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8.1. INTRODUCTION

The Roma population represents the oldest and largest ethnic minority in Europe. The number of Roma within Europe is estimated between 10-12 million, of whom around half are EU citizens and around 5-6 million are children.¹ In Greece, the Roma population is estimated around 175,000, though there is no available data on the exact number of Roma who have Greek nationality as well as of Roma children mostly due to their nomadic lifestyle and informal settlement.² Meanwhile, the European Commission has pointed out that Roma in Europe encounter considerable impediments in accessing health care combined with the social

¹ Resolution 1740 (2010) of the Parliamentary Assembly of the Council of Europe on ‘the situation of Roma in Europe and relevant activities of the Council of Europe’, § 1; <http://ec.europa.eu/justice/discrimination/roma/index_en.htm>; WHO Regional Office for Europe, *Roma Health Newsletter -issue 1*, Copenhagen: WHO, May 2012, p. 1; Report 13158 (2013) of the Committee on Equality and Non-Discrimination at the Parliamentary Assembly of the Council of Europe on ‘Ending Discrimination against Roma Children’, p. 6 § 2. Of note, the exact number of Roma is difficult to be defined as a large number of Roma families lack official documentation.

² European Commission, *The European Union and Roma - Factsheet - Greece*, Brussels: European Commission 2014; See also, ERRC, Submission of the European Roma Rights Centre Concerning Greece for Consideration under the Universal Periodic Review by the United Nations Human Rights Council (HRC) at its 11th Session on 2 – 11 May 2011, p. 1. Accordingly, the ERRC has stressed that based on unofficial estimates Roma in Greece range from 180,000 and 350,000, averaging 265,000 (2.47% of the population in Greece); See, also, Parliament of Greece (Period IE' - Synod A'), *Official Records of Parliament's Session I'*, Athens, 25 July 2013, pp.47-50. The Greek Minister of Interior and Administrative Reconstruction stressed that Roma parents are unwilling to register their children either due to ignorance of the birth registration procedure or due to their own negligence and as such there is no available/reliable data to determine the population size of Roma children in Greece.

exclusion, poor living and socioeconomic conditions that they experience in their daily lives.³ Likewise, UNICEF has pointedly underlined that ‘Roma children in all countries across Europe are at risk of experiencing the systematic violation of their rights, reflected in severe poverty and marginalization, discrimination and the denial of equal access to services and of equal opportunities in society.’⁴ At a policy level, on 5 April 2011, the European Commission adopted the ‘EU Framework for National Roma Integration Strategies up to 2020’ and urged all Member States to design or revise national Roma integration strategies in an effort to generate tangible improvements with respect to four key priority areas, *inter alia*, access to healthcare for the Roma.⁵

Importantly, at the same time the ECtHR has recognised in its case-law that this population group has special needs and characteristics by virtue of its both socio-economic and ethnic status which must be given special attention by States in terms of determining and fulfilling their obligations.⁶ Particularly, the Court noted that the vulnerable position of this group as a minority means that ‘some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases ...’.⁷ The Court by underlying the particularly vulnerable position of this group in society at large (housing etc.) acknowledged the State’s positive obligation to take into account and facilitate the different lifestyle which could entail different treatment for this population group on some occasions.⁸

³ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *An EU Framework for National Roma Integration Strategies up to 2020*, Brussels: European Commission, 5.4.2011 COM(2011) 173 final. <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0173:FIN:EN:PDF>>

⁴ UNICEF, *UNICEF and Roma Children*, available at: http://www.romachildren.com/?page_id=437

⁵ Ibidem supra note 3.

⁶ See, *Chapman v. the United Kingdom* (Application no.27238/95) ECtHR 18 January 2001; See also, concerning the ECtHR’s awareness of and concern for the way of treatment of the Roma, *Beard v. the United Kingdom* (Application no. 24882/94) ECtHR 18 January 2001; *Coster v. the United Kingdom* (Application no. 24876/94) ECtHR 18 January 2001; *Jane Smith v. the United Kingdom* (Application no. 25154/94) ECtHR 18 January 2001; *Lee v. the United Kingdom* (Application no. 25289/94) ECtHR 18 January 2001. Notably, the above case law reflects also how the ECtHR conceives Roma identity.

⁷ *Chapman v. the United Kingdom* (Application no.27238/95) ECtHR 18 January 2001, § 96.

⁸ This approach was also adopted in previous judgments of the ECtHR. In *Thlimmenos v. Greece* (Application no. 34369/97, ECtHR 6 April 2000), the ECtHR stressed that States are obliged to adopt differential measures regarding persons who find themselves in significantly different situations. Specifically, the Court held that ‘the right not to be discriminated

Building on the analysis of Part I of the present study and in view of the above concerns and calls for action, in this chapter we will examine whether Greece complies with its binding obligations particularly arising from the internationally guaranteed right to health towards Roma children within the context of health care, although the underlying preconditions for health will also be dealt with where relevant. For this reason, in section 8.3, attention will be drawn to respective national law and policy measures coupled with areas of concern and steps forward in light of the internationally guaranteed right to health. Subsequently, specific challenges relating to socio-economic circumstances, under which Roma children live that are closely intertwined with the effective enjoyment of the right to health in a way that they can be crucial and a decisive factor for Roma children's health and determine their possibilities of accessing health care, will be addressed in section 8.4.⁹ But first, in the following paragraph, the definition of two terms, namely Roma and children, as well as the definition of Roma children's health status in Greece will be elaborated.

8.2. ROMA CHILDREN AND THEIR HEALTH STATUS

In general, pursuant to the Council of Europe, the term 'Roma' comprises a wide diversity of population groups, which include Roma, Sinti, Kale and related groups in Europe, such as Travellers and the Eastern groups (Dom and Lom), including also individuals who identify themselves as Gypsies.¹⁰ In Greece, the main groups

against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different' (§ 44). The reasoning of the Court in Thlimmenos case could be applied to cases relating to other minority populations, such as the Roma.

⁹ '(...) the fundamental structures of social hierarchy and socially determined conditions that determine how people live, work, are raised and educated, which subsequently determine people's state of health (...)'. WHO/CSDH, *Closing the gap in a generation: health equity through action on the social determinants of health. Final report of the commission on social determinants of health*, Geneva: World Health Organization, 2008. <http://www.who.int/social_determinants/the_commission/final_report/en/index.html>

¹⁰ Council of Europe, *Council of Europe - Descriptive glossary of terms relating to Roma issues, version dated 18 May 2012* <www.coe.int/roma>; This definition is used in a number of documents of the Council of Europe, such as Resolution 1740(2010) of the Parliamentary Assembly on the situation of Roma in Europe and relevant activities of the Council of Europe, Committee of Experts on Roma and Travellers (MG-S-ROM). Within the specific 'the European Union and the Roma' section on the European Commission's website it is stressed that 'as it is most commonly used in EU policy documents and discussions, the term 'Roma' here refers to a variety of groups of people who describe themselves as Roma, Gypsies,

of Roma involve: (a) domestic nomadic Roma; (b) long-term settled distinct Roma communities, suffering from poverty and exclusion; (c) long-term settled distinct Roma communities, living almost without problems; (d) Roma migrants who are not EU nationals, especially coming from Albania, but also from Kosovo and the former Yugoslav Republic of Macedonia; (e) Roma migrants from new EU Member States, especially from Bulgaria and Romania; (f) fully integrated Roma who may not even identify themselves as belonging to Roma population; (g) Roma Muslims in Thrace, who benefit from the minority protections pursuant to the treaties between Greece and Turkey following World War II.¹¹ In addition, even though, Roma in many European countries are generally acknowledged to constitute a minority group, in Greece Roma do not enjoy a special legal status, except for the Roma Muslims in Thrace who are recognised legally as a minority group primarily on religious grounds.¹² Moreover, in Greece, as noted earlier, the Roma population is estimated around 175,000, constituting almost 1,55% of the total population in Greece and living scattered over the entire region with the highest concentrations around large cities, such as Athens and Thessaloniki.¹³ The number of Roma children in Greece, though, cannot be estimated due to the lack of appropriate data.¹⁴

Travellers, Manouches, Ashkali, Sinti and other titles. The use of the term Roma is in no way intended to downplay the great diversity within the many different Romani groups and related communities, nor is it intended to promote stereotypes.' <http://ec.europa.eu/justice/discrimination/roma/index_en.htm>

¹¹ Organization for Security and Co-operation in Europe (OSCE) High Commissioner on National Minorities, *Recent Migration of Roma in Europe*, OSCE and Council of Europe Commissioner for Human Rights, 2nd Ed., October 2010, p. 43; At the CoE level, there is no common definition of the term national minorities. Nonetheless, the Framework Convention for the Protection of National Minorities (adopted in 1994, entered into force in 1998) provides for the protection of minority cultures and identities. In fact, Germany, Sweden and Slovenia make explicit reference to the Roma in their list of minorities located within their borders; Concerning the protection of Muslims in Thrace, see Treaty of Lausanne of 1923, ratified by Greece by the Legislative Decree of 25 August 1923 and Greek-Turkish Peace Treaty, 1 November 1913, ratified by Greece by Law 4213/1913.

¹² See, UN CESCR, CO: Greece, UN Doc. E/C.12/1/Add.97, 7 June 2004, §10 read in conjunction with § 51; UN CESCR, CO: Greece, UN Doc. E/C.12/GRC/CO/2, 27 October 2015, § 9; See, Articles 37 et seq. of the Treaty of Lausanne of 1923, ratified by Greece by the Legislative Decree of 25 August 1923.

¹³ European Commission, *The European Union and Roma – Factsheet -Greece*, Brussels: European Commission, 2014; See also, ERRC, Submission of the European Roma Rights Centre Concerning Greece for Consideration under the Universal Periodic Review by the United Nations Human Rights Council (HRC) at its 11th Session on 2 – 11 May 2011.

¹⁴ Ibidem supra note 1, Report 13158, p. 6 § 2; Ibidem supra note 2; UN CESCR, CO: Greece,

Meanwhile, it is worth noting that Greece defines children as all human beings below the age of 18, which is in line with the CRC definition.¹⁵ Importantly, along with the above definition, Greece acknowledges primarily in Articles 1510-1511 of the Greek Civil Code the rights and duties of parents (or other persons legally responsible for the child in Articles 1603 and 1606 of the Civil Code), involving the provision, in a way consistent with the best interests of the child, of appropriate direction in the exercise by the child of the rights as well as their primary responsibility for the upbringing and development of child, which are also in line with Articles 5 and 18 CRC, respectively.¹⁶ These provisions highlight the role of the parents (or other persons legally responsible for the child), in circumstances where a child has not attained capacity and competency, in ensuring the child's rights; *in concreto* as to the right to health (care) these provisions find application in the context of the parents' primary responsibility for ensuring healthy living conditions and guiding the child within health care settings in line with the child's best interests.

Nevertheless, the age and dependence of Roma children upon the status, activities of other people for their growth and development make them more vulnerable compared to members of other age groups with respect to the effective enjoyment of all rights, such as the right to health and health care.¹⁷ At the same time, Roma children are falling also within the category of ethnic minority which contributes to inequalities in relation to health (care) for this group in Greece.¹⁸

UN Doc. E/C.12/GRC/CO/2, 27 October 2015, § 9 (Generally, there is a lack of statistics on the composition of the population in Greece).

¹⁵ Article 1 CRC, 20 November 1989, entered into force 2 September 1990, 1577 UNTS 3. As at 30 June 2016, 196 States were party to the CRC, including Greece. In particular, Greece has ratified CRC and incorporated into national law by Law 2101/1992; See, Article 121(1) of the Greek Penal Code in conjunction with Article 127 of the Greek Civil Code, which implicitly define a child.

¹⁶ *Ibid.*, Articles 5 and 18 CRC.

¹⁷ See, preamble and Article 2(2) CRC.

¹⁸ UN, *The Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health: Report of the Special Rapporteur, Paul Hunt*. UN ESCOR, Commission on Human Rights, 59th Sess., Agenda Item 10, UN Doc E/CN.4/2003/58, 13 February 2003, § 66; For instance, the Roma are officially recognized as ethnic minority, *inter alia*, in Austria, Croatia, the Czech Republic, Hungary, Norway, Poland, Romania, Slovakia, Sweden, Ukraine, but not in Greece. On this issue the CESCR has repeatedly expressed concern in its concluding observations to Greece. See, UN CESCR, CO to Greece, UN Doc. E/C.12/1/Add.97, 7 June 2004, § 10 and CO: Greece, UN Doc. E/C.12/GRC/CO/2, 27 October 2015, § 9-10; The CRC Committee has identified that Roma children, who are repeatedly the subject of concern in its concluding observations, are falling within the category

As such, the combination of age, dependence and ethnicity implies the heightened (double) vulnerability as to their prospects for enjoyment of their right to health (care) as well as the need for the Greek State to adopt context sensitive measures that address the special needs of those children and eliminate obstacles that impede their ability to enjoy their right to health (care).¹⁹

With regard to the health status of Roma children in Greece this population group face difficulties while accessing health care attributed to a number of factors. These factors include lack of financial means of their families either to pay for health-related costs or health insurance contributions or to afford transportation from remote or isolated areas to health care facilities, lack of identification documents required to obtain health care (see section 8.4).²⁰ Meanwhile, the fear or the experience of discrimination of Roma children and their families within health-care settings hinders their access to health care and, consequently, weakens their health status.²¹ In addition to the insufficient access to health care, many Roma children and their families often experience precarious socio-economic conditions that may have a negative impact on their health, as will be mentioned in section 8.4. As a consequence, Roma children, constitute an extremely vulnerable population group to contracting diseases and developing chronic illnesses and to suffer from poorer health compared to any other population group – the ‘average

of vulnerable children (see Part I, section 4.2.2., *inter alia*, UN CRC Committee CO: Greece, UN Doc. CRC/C/15/Add.170, 2 April 2002, § 56(e), UN CRC Committee CO: Slovakia, UN Doc. CRC/C/15/Add.140, § 35).

¹⁹ UN CESCR, General Comment No. 14: *The Right to the Highest Attainable Standard of Health*, UN Doc. E/C.12/2000/4, 11 August 2000, §§ 21-22; *Ibid.*, UN CESCR, CO: Greece 2015, § 10; *Ibid.*, UN CRC Committee, CO: Greece 2002, §§ 9-10 read in conjunction with § 56(e).

²⁰ Council of Europe, *The Council of Europe: Protecting the Rights of Roma*, Strasbourg: the Council of Europe's Directorate of Communication in collaboration with the Support Team of the Special Representative of the Secretary General for Roma Issues, September 2011, p. 12; See, UN CESCR, CO: Greece, UN Doc E/C.12/1/Add.97, 7 June 2004, §§ 11 and 15; UN CRC Committee, CO: Greece, UN Doc CRC/C/GRC/CO/2-3, 13 August 2012, § 52; UN CEDAW Committee, CO: Greece, UN Doc CEDAW/C/GRC/CO/7, 1 March 2013, § 32; Note that such cases also exist in other European countries, see, *inter alia*, *ERRC v. Bulgaria*, Complaint No. 46/2007, 3 December 2008. Accordingly, the ECSR found that ‘significant cases of discriminatory practices against Roma in provision of medical services’ were taken place throughout Bulgaria (§ 50) (see Part I, section 4.3).

²¹ European Union Agency for Fundamental Rights (FRA), *Data in focus report: the Roma*, Vienna: FRA, 2009. Accordingly, 20% of Roma responded that they had experienced discrimination within health-care settings; See also, UN CESCR, CO: Greece 2015 (*supra* note 18) and UN CRC, CO: Greece 2002 (*supra* note 18).

person' among Greece's population. A study carried out by UNICEF revealed that an increasing number of Roma children reported to suffer from avoidable illnesses, such as pneumonia and respiratory illnesses, and skin infections.²² Over 25% of Roma children are not fully vaccinated, thereby being at a higher risk of contracting vaccine-preventable diseases, which is indicative of their low and insufficient access to preventive care.²³ In general, life expectancy among Roma children is approximately a decade (i.e., about 8-15 years) lower than that of the general population.²⁴

As such, attention must be given by the Greek State to the extent of access to health care and to specific areas, including immunization, prevention of transmittable diseases, appropriate treatment of infectious diseases, adequate health care granted to Roma children within national law-policy context. In this regard, in 2011 the European Parliament in its resolution cautioned Member States to design public policies aimed at the promotion of early child development and to ensure that all children irrespective of their status enjoy social protection within their respective jurisdictions.²⁵

8.3. HEALTH-RELATED LAW AND POLICY

8.3.1. SETTING THE SCENE

In light of the above analysis and Part I, the state obligations arising from the right to health enshrined in human rights documents that are binding for Greece can provide an important background for its operationalisation in the Greek legislation-policy for Roma children, as they reflect the State's commitment to realize the respective right -albeit dependent upon the particular socio-economic position of Roma children in Greece- (section 8.4).

²² Ibidem supra note 1, Report 13158, p. 7.

²³ Eurostat, *Healthy life years and life expectancy at birth, by sex*, Eurostat, 2013. <http://epp.eurostat.ec.europa.eu/portal/page/portal/product_details/dataset?p_product_code=TSDPH100>; See, also, European Commission, *Roma Health Report - Health status of the Roma population - Data collection in the Member States of the European Union*, EU, August 2014, p. 43.

²⁴ Greek NGO's network for children rights convention, *Non-Governmental Organizations' Report in Application of the United Nations Convention on the Rights of the Child- Greece*, Athens, April 2011, p. 17; Council of Europe, *The Council of Europe: Protecting the Rights of Roma*, Strasbourg: the Council of Europe's Directorate of Communication in collaboration with the Support Team of the Special Representative of the Secretary General for Roma Issues, September 2011, p. 12.

²⁵ European Parliament resolution of 8 March 2011 on Reducing Health Inequalities in the EU, (2010/2089 (INI)) §§ 21-22.

In order to define respective laws and policies in Greece, it is essential to firstly mention that Roma children either with Greek or other citizenship have exactly the same entitlements to health (care) as the rest of the Greek population, without depending on whether or not they are legally entitled to be in the country. In particular, EU Roma children, namely the members of communities who are citizens of the EU, enjoy the freedom of movement in line with the EU Freedom of Movement Directive 2004/38/CE of 29 April 2004 which establishes the right of EU citizens to move and reside in other EU countries and have the same rights as Greek citizens, including being registered with the National Health System.²⁶ Further, Roma children who are third countries' nationals, are entitled to receive the same health care under the same conditions as Greek Roma children, whether they reside legally or illegally in Greece, according to Article 26 § 2 (a) of Law 4251/2014.²⁷

8.3.2. NATIONAL LEGISLATION REGULATING ACCESS TO HEALTH CARE FOR ROMA CHILDREN

The Constitution of Greece in Article 21 § 1 provides expressly that childhood is under the protection of the State. At the same time, the protection of one's health is also guaranteed under the Constitution of Greece (see section 5.2). Note, however, that the right to health of (Roma) children is not explicitly enshrined in the Constitution, but rather it is located under the umbrella of the general right to health provisions under Articles 5 § 5 and 21 § 3 of the Constitution.²⁸ Importantly, the Greek law contains several general provisions governing one of the essential elements of the right to health, namely access to health care for vulnerable groups in society, without though explicitly addressing Roma children. This means that access to health care for Roma children in Greece is regulated implicitly by a number of respective law provisions addressed generally to vulnerable groups of the population in Greece.

²⁶ European Parliament and the Council of the European Union, *Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States*, April 2004; Note that PD 106/2007, *Official Government Gazette* – ΦΕΚ issue A' 135/21-06-2007 (as amended by Article 42 of Law 4071/2012) has integrated at the national level the Directive 2004/38/EC.

²⁷ Law 4251/2014, *Official Government Gazette* – ΦΕΚ issue A' 80/01-04-2014.

²⁸ The *Constitution of Greece (1975-1986-2001-2008)*, as revised by the parliamentary resolution of 27 May 2008 of the VIIIth Revisionary Parliament and published in the *Official Government Gazette* - ΦΕΚ issue A' 120/27-06-2008.

In particular, Article 1§ 2 of Law 1397/1983, which was discussed elaborately in chapter 6, provides universal access to all citizens, regardless of financial, employment and social status, and as such this provision implicitly, though, reflects the notion under Article 24 § 1 CRC.²⁹ Moreover, pursuant to Article 44 of Law 2082/1992 Greek nationals and authorized residents with low or no income and without an insurance coverage can obtain a welfare booklet (i.e. as citizens of no financial means) in order to receive cost-free public health care.³⁰ In addition, Article 3 § 3 (c) of Law 2519/1997 provides for the design and implementation of health programmes addressed to at high-risk population groups with ethnic, social and cultural differences.³¹

Further, Law 3304/2005 underlines the right of every individual to equal treatment, promotes the application of non-discriminatory measures and proscribes any discrimination on any ground (e.g., ethnic, national or racial origin, age), which has the intention or effect of nullifying or impairing social protection, including access to health care.³² In fact, Law 3304/2005 has integrated at the national level a Council Directive 2000/43/EC of June 2000 (see Part I, section 2.3). Accordingly, it is highlighted that individuals should receive no less favorable treatment irrespective of their racial or ethnic characteristics and that discrimination in the areas of employment, education, social protection, including social security and healthcare, and access to and the supply of goods and services, including housing, is prohibited.³³ In light of the above, it is notable that the guiding principle of non-discrimination does not prescribe a specific level of health care, involving certain services that should be available for children with special health needs, such as Roma children.³⁴

Meanwhile, perhaps acknowledging the severe consequences of the continual economic recession on the living reality of many segments of the society in Greece, the Greek State sought to devise solutions on issues involving the high costs of

²⁹ Law 1397/1983, *Official Government Gazette* – ΦΕΚ issue A' 143/07-10-1983; Annex 2.

³⁰ Law 2082/1992, *Official Government Gazette* – ΦΕΚ issue A' 158/21-09-1992; See also, Joint Ministerial Decision 139491/16-11-2006, *Official Government Gazette*- ΦΕΚ issue B' 1747/30-11-2006.

³¹ Law 2519/1997, *Official Government Gazette* – ΦΕΚ issue A' 165/21-08-1997.

³² Law 3304/2005 on the 'Implementation of the principle of equal treatment, irrespective of race, nationality, religious or other beliefs, disability, age or sexual orientation', *Official Government Gazette* – ΦΕΚ issue A' 16/27-01-2005.

³³ Article 3(1) Racial Equality Directive 2000/43/EC.

³⁴ A.C. Hendriks, 'Patients' rights and access to health care', *Medicine and Law* 2001, Volume 20, p. 375.

health care mainly for groups with low or no income and without insurance coverage. Importantly, as will be analyzed more fully below, Roma children and their families experience poor conditions with negative impacts upon their prospects for enjoyment of their right to health and health care especially during the economic crisis in Greece.³⁵ In view of the above concerns, a range of health reform measures regardless of personal economic and employment status were introduced by the Greek State. Specifically, Law 4238/2014, as discussed extensively in chapter 6, provides that every individual, irrespective of financial, social and insurance status, can equally access primary health care system.³⁶ In line with Law 4238/2014, the Greek Ministry of Health in cooperation with the Greek Ministries of Employment and Finance issued Y4a/GP/oik.48985/2014 and G. P./oik 56432/28-06-2014 decisions, namely two joint ministerial decisions that provide for a cost-free access to hospital and pharmaceutical care, respectively, for individuals and their family members without insurance coverage and ability to afford such coverage (see section 6.4.2.3).³⁷ The measures regulated by Law 4238/2014 in combination with the respective joint ministerial decisions reflect an effort -belatedly perhaps- on the part of the Greek State to guarantee the economic accessibility of health care for vulnerable groups in society, such as Roma children, which is a significant element of the 'AAAQ' criteria defined by the CESCR in its GC No. 14 on the right to health (see Part I, section 3.5).

Nonetheless, it is worth observing that as elaborated previously (section 6.4.2.3), individuals wanting to benefit from such coverage have to follow a strict and specific procedure that it is not always easy for them to understand how to access its formal structures (i.e. a number of public authorities-committees at different levels) and as such, it remains to be seen as regards to its implications on 'economic accessibility' of vulnerable population groups, like Roma children and their families. At the same time, it is essential to stress that preconditions of such coverage are that the individuals should reside legally in the country and should obtain a social security

³⁵ UNICEF Office of Research, 'Children of the Recession: The impact of the economic crisis on child well-being in rich countries', *Innocenti Report Card 12*, Florence: UNICEF Office of Research, 2014 p. 9; Ibidem supra note 20, UN CRC Committee, CO: Greece 2012, § 58.

³⁶ Article 1(3) Law 4238/2014, *Official Government Gazette* - ΦΕΚ issue A' 38/17-02-2014.

³⁷ Joint Ministerial Decision Y4a/GP/oik.48985/2014 'Defining the Conditions, Criteria and Process of Access to Health Care for the Uninsured and Financially Weak people', *Official Government Gazette* - ΦΕΚ issue B' 1465/05-06-2014; Joint Ministerial Decision GP/oik 56432/28-06-2014, 'Defining the Conditions, Criteria and Process concerning Access to Pharmaceutical Care for Uninsured and Financially Weak People', *Official Government Gazette* - ΦΕΚ issue B' 1753/28-06-2014.

number (AMKA).³⁸ Considering the low rate of birth registration among Roma population (see below, section 8.4.3), such preconditions create a tension with the accessibility principle under the right to health (Part I, section 3.5).

Notably, of particular assistance in setting parameters as to the legislative measures required by the Greek State for the effective implementation of Roma children's right to health (care), are two developments. Specifically, there has been a proliferation of institutional monitoring mechanisms that measure, *inter alia*, the level of implementation of every child's right to health (care), including Roma children in Greece. Particularly, in 2001 the National Observatory on the Rights of Children (NORC) was established under the auspices of the Ministry of Education with the aim of monitoring the implementation of the Convention on the Rights of the Child.³⁹ This institution has a responsibility to identify problems in the enjoyment of all children's rights and to suggest solutions with a view to securing the effective implementation of state obligations under the CRC. This initiative was welcomed by the CRC Committee in its 2002 concluding observations for Greece as a positive step.⁴⁰

Meanwhile, in 2003 the Greek Ombudsman for Children was established by Law 3094/2003 under the auspices of the general Greek Ombudsman and since 2011 includes a separate investigation team for Roma children issues. Importantly, the duties of this national monitoring mechanism are to promote Roma children's interests to public and private authorities and be a spokesperson for Roma children's rights. Such task involves, *inter alia*, working with local authorities and NGOs in order to ensure that the best interests' principle is respected in the context of State's activities and remains a primary consideration in development of policies by local authorities.⁴¹ All in all, it constitutes an independent authority that can investigate state or private actions or omissions or complaints about individuals or legal entities brought to him by the child itself, its parents/caregivers, or by third parties being aware of violations against the child or on his own initiative. Particularly, this

³⁸ Ibid., Joint Ministerial Decision GP/oik 56432/28-06-2014, Article 1(1) and (5).

³⁹ Article 4, Law 2909/2001, *Official Government Gazette* – ΦΕΚ issue Α' 90/02-05-2001.

⁴⁰ Ibidem supra note 18, UN CRC Committee, CO: Greece 2002, § 6; Note that, in 2012 the CRC Committee was concerned that the NORC was not fully operational for 11 years, namely since its establishment (Ibidem supra note 20, § 11).

⁴¹ The general Greek Ombudsman was established under Law 2477/1997 (founding law), as amended and supplemented by Law 3051/2002 (ΦΕΚ 220 issue Α'), Law 3094/2003 (the Greek Ombudsman for Children - ΦΕΚ 10 issue Α'), Law 3293/2004 (the Greek Ombudsman for Health and Social Solidarity) and Law 3304/2005. Its function as an independent authority was further enforced under Article 103 § 9 of the Constitution of Greece.

quasi-judicial authority has extensive investigative powers, is responsible for conducting inquiries, after receiving such complaints, as well as he has the power to give recommendations, prepare thematic reports on his own initiative and publicize matters to enhance the welfare of Roma children and youth.⁴² With respect to Roma children, in a report, the Ombudsman has explicitly stressed that the Greek State has not taken the appropriate measures to ensure unimpeded access to health care for Roma children pursuant to the Constitution of Greece and Article 6 of Law 3304/2005.⁴³

Both aforementioned national institutional monitoring mechanisms are generally concerned with enhancing, *inter alia*, the enjoyment of the right to health (care) of Roma children in Greece and providing guidance as to the measures the Greek State must take to ensure that its efforts for compliance with its binding obligations are appropriate for this vulnerable population group. Further, they highlight the importance of accountability and participation in the adoption of legislative measures if the Greek State is to secure the effective implementation of the obligations that flow from its recognition of every child's rights, including the right to health (care) of Roma children.

8.3.3. HEALTH-RELATED POLICIES FOR ROMA CHILDREN

The imposition on the Greek State of a legal obligation to ensure access to health care for Roma children under the right to health is only one part of the picture, given that the Greek State should comply with this obligation and translate it into the formulation of operational policies and programmes for the health and well-being of these children. Before embarking on the analysis of health-related policies for Roma children, it is essential to mention that these policies were not designed and/or implemented by the Greek State in light of the right to health framework (albeit some of these policies reflect several elements of this framework). Over the last decade, at a policy level the Greek State devoted either explicit (Roma children specific policies) or implicit attention to Roma children to create the necessary conditions of trust and confidence between Roma communities and the local health care providers. As such, the Greek State developed a number of health-related programmes that tend to enhance the health status of Roma children

⁴² Articles 3 and 4, Law 3094/2003 *Official Government Gazette* – ΦΕΚ issue Α' 10/22-01-2003; For further information concerning this institution, see, the European Network of Ombudspersons for Children at <<http://www.enoc.eu>>.

⁴³ Greek Ombudsman for Children, *Immediate Measures for the Protection of Roma Children and Social Inclusion of Roma*, Press release - 24 October 2013.

primarily in terms of Roma integration strategies rather than in light of human rights law.

In particular, as regards immunization (vaccination) of Roma children against infectious diseases, the Greek Ministry of Health has issued a number of respective Circulars. These Circulars implicitly regulate access to primary health care and to the necessary vaccinations against major childhood diseases pursuant to the National Vaccination Programme. More specifically, the Greek Ministry of Health issued two significant Circulars, namely Y1/G.P.oik 109797/08-11-2012 and Y1/G.P.oik 109805/08-11-2012, indicating specific strategies concerning access to vaccination programmes for vulnerable and at-risk children, including Roma children. Accordingly, the Y1/G.P.oik 109797/08-11-2012 Circular entitled ‘vaccination programme of uninsured and without financial means children and adolescents’ provides for the free vaccination coverage of children who do not have the financial means, are uninsured and reside legally or illegally in Greece. The vaccinations are conducted under the auspices of the Greek Ministry of Health pursuant to the national vaccination programme for young children and adolescents. Vaccinations are offered without any costs for parents, as the vaccines, which are not covered by the insurance organizations, come from the national stock. At the same time, early childhood immunization is also provided cost-free in Greece for certain groups of the population, including Roma children. Particularly, Y1/G.P.oik 109805/08-11-2012 Circular provides for the vaccination of infants belonging to uninsured and without financial means families against major infectious diseases.⁴⁴ Nevertheless, the vaccination among Roma children is lower than among other population groups in Greece.⁴⁵ Roma families do not adhere to the vaccination schedule that protects against diseases which can be disastrous for the health of their children and their development prospects, particular in situations where care of children cannot be provided by their families due to lack of financial means.⁴⁶ In fact, the Greek Ministry of Health has urged all hospitals in the country to raise awareness and to regularly inform Roma mothers about the potential health risks

⁴⁴ Note by way of background that the medical and vaccination coverage of children belonging to disadvantaged groups of the population has been established since 2006 under the Ministerial Decision 139491/16-11-2006, *Official Government Gazette* - ΦΕΚ issue B' 1747/30-11-2006, on ‘Determination of the requirements criteria and procedures of access to the system of hospital, medical and pharmaceutical care for uninsured and financially weak citizens’.

⁴⁵ See, European Commission, *Roma Health Report - Health status of the Roma population - Data collection in the Member States of the European Union*, EU, August 2014, pp. 43-44.

⁴⁶ Ibid.

and ensure access to vaccination programme required in preventing harm to the health of infants.⁴⁷ As such, the implementation on the part of the State of an immunization programme which is accessible to all, including Roma children and their families, implicitly indicate the State's initial response to its obligation to develop preventive health care (Part I, section 2.2.2).⁴⁸

Nonetheless, there are problems related to the vaccination of Roma children, as a significant proportion of Roma mothers give birth unattended by a health professional (i.e., without skilled professional care). As such, Roma mothers have limited access to health information (e.g., information on vaccination programmes and schedules) and do not receive prior notification about the vaccination procedure for their non-registered children. This means that Roma mothers are less likely to have the awareness to achieve optimum health for their children and act on the basis of the best interests of their children (see Part I, section 4.2.2). Indeed, organizations, such as UNICEF, have stressed that the care a child receives, mainly the prevention of harm to the health of a child, is closely dependent on the knowledge, abilities and skills of the mother or other primary caregiver, the support the mother receives and the extent of access to care the mother has.⁴⁹

Interestingly, since 2002 and until the end of 2013 it seems that access to health care for Roma children and their families was expressly facilitated through the establishment of 35 Centers (former Medico-Social centers) in the Roma organized permanent settlements, albeit these structures were established for a specified period (i.e. limited timeframe) by the Greek State (i.e. the Greek Ministry of Health) without providing clarification on their further viability.⁵⁰ The provided

⁴⁷ Greek Ministry of Health, Circular Y1/G. P. oik. 10980/28-11-2012 on 'Reminding of Vaccinations'.

⁴⁸ Ibidem supra note 15, Article 24 § 2 (f) CRC; See also Annex 2.

⁴⁹ See, e.g., UNICEF, *Women Motherhood Early Childhood Development: Exploring the question of how poor Roma women's status and situation influences children's survival, growth and development*, Hungary: Regional Office Central and Eastern Europe & the Commonwealth of Independent States, 2011, p. 7, <http://www.unicef.org/ceecis/Women_Motherhood-07-21-2011-final-WEB.pdf>

⁵⁰ Joint Ministerial Decision No. 113956/02-10-2002, *Official Government Gazette* - ΦΕΚ issue B', 1295/04-10-2002. Of note, this initial Decision set out the establishment, management, assessment, monitoring and implementation procedure of the then Medico-Social Centers; Joint Ministerial Decision 1.5422/oik. 31022/02-05-2011, *Official Government Gazette* - ΦΕΚ issue B' 824/12-05-2011 on 'System for the Management, Evaluation, Control and Procedure for the Implementation of Action -Centers for the Support of Roma and Other Vulnerable Groups- in terms of the National Strategic Framework for the Period 2007-2013'.

activities under this infrastructure included, *inter alia*, counseling, provision of basic health care services and vaccination of children, health education, provision of support in the process for acquiring adequate housing, registration and monitoring of their needs for planning further policy actions with ultimate aim the social inclusion of this population group and the elimination of discrimination practices against this group.⁵¹

Additionally, for the year 2012 KEELPNO (Hellenic Center for Disease Control and Prevention) in close cooperation with respective regional authorities from the Greek Ministries of Health and of Employment carried out a programme for the protection and promotion of health as well as for the provision of psychosocial support for Roma children and their families.⁵² More specifically, KEELPNO through its mobile health-care units launched visits to the Roma temporary halting sites based on its overall mandate to promote public health and in terms of the specific tasks assigned to it by the Greek Ministry of Health, namely to conduct clinical examinations and vaccinations; to provide psychosocial support and consultation; to place greater emphasis on issues concerning restrictions of infectious diseases and Roma children vaccinations; and to record living conditions at the local level.⁵³ It seemed that such a practice intended not only to promote access to primary health care, but also to absolve Roma children and families from their fear of stigmatization and their distrust towards public (health) services with ultimate aim their social integration.⁵⁴ This would in turn help them safeguard and enhance their health and well-being and motivate them to adopt behaviors that would limit the future spread of infectious diseases. Importantly, the provision of such elaborate activities (i.e. covering both access to health care and the determinants of health) under the Greek Ministry of Health in cooperation with the KEELPNO reflect indirectly the State's intention to create conditions to assist and enable Roma children to enjoy their right to health, in light of its 'obligation to fulfil', a State's duty flowing from the right to health (see Part I, section 3.3). Nonetheless, the drawback of such initiative is its limited duration, namely until the end of the year 2012. At the same time, it must be recognised that such a limited duration is problematic but so too is the process followed by the Greek State, namely the non-participation of the intended beneficiaries (i.e., Roma children and their families) in the design, implementation and evaluation of this programme.

⁵¹ Ibid.; See, ESC, ECSR, Conclusions XIX-2 (2009) Greece, Council of Europe, January 2010, p. 11.

⁵² Greek Ministry of Health, Ministerial Decision P2a/GPoik.27578/13-03-2012.

⁵³ Ibid., §§ 2 and 4(II).

⁵⁴ Ibid., § 3.

There to, the point to stress is that constructive dialogue between the State and the target group rather than State directives must inform the type of measures targeted to Roma children and their families (see Part I, section 3.5).

Meanwhile, in response to the initiative of the European Commission on the development of national strategies for the integration of Roma up to 2020, the Greek State has taken action, *inter alia*, to facilitate access to primary health care for Roma children and their families. For that purpose, a special joint commission from the Ministries of Health and Labour was established aiming at introducing the measures required for the operationalisation of the national strategy in the area of health. In fact, in terms of developing relevant and targeted measures to the health needs of Roma children, the commission identified the following action-areas (as part of the Greek State's commitment to enhance the health status of this group):

- Public health - hygiene, proper nutrition and oral hygiene.
- Environmental hygiene
- Disease prevention and health promotion, involving access to primary health care
- Disease prevention and health promotion dealing with matters of mental illness and drug addictions
- Access to health care – health education.⁵⁵

The above mentioned list of specific activities to be undertaken illustrate how the Greek State seeks to determine the nature of health needs of Roma children and make available appropriate facilities to explicitly address such needs within its jurisdiction, which largely reflect the right to health obligations under the CRC (see Part I, section 2.2.2). Areas, such as proper nutrition, hygiene, environmental sanitation and prevention against diseases, are critical to the health and development especially of younger Roma children, as attention to such areas can prevent potential health risks in the long-term (see Part I, section 4.2.2 – early childhood).⁵⁶ At the same time, the increase of low vaccination rates among Roma children constitutes a State's priority, as already mentioned. For this reason, the Greek Ministry of Health in close cooperation with other relevant actors, such as non-governmental organizations, local and regional authorities, developed a project for the education of Roma children and their parents in terms of health promotion, involving

⁵⁵ Ministry of Labour and Social Security, *National Strategy Framework for Roma*, December 2011, pp. 8 and 22.

⁵⁶ See, UN CRC Committee, General Comment No. 7: *Implementing Child Rights in Early Childhood*, UN Doc. CRC/C/GC/7/Rev.1, 1 November 2005, § 27(a)-(b).

appropriate immunization, hygiene and sanitation.⁵⁷ Uptake of this project was attributed to the need to access primary health care and health promotion for Roma children and their families, mainly because of findings that either few Roma children had received the necessary vaccination; or their parents/legal caretakers, on whose Roma children are largely dependent, had not filed the necessary medical certificates for their registration to school. This assertion indicates that this project was designed with an absence of the right to health framework. Note by way of background that all children are required to be medically checked-examined; follow the vaccination schedule; obtain a child's health booklet; and a medical certificate as prerequisites to their acceptance in primary education.⁵⁸

At the same time, due to the development of this project the Greek State is expected to obtain record of Roma communities, vaccination records for Roma children as well as issue official documentation-identity cards, a decisive factor in access to health care for Roma families (see section 8.4.3).⁵⁹ Furthermore, in terms of the initiative entitled 'Health education- Intervention' conducted -albeit not designed in light of human rights law- under the auspices of the Greek Ministry of Health in intercultural schools, Roma children received free dental care. In general, access to dental care for this population group is rather limited and Roma children and their families in their vast majority are unaware of the basic rules of oral health-hygiene.⁶⁰

Nonetheless, certain shortcomings in health care and especially preventive care have been identified in several cases concerning Roma children in regions of Greece. Reports focusing on certain local situations suggest that the health conditions of Roma children are far worse than those of the majority of the population. Life expectancy of Roma children in Greece is a decade lower than

⁵⁷ Greek Ministry of Health, Y1/G. P. 95720/16-09-2011 and Y1/G. P. 130064/28-12-2011.

⁵⁸ Greek Ministry of Education, PD 200/1998, *Official Government Gazette* - ΦΕΚ issue A' 161/13-07-1998, 'Organization and function of nursery education' and PD 201/1998 *Official Government Gazette* - ΦΕΚ issue A' 161/13-07-1998, 'Organization and function of elementary schools'. A Child's health booklet is compulsorily given to parents of the infant at its discharge from the maternity hospital. Note that every school year health education interventions are implemented in schools by hospitals/health centers, medical associations and other respective bodies, which conduct preventive controls and tests, and provide information on health prevention (23rd Greek report on the European Social Charter and 8th National Report on the implementation of the Additional Protocol of 1988, XX-2 (2013), CoE).

⁵⁹ European Commission, *The European Union and Roma- Factsheet. Greece*, April 2014.

⁶⁰ Greek NGO's network for children rights convention, *Non-Governmental Organizations' Report in Application of the United Nations Convention on the Rights of the Child- Greece*, Athens, April 2011, p. 18.

that of the general infantile population.⁶¹ Infectious diseases disproportionately affect Roma children and in recent years there has been a significant increase in the number of cases of such diseases among Roma children. For instance, since 2013 an increased number of hepatitis A -a vaccine preventable disease- was reported mostly affecting Roma children with new such cases occurring also in 2014. Reported outbreaks and clusters of such cases mainly affected camps in the regional units of Northwestern Greece and Thrace.⁶² Such outbreaks can be the result of the State's failure to implement Roma children specific preventive strategy, namely the lack of well-coordinated preventive health care programs (i.e. immunization program etc.); poorly defined or stigmatizing health raising-awareness campaigns; lack of a policy that is participatory in design and implementation; and lack of community-based primary health care linked to the remote geographical location of Roma housing (see below section 8.4.2). Thus, there is a lack of a comprehensive and systematic state policy action designed in light of the right to health framework that shapes measures targeted at the particular health needs and best interests of Roma children (see Part I, section 4.2.2).

Meanwhile, in 2010 a new policy action -albeit in collaboration with the Council of Europe- was introduced in Greece, namely Roma health mediation. In particular, this policy action aims to increase access to health care for this population group and is targeted at addressing their particular health needs and the obstacles that confront their ability to enjoy their right to health and health care.⁶³ Roma health mediation is a joint programme under the auspices of the CoE and enables through its interventions access to culturally sensitive health care for this population group.⁶⁴ More specifically, the Greek State agreed to participate in and develop the Roma

⁶¹ Ibid., p. 17.

⁶² K. Mellou, T. Sideroglou (Hellenic Center for Disease Control and Prevention), Increased number of hepatitis A reported cases among Roma in 2013 and January 2014, Greece, *e-bulletin - HCDCP - Ministry of Health*, 35(2014), pp. 9-10.

⁶³ See, Council of Europe, The Strasbourg Declaration on Roma, adopted 20 October 2010, at the Council of Europe High Level Meeting on Roma in Strasbourg, CM(2010)133 final, §§ 35, 46.

⁶⁴ Ibid. Note that in 2010, the Council of Europe began the European Training Programme for Roma Mediators – ROMED – in order to enhance the quality and effectiveness of (school/health/employment) mediators and existing training programmes, aiming at achieving better communication and co-operation between Roma and public institutions (schools, health-care providers, employment offices). ROMED leaflet, Mediation for Roma, Intercultural mediation for Roma children, a joint Council of Europe and European Commission action, Council of Europe Support Team of the Special Representative of the Secretary General for Roma Issues.

health mediation programme in the country with the aim of promoting communication between Roma communities and public institutions on significant matters, involving, *inter alia*, health care. Notably, this state action -albeit not designed in light of human rights law- is consistent with the requirement as established in Article 24 § 4 CRC, which underlines the need for the State's engagement in international co-operation as a means of ensuring the right to health (Part I, section 4.4).⁶⁵ Roma health mediators are suitably trained, with a good knowledge of Roma matters and usually members of the Roma communities who can speak the language of the Roma community they are working with.⁶⁶ They are tasked with enhancing the health status of Roma communities by mediating between the patients and the health personnel during consultations; communicating with Roma communities on behalf of the public health system; and generally by facilitating communication between Roma and health care providers. At the same time, Roma health mediators engage in alerting Roma children and families to the significance of preventive care and vaccination through facilitating vaccination and other health-related campaigns in Roma communities. As such, Roma health mediators are involved in organizing health education sessions to Roma children and families, and providing information on issues concerning reproductive health, maternal and child health. Furthermore, Roma health mediators are concerned with the protection of patients' rights by facilitating access to judicial and other remedies for Roma to claim health entitlements.⁶⁷ From the above, it becomes obvious that such a practice aims at providing Roma children and families with assistance towards health care providers and enhancing availability of health care services, highlighting gaps in their access to health care and ultimately ensuring an unimpeded enjoyment of the right to health (care) for this vulnerable population group.⁶⁸ However, it is

⁶⁵ Ibidem supra note 15.

⁶⁶ Ibidem supra notes 63 and 64. Up until 2014, in Greece there are 75 Roma mediators and 4 training programmes have been organized. <<http://romed.coe-romact.org/countries/greece> >

⁶⁷ Ibid.; The CRC Committee has stressed in its concluding observations on Greece that many children and families coming from distinct ethnic groups, such as the Roma, are unaware of their rights to social security and welfare, and are consequently unable to claim such assistance. (UN CRC, CO: Greece, UN Doc. CRC/C/15/Add.170, 2 April 2002, § 62(d)) In this regard, the Committee has recommended Greece to strengthen the provision of information about such benefits to children and families in need of assistance, including the Roma. (§ 63(d))

⁶⁸ Council of Europe, *The Council of Europe: Protecting the Rights of Roma*, Strasbourg: the Council of Europe's Directorate of Communication in collaboration with the Support Team of the Special Representative of the Secretary General for Roma Issues, September 2011, p. 19.

noteworthy that this seemingly well-intended project is still at a primary stage in Greece, namely at the training of Roma mediators, and, thereby, its effectiveness and impact on the health status of Roma children remains to be seen.

All in all, the preceding analysis, set out in sections 8.3.2 and 8.3.3, demonstrates that the Greek State has rarely considered implementing the implications of the right to health in a consistent and coherent way within the adoption of laws and policies in relation to Roma children. The point to stress therefore is that the State's legislative decisions and policy measures were not duly informed by the right to health as a guiding principle -put simply they were designed with an absence of the right to health framework- and certain alarming issues can be detected as a result. Thereto, the subsequent section further elaborates on this observation and presents a reflection on the implementation of such law and policies and their effects, primarily in terms of the concerns raised in light of the internationally guaranteed right to health.

8.3.4. REMAINING ISSUES

In light of Part I and sections 8.3.2 - 8.3.3, this section will analyze Greece's compliance with its responsibilities under the right to health (care). In this regard, the work of the CRC Committee tends to provide some guidance through its exhortations on States' reports as to the assessment of respective States' efforts (see Part I, section 4.2.2). Thus, in order to measure compliance of Greece we will also gain perhaps some knowledge from the concluding observations of the CRC Committee on respective reports of the Greek State on the status of Roma children's right to health and access to health care. As mentioned in Part I, specific right to health obligations stem from the CRC which is binding for Greece. Instead, access to healthcare and health-related policies for Roma children in Greece were not designed in light of the right to health framework, but rather sporadic state efforts were made towards this perspective (see sections 8.3.2 and 8.3.3), as also will be subsequently analysed. The Greek State is struggling with its obligations under the right to health and health care. However, progress in this field has been slow and remains below expectations. Specifically, when looking at the respective legislation and policies for Roma children developed by the Greek State from the perspective of the 'AAAQ' criteria enshrined in GC No. 14, which were analyzed in Part I of the present study (see Part I, section 3.5), some points of great concern and several inadequacies can be discerned.

Particularly, with respect to the issue of availability of health care services, the CRC Committee has repeatedly emphasized the weaknesses of the health infrastructure, the inadequacy of medical staff in the health system and the Greek

State's duty to recruit additional nurses and social workers to respond to the diverse needs of all children, especially Roma children due to their increased vulnerability (see section 8.2).⁶⁹ Instead, over the years, the Greek State has launched several fragmented health policies in relation to Roma children, without careful planning and coordination, namely without setting concrete priorities and targets to be achieved within a particular timeframe and tailored to the particular needs of this vulnerable population group (see Part I, section 4.2.2). Certainly, such State's response towards Roma children is also not in line with the State's obligation for progressive realization of the right to health (see Part I, section 3.4). Importantly, the Greek State has denied those children the right to preventive care by not providing community-based primary health care, namely in close proximity to Roma communities, involving, *inter alia*, the development of multidisciplinary information (i.e., reproductive health education) and advice (i.e., child-sensitive counselling services for Roma children and their families) about the negative impact of early pregnancies linked to early marriages on health and development; and by not systematically implementing coordinated and well-resourced immunization programs, with serious consequences for both Roma children's health and public health in the long-term, as elaborated in section 8.3.3.⁷⁰ Preventive care, by definition, should be provided before the medical condition of an individual deteriorates (i.e., reaches an emergency) and include measures, such as preventive medical check-ups, vaccinations against major infectious diseases and early detection of disease.⁷¹

A second point of concern is accessible health care without discrimination, one of the elements of accessibility under the 'AAAQ'.⁷² In light of this principle, it requires special attention that the CRC Committee has hinted at the State's failure to remove discrimination against Roma children in its report for Greece where it noted 'the negative attitudes, prejudices and discrimination against children of minorities and in particular Roma children, especially with regard to disparities, poverty and their equal access to health' and the underlying determinants of health, such as 'birth registration, housing, and a decent standard of living'.⁷³ Put simply,

⁶⁹ Ibidem supra note 20, UN CRC Committee, CO: Greece 2012, § 53 and 72(b); Ibidem supra note 18, UN CRC Committee, CO: Greece 2002, § 56.

⁷⁰ See, also, European Commission, *Roma Health Report - Health status of the Roma population - Data collection in the Member States of the European Union*, EU, August 2014, p. 43

⁷¹ Ibid., p. 99. It is indicative that 32% of Roma children use emergency services in Greece; See, e.g., WHO, *Glossary of Terms*, Geneva: World Health Organization 1984, p. 17; WHO, *A Glossary of Terms for Community Health Care and Services for Older Persons*, Japan: WHO Centre for Health Development 2004, p. 47.

⁷² Ibidem supra note 19, GC No. 14, § 12(b).

⁷³ Ibidem supra note 20, UN CRC Committee, CO: Greece 2012, § 71.

Greece has failed in practice to treat this population group on the basis of medical criteria along with the diverse characteristics and needs of this group by means of integration in health care delivery. This could be a disturbing development in that in principle the Greek State has enacted Law 1397/1983 on the provision of healthcare equally to all citizens as well as Law 3304/2005 on equal treatment and non-discrimination on ethnic grounds, as mentioned earlier. Instead, Roma children, even if not overtly denied health care *via* the law in Greece, often experience lower access to health care and their health suffers additionally from their poor socio-economic status in society, which also raise human rights concerns, as will be more fully analyzed in section 8.4.

Importantly, when care is available for Roma children, it is disproportionately expensive for them and their families relative to their apparent inability to pay, due to the increasing demands on payments for health care, involving the introduction of additional increased user fees especially during the economic recession of Greece (see section 6.4.2.3).⁷⁴ Nonetheless, such developments could result in delays in seeking treatment for a health problem that could have been easily rectified owed to early diagnosis and medical follow-up, and in the inability of Roma children and their families to act on medical advice, namely to afford to pay for medication. This situation raises concern in light of the principle of economic accessibility which requires, based on the principle of equity, health care to be available and affordable to all, including socially disadvantaged groups (Part I, section 3.5).⁷⁵ The CRC Committee in its 2012 report expressed concern that ‘the right to health and access to health services is not respected for all children, with regard to the fact that some health services have to be paid in cash and in advance, which may hinder the access to these services especially for Roma children,...’.⁷⁶

Furthermore, another issue of high concern is physical (geographic) accessibility of health care for Roma children, primarily as regards to the distance and travel time to health facilities and services in connection with the absence of convenient and affordable transport (Part I, section 3.5). This essential element of ‘accessibility’ under the ‘AAAQ’ requires due attention in that Roma children and their families run the risk of not having timely access to health care owed to structural factors, such as lack of the necessary health infrastructure, namely health care personnel and facilities, in remote areas and less developed regions where they live, as was extensively analyzed in chapter 6 and further elaborated in section

⁷⁴ Ibid., UN CRC Committee, CO: Greece 2012, § 17.

⁷⁵ Ibidem supra note 19, GC No.14, §12(b).

⁷⁶ Ibidem supra note 20, UN CRC Committee, CO: Greece 2012, § 52.

8.4.2.⁷⁷ Additionally, as pointed out in section 8.3.3, a limited number of prevention health programmes are carried out sporadically -within a limited timeframe- only in Roma organized settlements, which could be an alarming development in the prevention of infectious and transmittable diseases and thereto, it signal dangers for the individual and population health.

Along with the concerns raised in light of the ‘AAAQ’ criteria, the question arises how the notion of ‘accountability’, as set out in chapter 3 (see Part I, section 3.5), is given due attention for addressing possible failures to realize the right to health (care) of Roma children at the legislative and policy levels. As noted in section 8.3.2, accountability is implicitly conceptualized primarily through two institutional authorities, whose decisions, recommendations and reports are not legally binding, namely the National Observatory for the Rights of Children and the Greek Ombudsman for Children and especially its special office for Roma issues. In fact, in response to the repeated CRC criticism, the Greek Ombudsman for Children has urged the Greek State to develop a national strategy that will protect, *inter alia*, the right to health (care) of Roma children through addressing their special health needs within relevant targeted health interventions and taking into account their heightened vulnerability due to the increasing pressure exerted upon this group from the on-going economic crisis and the several austerity measures in Greece.⁷⁸ Nevertheless, it is noteworthy that the Greek Ombudsman for Children -separate investigation team for Roma- can only deal with a failure concerning the right to health (care) of Roma children after having received a claim to investigate an individual case. In this regard, attention could be given to the support and development of accountability mechanisms that enable Roma children and their families to know and claim their right to health (care), including accessing means of redress. Another cause for concern is the adequacy of the functioning of the National Observatory for the Rights of Children given that this body, based on its overall mandate, is responsible for monitoring and ensuring the implementation of the CRC in Greece. Indeed, in its 2012 report to Greece, the CRC Committee noted with concern that this body had not been fully functional since its establishment, nearly for 11 years.⁷⁹

In addition to accountability, it is important to stress that the Greek State has not systematically integrated another core human rights principle, namely the

⁷⁷ Ibid., § 72(c); Ibidem supra note 18, UN CRC Committee, CO: Greece 2002, § 57(a); Ibidem supra note 18, UN CESCR, CO: Greece 2015, §§ 35-36(b) and (d).

⁷⁸ Greek Ombudsman, *Adoption of a National Action Plan for the Rights of the Child*, Press release-12 September 2013.

⁷⁹ Ibidem supra note 20, § 11.

principle of participation, in accordance with the best interests of this group, as was pointed out in chapters 3 and 4 (see Part I, sections 3.5, 4.2.2 and 4.2.3), into the process of formulation of its national policy and programme response for the diverse health needs of Roma children. The earlier-mentioned national policy measures (section 8.3.3) were not regulated and undertaken in consultation and collaboration with Roma children and, as appropriate, with their families that have the capacity to impact on young Roma children's health, even though required under articles 12 and 5 CRC respectively, which is binding for Greece under Law 2101/1992 and prevails over any other contrary provision of law.⁸⁰ Participation of Roma children and their families in the decision-making process could have provided the Greek State the necessary means to create conditions that will affect the effectiveness of health-related policies and programmes addressed to them.⁸¹ This means that participation of this population group could assist in identifying its particular and discrete health needs that must be addressed, as well as the need for systemic state responses to barriers to needed care, such as discrimination or inaccessible services.

Importantly, the realization of the right to health involves, *inter alia*, the active involvement of individuals and communities by providing them with a genuine voice in the decision-making process (i.e., as to the decisions that determine and affect their health).⁸² In literature it is pointedly argued that a significant purpose of participation in the context of the right to health is 'to recognize and respect difference and diversity within the population', through ensuring inclusiveness in the development of health policy (Part I, sections 3.5 and 4.2.3).⁸³ Nevertheless, as reflected in sections 8.3.2 and 8.3.3, the Greek State has been averse to conforming laws and policies to meet this key element of the right to health and as such, participation is not conceptualized to the legal and policy context within which Roma children are situated. The Greek State has not developed systematic institutional structures for Roma children and their families' participation in the formulation, implementation, evaluation and review of health programs, strategies and plans. Notably, the CRC Committee has repeatedly emphasized the need for participation of this group by urging the Greek State to 'continue and strengthen its efforts to develop and implement policies and programmes towards improved

⁸⁰ See, Article 28, Constitution of Greece; See, also, Chapter 5 with regard to the supremacy of international law over national law.

⁸¹ Ibidem supra note 20, UN CRC Committee, CO: Greece 2012, § 72(a).

⁸² Ibidem supra note 19, GC No. 14, § 54; See section 4.2.3.

⁸³ H. Potts, *Participation and the Right to the Highest Attainable Standard of Health*, Essex: Human Rights Center 2008, p. 20.

respect for the rights of Roma children, including through cooperation with representatives of the Roma themselves and through empowerment of Roma communities'.⁸⁴

While the concluding observations of the CRC Committee are not legally binding for Greece, they tend to provide some authoritative material for pointing out particular issues of great concern that Greece, in order to comply with its right to health obligations, must address. Of further importance, beyond the State's non-compliance to its right to health obligations within national law and policy context, is the apparent gap between the law and the living reality of Roma children, namely with respect to their socially constructed characteristics, namely their low socio-economic status, which also raise human rights concerns, as will be more fully analyzed subsequently (section 8.4).

On the basis of the prevailing health-related policies and programmes for Roma children (see section 8.3.3), it is indicative that the Greek State places emphasis on the vaccination of Roma children, albeit not on a systematic manner, without at the same time effectively addressing the diverse health needs of Roma children in conjunction with their socio-economic conditions. This means that the Greek State needs to adopt comprehensive context-sensitive measures, namely policies that respond to and tackle the challenges faced by Roma children, especially in relation to their characteristics and circumstances in which they live and the different developmental stages during their life course. Such measures can include the promotion of outreach primary health care due to their different lifestyle and of continuum health care, involving prenatal, natal, maternal, early childhood and adolescent health care. At the same time, it is noteworthy that the consideration of the special needs and characteristics of Roma children in terms of realizing their right to health (care) is not intended to neglect the needs of other groups of children in Greece. On the contrary, the realization of the right to health (care) for Roma children should be addressed in line with the right to health (care) of other groups of children in society in a State's effort to promote integration of these groups in law and policy-making.⁸⁵

All in all, from a health and human rights perspective, a thin legal grounding for the right to health and access to health care for Roma children is construed in national law (i.e. lack of Roma children specific legislation), as elaborated in section 8.3.2, which may reflect the low prioritization of their diverse health needs

⁸⁴ Ibidem supra note 18, UN CRC Committee, CO: Greece 2002, § 81; Ibidem supra note 20, UN CRC Committee, CO: Greece 2012, § 72(a).

⁸⁵ UN CRC Committee, General Comment No. 5: *General Measures of Implementation of the Convention on the Rights of the Child*, UN Doc CRC/GC/2003/5, 27 November 2003, § 47.

in comparison to other population groups. Added to this, the design and development of policy measures for Roma children were made in a somewhat haphazard fashion and irrespective of the right to health framework, as elaborated in section 8.3.3. Yet there are still remaining issues that the Greek State bears responsibility and is required to work on by undertaking legislative and policy measures under the right to health, targeted to the health needs of Roma children. As such, the legislative decisions and policy measures for Roma children must be sufficiently flexible to accommodate and respond simultaneously to the social, ethnic, cultural differences and diverse health ‘age’ needs of Roma children. In this respect, it is argued that the recognition of such difference on the part of the State constitutes an enduring concern and a requirement for ensuring access to and the enjoyment of health care of appropriate quality without discrimination.⁸⁶

Last but not least, when it comes to health status, the high mortality rate, the low life expectancy and the high rate of diseases among Roma children in comparison to the rest of the population largely reflect the increased vulnerability of this group as well as the State’s failure to effectively address this vulnerability and ensure the survival and development of those children in all different phases of their lives (see Part I, section 4.2.2). Of note, the CRC Committee expressed its concern about the poor health statistics relating to Roma children in its report to Greece.⁸⁷ Such alarming developments make clear that the concrete inclusion of the right to health within national law and policies for Roma children is totally absent and is urgently needed as a result. Although the rooted recession and economic crisis in Greece, which led, *inter alia*, in critical understaffing of the health system and in decrease in public health funding as elaborated in chapter 6, do not allow for the implementation of well-resourced programmes for Roma children, the Greek State still is required under international law to make every effort thereof and justify circumstances when those children are denied access even to low-cost health measures (i.e. measures that do not require extensive resources) targeted to their needs (see Part I, section 4.2). Unless there is a demonstrable justification, it should be seen as a denial of the right to health (care) of Roma children on the part of the Greek State. It is notable at this stage that resource scarcity should not be seen by the State as an excuse for the restriction or denial of care needed for this population group. Along similar lines, the CRC Committee has highlighted that even in times of fiscal constraints the Greek State

⁸⁶ A.C. Hendriks, ‘Ethnic and Cultural Diversity: Challenges and Opportunities of Health Law’, *European Journal of Health Law*, 15, 3 (2008), pp. 285-295.

⁸⁷ *Ibidem* supra note 18, UN CRC Committee, CO: Greece 2002, § 36(b).

must give priority to the most disadvantaged groups in society, including Roma children.⁸⁸ Indeed, as observed in Part I, section 4.2, the right to health involves the state obligation to prioritize measures targeted to the needs of vulnerable population groups in society, like Roma children, during severe resource constraints.

8.4. AREAS OF CONCERN AND STEPS FORWARD

The effective enjoyment of the right to health by Roma children is influenced by several challenges that not only signal dangers of neglecting the special health needs of Roma children, but also shape access to health care for Roma children, one of the important aspects of the realization of the right to health. Particularly, in addition to the problems Roma children face in accessing health care in Greece, they also face other difficulties that impact upon their health and access to health care, and stem from the underlying determinants of health. Importantly, the realization of the right to health of Roma children is closely connected to and dependent upon the realization of other human rights, including the right to an adequate standard of living, the right to housing, the right to birth registration and identity. These human rights at a large extent constitute the underlying determinants of the health and form the general content of the right to health (see Part I and Annex 1).⁸⁹ As such, the right to health together with these rights obliges Greece to enhance Roma children's social and living conditions, which are also significant causes of their limited access to health care, as will be subsequently elaborated.

Most notably, life expectancy of Roma children in Greece is a decade lower than that of the general infantile population, as mentioned earlier.⁹⁰ WHO has pointedly stressed that the 'structural determinants and conditions of daily life constitute the social determinants of health and are responsible for a major part of health inequities between and within countries'.⁹¹ Thereby, three specific health-related challenges which influence Roma children's health status and are enduring concerns for the CRC Committee, in that they may constitute a threat to the objectives of the right to health of these children coupled with future steps on the part of the Greek State will be underlined below.⁹²

⁸⁸ Ibidem supra note 20, UN CRC Committee, CO: Greece 2012, §§ 6 and 18(b).

⁸⁹ Ibidem supra note 19, GC No. 14, § 3.

⁹⁰ Ibidem supra note 24, Greek NGO's network for children rights convention, April 2011, p. 17.

⁹¹ Ibidem supra note 9, p. 1; See, e.g., P. W. Newacheck, D. C. Hughes and J. J. Stoddard, 'Children's Access to Primary Health Care: Differences by Race, Income and Insurance Status' *Pediatrics* 1996, 97 (1), pp. 26-32.

⁹² The CRC Committee has repeatedly pointed out Roma children poverty, poor standard of

8.4.1. ROMA CHILDREN POVERTY

Child poverty not only encompasses income deprivation but also constitutes the underlying factor for poor health status and less development opportunities among children.⁹³ The level of poverty experienced by many Roma children is extreme in Greece.⁹⁴ Roma children live in disproportionately poor conditions compared to other children with negative effects on infant health and their development prospects.⁹⁵ Meanwhile, due to the interaction among environment and human development poverty's negative effect is more intense in early childhood than its impact experienced in later life.⁹⁶ Poverty of Roma children contributes to higher infant mortality rates, lower life expectancy and a higher rate of vaccine-preventable diseases, as indicated above. Put simply Roma children are exposed to numerous threats to their health and well-being during their childhood, such as hunger, malnutrition, perinatal problems and infectious diseases, which can determine health in later life and into the next generation.⁹⁷

Such disturbing developments are further exacerbated when looking at the introduction of a number of austerity measures in the area of health since 2010 by the Greek State (see section 8.3.4 'economic accessibility'). The Greek State imposes an excessive financial burden upon Roma children and their families, and

living-housing conditions and the low level of birth registration among Roma children in its observations for Greece. See *infra* notes 98, 100, 106, 119, 120 and 121; *Ibidem supra* note 18, UN CESCR, CO: Greece 2015, §§ 29-30 and 33-34; Note that in addition to the CRC Committee and the CESCR, several other organizations, such as the ERRC, FRA, UNICEF and WHO, have voiced their concern as to these three health-related challenges (see *infra* notes 94, 95, 96, 102, 103, 104 and 117).

⁹³ WHO, *The European Health Report 2005. Public health action for healthier children and populations*, Copenhagen: WHO Regional Office for Europe, 2005, pp. IX-X, 51.

⁹⁴ According to the 2014 FRA survey data, unemployment rates for Roma are three times higher compared to the non-Roma living nearby and the general population. As a consequence, the proportion of Roma children who live in households falling below the national at-risk-of-poverty line is twice (42%) as high as that of non-Roma children living nearby. Further, it is reported that Greece has the second highest child hunger rates after Romania. European Union Agency for Fundamental Rights (FRA), *Roma Survey - Data in Focus: Poverty and employment: the situation of Roma in 11 EU Member States*, Luxembourg: Publications Office of the European Union 2014, pp. 22, 37 and 41.

⁹⁵ WHO, *Poverty and social exclusion in the WHO European Region: health systems respond*, Copenhagen: WHO 2010. <http://www.euro.who.int/data/assets/pdf_file/0006/115485/E94018.pdf>

⁹⁶ WHO, *Early Childhood Development: a powerful equalizer*, Geneva: World Health Organization 2007; WHO, *The European Health Report 2009. Health and health systems*, Copenhagen: WHO Regional Office for Europe 2009, p. 48.

⁹⁷ *Ibidem supra* note 93, WHO 2005, pp. 46-47 and 60.

as such, creates obstacles to the treatment of these children that could be prejudicial to their health in the long-term. Such a condition may deter Roma children and their families from seeking medical assistance, thereby endangering not only their own health, but also in the case of transmissible diseases the health of the general population. It was on this basis that in 2012 the CRC Committee expressed concern in the case of Greece where financial considerations have hampered the realization of several aspects of Roma children's right to health.⁹⁸

Here, it is, though, important to note that there is no mandate under which any State should provide such measures free of charge, as the implementation of the right to health depends on the State's available resources (see Part I, sections 4.2.1 and 4.2.2).⁹⁹ At the same time, the Greek state, in order to comply with its binding right to health obligations, needs to ensure that Roma children are not deprived for financial reasons of their right to health (care) (see Part I, section 4.2). This implies that the Greek State must take steps in light of its available resources to reduce the financial burden and ensure that Roma children's financial condition does not preclude access to health care. In fact, the CRC Committee has generally recommended Greece to provide (financial) support (i.e. material assistance and support programmes) to Roma families with the aim of assisting in the care of Roma children who belong to families with low or no income.¹⁰⁰

All in all, measures tailored to the needs of Roma children are required to close the health gap between Roma children and the general population in Greece.¹⁰¹ Particularly, there is a need for targeted and sustainable health interventions that will be linked to State's actions concerning also other areas, such as living - housing conditions coupled also with the need of tackling poverty in Greece. It is notable that poverty of Roma children is often associated with other conditions which together can hinder the potential of Roma children to achieve optimum health and access health care, such as remote and poor housing conditions, lack of identity documents and birth certificates, which will be fully addressed below.

⁹⁸ Ibidem supra note 20, UN CRC Committee, CO: Greece 2012, § 52; Ibidem supra note 18, as regards earlier expressions of concern, UN CRC Committee, CO: Greece 2002, § 61(b).

⁹⁹ Tomaševski K. 'Indicators', in: A. Eide, C. Krause and A. Rosas (eds), *Economic, Social and Cultural Rights. A Textbook*. 2nd revised ed. Dordrecht/Boston/London: Martinus Nijhoff Publishers 2001, pp. 531-543, p. 543.

¹⁰⁰ Ibidem supra note 18, UN CRC Committee, CO: Greece 2002, §§ 48(c) and 49(a).

¹⁰¹ The WHO Commission on the Social Determinants of Health underlined that the promotion of equity means more than just equal treatment of all individuals. Services may need to be adapted or developed to respond to the needs of particular groups, especially those that experience marginalization. (See, WHO/CSDH, supra note 9).

8.4.2. STANDARD OF LIVING- HOUSING CONDITIONS

The way people live has a direct impact on whether they will seek and receive medical treatment in the event they require medical attention. Poverty coupled with other practices against Roma children and their families such as residential segregation, forced evictions often without any provision of adequate alternative housing make Roma children more vulnerable than other groups of the same socioeconomic status.¹⁰² Roma children are born and live in households that often function in basic survival levels affecting negatively infant health and survival prospects in Greece.¹⁰³ For instance, the European Roma Rights Center (ERRC) has reported that a large proportion of Roma children and their families residing in Greece live in 52 improvised and dangerous tent encampments, while most others live in poorly constructed dwellings without access to basic services, such as electricity and running water and miles away from the closest towns, namely isolated from social and health infrastructure.¹⁰⁴ Likewise, the Greek Ombudsman

¹⁰² Ibidem supra note 18, UN CESCR, CO: Greece 2004, § 22; Ibidem supra note 18, UN CESCR, CO: Greece 2015, §§ 33-34; In Greece, around 60% of the Roma surveyed, aged 16 and above, responded that they have experienced discriminatory treatment in health, housing, education and employment, due to their ethnic origin. A relatively high level compared to the levels of other EU countries, such as in Romania and Spain (European Union Agency for Fundamental Rights and UNDP, *The Situation of Roma in 11 EU Member States*, Luxembourg: European Commission Publications Office, 2012, p. 26); See, e.g., Complaint No. 49/2008. *International Center for the Legal Protection of Human Rights (INTERIGHTS) v. Greece*, 11 December 2009 (p. 4), there have been over 20 documented forced evictions of Roma families in Greece since 2004; Amnesty International, *Briefing - Human Rights on the Margins- Roma in Europe*, UK: Amnesty International- The Human Rights Action Center. Since 2006, more than 100 Romani families were forcibly evicted four times from the centre of Athens, where they were originally living.(p. 8)

¹⁰³ European Union Agency for Fundamental Rights (FRA), *Housing Conditions of Roma and Travellers in the European Union – Comparative Report*, Vienna: FRA, 2009; European Union Agency for Fundamental Rights and UNDP, *The Situation of Roma in 11 EU Member States: Survey Results at a Glance*, Luxembourg: European Commission Publications Office 2012, p. 24. In Greece, around 90% of the Roma households surveyed live in conditions at risk of poverty, namely lacking fundamental housing amenities, such as electricity, indoor toilet, indoor shower or bath and indoor kitchen. See, for instance, 13/02/2013 sanitary inspection report (in Greek) on the living-housing conditions of Roma in a region of Peloponnese.

¹⁰⁴ ERRC, Submission of the European Roma Rights Centre Concerning Greece for Consideration under the Universal Periodic Review by the United Nations Human Rights Council (HRC) at its 11th Session on 2-11 May 2011, p. 3; For instance, substandard housing conditions can be traced at the Roma settlements in Spata (near Athens), Aspropyrgos (near Athens) and Riganokampos (Patras) where access to social infrastructure is poor.

2008 annual report reveals that in Athens ‘Roma live in tragic conditions right next to dumps, in shacks, without water and electricity, without basic hygiene, among rodents, and at the mercy of extreme weather conditions and phenomena, affected by epidemic diseases, mainly caused by the trash they are paid to collect and remove from all areas of Attica.’¹⁰⁵ Such developments are repeatedly noted with expressions of concern accompanied with exhortations by the CRC Committee in its CO for Greece.¹⁰⁶ Meanwhile, the geographical location of Roma housing (i.e., in remote or rural areas) can negatively affect access to health care for Roma children in terms of being an obstacle to access to regular health care and emergency treatment due to its geographical distance from health care facilities in connection with the limited transportation options (see sections 3.5 and 6.4.2.2).¹⁰⁷ As such, the aforementioned living conditions of Roma families in Greece tend to create dangerous unhealthy situations which could not only endanger the health of the Roma children, but also jeopardize the safety of the broader community in the long term.

All in all, such disturbing developments require special and systematic attention (i.e. adoption of support programmes) on the part of the Greek State within the context of complying with its ‘obligation to fulfil’ the right to health (Part I, section 3.3). Thereto, the Greek State in light of its available resources needs to create conditions that enable Roma children and their families to enjoy their right to health, such as making health-related services accessible to Roma children and their families by means of a regular basis outreach of good quality primary health care; and assisting Roma families to provide a safe living environment for the promotion of development and growth of their children.¹⁰⁸ Interestingly, the ECSR in the case of Greece has suggested that measures targeted to vulnerable groups should be funded to the maximum extent of the State’s available resources; have a reasonable completion timeframe; their progress should be measurable; and consider the particularities of the situation of these groups.¹⁰⁹

¹⁰⁵ Greek Ombudsman case No.16048/2007. The Greek Ombudsman Annual Report 2008, p. 40, available at: http://www.synigoros.gr/annual_2008_gr.htm

¹⁰⁶ Ibidem supra note 20, UN CRC Committee, CO: Greece 2012, §§ 58, 59, 71 and 72(b); Ibidem supra note 18, UN CRC Committee, CO: Greece 2002, §§ 64(b) and 65(b); Such concerns and calls for action have been also reiterated and expressed by the CESCR in its 2015 report for Greece (CO: Greece, UN Doc E/C.12/GRC/CO/2, 27 October 2015, §§ 33-34).

¹⁰⁷ ESC, ECSR, Conclusions XIX-2 (2009) Greece, Council of Europe, January 2010.

¹⁰⁸ Ibidem supra note 18, UN CESCR, CO: Greece 2015, §§ 33-34.

¹⁰⁹ *ERRC v. Greece*, Complaint No. 15/2003, 8 December 2004, § 21.

Last but not least, it must be conceded that the prevailing economic crisis in Greece (i.e. five yearly economic recession) may pose a barrier to the implementation of targeted measures for Roma children. At the same time it must be also acknowledged that the development of such policy initiatives in close cooperation with regional and local authorities, where Roma children and their families live, is not always a matter of funding but rather a matter of political will.¹¹⁰ Put simply, the Greek State should either increase resources required by means of co-operation and assistance (e.g. make use of regional funds) or allocate existing (scarce) ones (e.g. from military/taxation to health expenditure) (see Part I, section 4.2).¹¹¹

8.4.3. BIRTH REGISTRATION

Another cause for concern from a right to health perspective is the weak level of birth registration among Roma children in Greece.¹¹² Generally speaking, birth registration in Greece is required by an individual for being accepted for social insurance policies and admitted to health care settings (see also Part I, section 4.2.2). Note by way of background that birth registration is regulated under Article 20(1) of Law 344/1976 which provides that a child must be registered by its parents (or legal guardians) within 10 days from its birth at the municipalities' registry offices. The birth registration forms should also be accompanied either by a medical certificate issued by the respective hospital or by a declaration of the childbirth signed by the applicant and two witnesses.¹¹³ In addition, the above respective law

¹¹⁰ For instance, note that the CERD has cautioned in an effort to guide the coordination of national legislations and policies in a non-binding manner that States should counter 'local measures ... placing Roma in camps outside populated areas that are isolated and without access to health care and other facilities'. UN Committee on the Elimination of Racial Discrimination (CERD), General Recommendation No. 27: *Discrimination against Roma*, August 2000, § 31.

¹¹¹ See, UN CESCR, General Comment No. 3: *The Nature of State Parties' Obligations*, UN Doc. E/1991/23, 14 December 1990, § 13.

¹¹² The right to birth registration is laid down in Articles 7 and 8 CRC and Article 24 ICCPR that are both binding for Greece and are incorporated by Law 2101/1992 and Law 2462/1997 respectively and take precedence over any other contrary national legislation. Notably, the right to birth registration is closely connected to the right to health in a way that birth registration is a prerequisite for access to health care and social security (see, e.g., UN CRC Committee, General Comment No. 15 on *the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (art.24)*, 17 April 2013, UN Doc CRC/C/GC/15, § 29).

¹¹³ Law 344/1976 'Regarding Registrations', *Official Government Gazette- ΦΕΚ* issue A' 143/11-06-1976.

provision should be read in conjunction with Article 49(1) of Law 344/1976, as amended by Article 4 of Law 4144/2013, where it is explicitly stressed that the act of birth registration can be extended 90 days or more from day of the childbirth, however, in that case a fine for late registration will be imposed by the respective authority.¹¹⁴ Thereto, the act of birth registration ensures that a child enjoys the right to family ties, name and nationality, and acknowledges the existence of the person before the law.¹¹⁵

In Greece, Roma parents do not systematically register their children, especially when their children are not born at hospitals and/or when their families lack identity documents or remain unaware of the significance of such process.¹¹⁶ Nevertheless, the lack of birth registration and identity documentation renders Roma children legally invisible in the respective Greek authorities and, as such, deprives them of citizenship and access to several social services and care benefits critical to their development such as health care and social protection benefits.¹¹⁷ In essence, without birth registration, Roma children do not obtain a health booklet; are not entitled to health care benefits; have to pay the full cost of medicines and treatment; cannot enjoy the benefits of an early and appropriate diagnosis and treatment; and are not included in general prevention strategies, medical follow-ups and information about national vaccination programmes.

The ECtHR in its case law has been concerned with the interrelation between the absence of identity documentation and access to health care. In particular, the Court held that ‘The internal passport is [...] required for more crucial needs, for example, finding employment or receiving medical care.’¹¹⁸ Of note, the lack of birth registration not only hampers access to medical care for Roma children, but

¹¹⁴ Law 4144/2013 ‘Dealing with violations within social security and employment market and other provisions of the Ministry of Employment, Social Security and Welfare’, *Official Government Gazette*- ΦΕΚ issue A’ 88/18-04-2013.

¹¹⁵ Law 344/1976 ‘Regarding Registrations’, *Official Government Gazette*- ΦΕΚ issue A’ 143/11-06-1976; See also, supra note 12, Article 7 CRC. The CRC is legally binding for Greece (see Annex 2).

¹¹⁶ Ibidem supra note 20, UN CRC Committee, CO: Greece 2012, § 32; See, also, Parliament of Greece (Period IE’ - Synod A’), *Official Records of Parliament’s Session I’*, Athens, 25 July 2013, pp. 47-50.

¹¹⁷ Legislative Decree 3370/1955, *Official Government Gazette* – ΦΕΚ issue A’ 258/23.09.1955 as amended by Law 3284/2004 ‘Code of Greek Citizenship’, *Official Government Gazette* – ΦΕΚ issue A’ 217/10.11.2004; Ibidem supra note 56, UN CRC Committee, GC No. 7, § 25; UNICEF, *Birth Registration- Right From the Start*, Italy: UNICEF Innocenti Research Centre 2002; See generally, supra note 112, UN CRC Committee, GC No. 15, § 29.

¹¹⁸ *Smirnova v. Russia* (Application no. 46133/99 and 48183/99), ECtHR 24 July 2003, § 97.

also makes adequate data collection very difficult, as already noted. In addition, the CRC Committee repeatedly in its CO for Greece has expressed its concern about the low level of birth registration of Roma children by stressing that ‘a persistent number of Roma children are still unregistered’.¹¹⁹

In light of the above, the enhancement and promotion of the birth registration process -a determinant of health- is a significant human rights concern. The Greek State may violate ‘the obligation to fulfil’ the right to health (see Part I, section 3.3) if it does not make sufficient efforts and/or structurally fails to create such pre-conditions for Roma children to access health care facilities, such as: to review the existing registration system and adapt the legislation to ensure free birth registration for older Roma children; to raise awareness of the importance of such process among Roma families, involving access to health care and other social benefits; and to develop sufficiently decentralized services¹²⁰, such as mobile registration units that will reach Roma children and their families living in remote and rural areas of Greece (see Part I, section 3.3). All in all, there is a need for the Greek State to make birth registration process more transparent, cultural sensitive, easy to access¹²¹ (i.e. to understand how to participate in the formal structures) and user-friendly for Roma children and their families with ultimate aim the satisfaction of the children’s pressing health needs. Here, it must be conceded that non-registration of Roma children and their resulting inability to access health care, are reflected in statistics illustrating poorer health outcomes, including higher rates of infant mortality, of vaccine-preventable diseases, such as chronic measles and tuberculosis, and a life-expectancy below the national average.¹²²

8.5. CONCLUSIONS

Roma children have health-related needs, some of which are special due to their physical vulnerability, age and marginalized social status. The importance of right to health standards is that their concrete integration within the national legal and policy context has the potential to convert these needs into rights, concrete claims and State’s commitments. In practice, however, such standards are largely absent from the design and implementation of national law and policies in relation to

¹¹⁹ Ibidem supra note 20, UN CRC Committee, CO: Greece 2012, §§ 71 and 32.

¹²⁰ Ibidem supra note 18, UN CRC Committee, CO: Greece 2002, § 40(a).

¹²¹ Ibidem supra note 20, UN CRC Committee, CO: Greece 2012, § 33 (a); Ibidem supra note 18, UN CRC Committee, CO: Greece 2002, § 41(a).

¹²² See, also, Schaaf, Marta, ‘Confronting a Hidden Disease: TB in Roma Communities’, Open Society Institute and the World Lung Foundation, January 2007.

Roma children. It seems that the Greek State tends to avoid fully abiding by its obligations under the right to health in that it adopts implementation (legislative and policy) measures irrespective of the right to health, namely in a somewhat haphazard fashion and not by a concrete and targeted way to prevent, reduce or address threats to the health of Roma children (see Part I, sections 4.2 and Part II, section 8.3.3). The Greek State is lacking a continuous comprehensive national health strategy and a plan of action targeted to Roma children and their families. Instead, the measures taken on the part of the Greek State create several obstacles to needed care for these children that could be detrimental to their health. This is also depicted in the CRC Committee's reports to Greece where the Committee has pointedly emphasized the poor access to health care for Roma children in Greece along with a high level of health concerns regarding this group.¹²³

Regardless of their legal health care entitlements Roma children and their families encounter several (informal) barriers when seeking medical assistance in Greece. While sporadic health interventions have been undertaken on the part of the State for Roma children and their families, these interventions failed to attend to their specific health needs effectively. This disturbing situation was revealed when national law and policies were evaluated against the 'AAQ' and 'AP', essential elements underpinning the right to health. Importantly, we have pointed at several alarming developments, including excessive payments for health care and no timely access to health care for Roma children and their families from remote (socially excluded) areas, which raise issues of concern in light of the economic and physical (geographic) accessibility of health care services. Such developments cannot be considered to meet the requirement of State's responsibility to guarantee the accessibility of health facilities, goods and services, and as such they create tension with the right to health framework. All in all, the realization of the 'AAQ' is problematic but so too is the process followed by the Greek State in the design, implementation and evaluation of health-related policies, if one considers that the State pays no attention to the promotion of participation of Roma children and their families to this end. Similarly, when it comes to the accountability mechanisms the adequacy of their functioning is questionable. Such disturbing observations demonstrate that the Greek State has not effectively and in a systematic manner addressed the implications of 'AAQ' and 'AP' within the adoption of laws and policies in relation to Roma children (see sections 8.3.2 and 8.3.3).

At the same time, added to the aforementioned observations, in light of its available (limited at times) resources the Greek State has failed so far to adequately

¹²³ See, e.g., *Ibidem* supra note 18, UN CRC Committee, CO: Greece 2002, §§ 56(e) and 80.

address the underlying determinants of health -albeit an important aspect of the right to health (see Part I, section 3.2)- in the provisions of health care to this vulnerable group. In particular, the Greek State has not ensured that Roma children's and their parents' poor living-housing conditions do not preclude their access to health care. Additionally, the Greek State has not made birth registration process more easy to access and user-friendly for Roma families to register their children and benefit from receiving appropriate care for their children's health needs. All in all, when it comes to the overall health status among Roma children, the Greek State has failed to take into account particular vulnerabilities, dependencies and challenges, especially relating to the circumstances in which those children and their families live (i.e., the socio-economic determinants of health), which result in the weakening of their status as well as constitute significant human rights concerns. Thereto, the point to stress is that when measures for this population group are planned, the Greek State must endeavor to narrow down the gap between the law and the living reality of these children and give special consideration primarily targeted to the particular needs of this vulnerable group (see Part I, section 4.2.2).

Meanwhile, it is worth bearing in mind that the translation of State commitments into concrete actions is often impeded either by lack of resources (indicating a State's incapacity) or political will. Indeed, from a human rights perspective the distinction between a State's unwillingness and a State's incapacity is highly relevant when it comes to identify a (potential) violation of a State's treaty obligations (see Part I, section 4.2.1). Certainly, the content of the state measures as to the needs of Roma children will remain subject to resource availability and more crucially, upon the efficient use and prioritization of existing (limited) resources (see Part I, section 4.2.1) given the economic recession rooted in the country during the last five years. Nonetheless, the Greek State must ensure that any limitation of the right to health of Roma children in light of budgetary and other considerations is justified. If not justifiable and unless the Greek State has not taken measures within the scope of its powers to ameliorate the position of Roma children (e.g., to prioritize the health needs of this vulnerable group, to adopt context-sensitive measures, to promote participation in decision making etc.), its failure will implicate a lack of political will and consequently a (potential) violation of its right to health obligations towards this group (see Part I, section 4.2.1).

Last but not least, given the progressive nature of the right to health (see Part I section 3.4) and resource availability, of particular assistance constitutes the development and use of indicators and benchmarks (see Part I, section 3.6), namely a collection of disaggregated data on the number of Roma children in Greece, their

health status and specific health needs in connection with their socio-economic conditions (i.e. living conditions etc.). Such indicators are of importance in order to discern their most pressing health needs and the level of health care provided to these children (often remaining overlooked in Roma integration strategies).¹²⁴ Further, such information provides a useful tool for strengthening Greek State's accountability for violations of the right to health (care) of Roma children and promoting their participation in the process of design, implementation and assessment of relevant health-related law, policies and programs.¹²⁵

¹²⁴ See, e.g., WHO Regional Office for Europe, *Investing in children: the European child and adolescent health strategy 2015–2020*, Copenhagen: WHO, September 2014, p. 6, §§ 24–25.

¹²⁵ *Ibidem* supra note 18, UN CESCR, CO: Greece 2015, § 10.

