

TABLE OF CONTENT

Revised National Action Plan to the Decade of Roma Inclusion Threatens to Become Toothless | *Jarmila Lajčáková*..... 1

Re: Jarmila Lajčáková: “Legislative Intent of the Bill on Socially Excluded Communities May Have Undesirable Implications” and Stano Daniel: “Ethnic Principle in the Bill on Socially Excluded Communities Remains Intact” | *Martin Vavrinčík* 4

Free Contraception for People from Socially Excluded Communities: Reproducing Past Wrongs? | *Adriana Lamačková* 5

Revised bill on material need benefits should seek to help the poor, not save money on them | *Jarmila Lajčáková* 7

Slovak Family Robinsons | *Barbora Maťašová*..... 7

Lazy Journalists Reproduce Stereotypes | *Karolína Koščová*..... 8

Is Minaret Really the Place Where Different Law Systems Collide? | *Ivan Šimko*..... 8

Religious Diversity Still Unwanted in Slovakia | *Monika Náglová* 9

Protection of Conscientious Objection Is in Line with Policy of Multiculturalism | *Jarmila Lajčáková* 10

Migration Strategy: An Attempt to Homogenize Society by 2020? | *Alena Chudžíková*..... 11

EDITORIAL

BY JARMILA LAJČÁKOVÁ

In September 2011, representatives of public administration as well as academic and non-governmental sector met at a working seminar to discuss possibilities of changing perception of minorities and minority policy furthered by the project *Monitoring Minority Policy*. In a relatively rare consensus, the participants agreed that construing old and new minorities as a threat and adopting repressive measures can never lead to building a modern and decent multicultural democracy.

In this respect, it seems more effective to promote the principle of respecting individuals' human dignity, which prevents emergence of tensions. Respecting human dignity requires a contextual approach that focuses on individuals while taking into account not only their

REVISED NATIONAL ACTION PLAN TO THE DECADE OF ROMA INCLUSION THREATENS TO BECOME TOOTHLESS

BY JARMILA LAJČÁKOVÁ

In early August 2011, the cabinet approved a revised *National Action Plan to the Decade of Roma Inclusion for the Period of 2011 – 2015*. The Decade of Roma Inclusion (2005 – 2015) is a joint initiative by national governments, non-governmental organizations and Romani organizations that is aimed at making inclusion of the Roma more effective. The Decade of Roma Inclusion is primarily a political commitment of national governments to adopt and implement measures aimed at achieving clearly measurable progress in social inclusion of the Roma in the field of education, employment, housing and health care while addressing three basic issues – poverty, discrimination and gender equality.¹

POLLÁK: ACTION PLAN WILL TRULY IMPROVE LIVES OF THE ROMA

According to the justification report accompanying the document, the need to revise the original text from 2005 arose from insufficiently defined tasks, “including specifically measurable criteria for progress”.² According to Government Plenipotentiary for Romani Communities Miroslav Pollák who “views drafting and approving the document as the greatest achievement of his office”, all previous action plans “have been incomplete or abstract essays while this one is concrete”. Pollák said that the revised Action Plan truly stands a chance to improve lives of the Roma because it defines “concrete tasks for individual ministerial departments along with applicable deadlines, i.e. measurable data. It circumscribes responsibility, concrete deadlines and allocated funds. Everything [the document] spells out will be checked and must be fulfilled”.³ While I would love to share Mr. Pollák’s optimism, I fear that the most recent Action Plan will become just another toothless strategy whose sole purpose is to provide ‘alibi’ to the Slovak Government and its bureaucrats that they are doing ‘something’ in this area.

“According to Pollák, all previous action plans have been incomplete or abstract essays while this one is concrete... because it defines concrete tasks for individual ministerial departments along with applicable deadlines, i.e. measurable data.”

ACTION PLAN FAILS TO TARGET THE ROMA

I consider the revised Action Plan problematic as I have four major concerns.

First of all, the target group spelled out in the document are not the Roma but people from socially disadvantaged environment or, in a better case, from marginalized Romani communities. The main mission of the Decade of Roma Inclusion is to help the process of including the Roma. Members of this ethnic minority are facing an incomparably higher degree of social disadvantage

1 The legislative intent of the bill on socially excluded communities declares it aims to tackle the problem of concentrated poverty, not social exclusion of the Romani minority; yet, both documents overlap significantly as far as proposed measures are concerned.

2 Justification report to *Revidovaný akčný plán Dekády začleňovania rómskej populácie 2005-2015 na roky 2011-2015*, p.1. The revised Action Plan was approved on August 10, 2011, by the Slovak Government Resolution No. 522/2011.

3 Pollák: “Máme akčný plán, ktorý je reálny a Rómom pomôže” [‘We Have a Realistic Action Plan that Will Help the Roma’], SITA news agency, September 6, 2011.

affiliation to particular minorities but also other important sources of their identity such as, for instance, sex, age, socio-economic status, sexual orientation or profession.

During a discussion on policies targeting the Romani national minority, however, it turned out that seminar participants had different ideas on what the ideal policy should look like. For some of them it was important to base it on socio-economic disadvantage and adoption of ethnically “neutral” measures aimed at combating poverty. Others believed that decision-makers should place equal emphasis on respecting Romani culture (in its various shapes and forms) and language when forming the overall policy.

The discussion, which characterized developments in this area over the past 20 years, took place against the background of disturbing news from the Czech Republic and Bulgaria that indicate growing interethnic tension and aggravating conflicts. They are the breeding ground for voices demanding adoption of so-called radical and repressive anti-Roma measures. The presence of armour-clad police in the streets reduces (to say the least) chances to adopt measures that cannot bring tangible and sustainable results earlier than in the long term but eventually they will improve opportunities of the Roma in Slovakia and give them a chance to lead a dignified life.

Unfortunately, politicians who have a real chance to take positive initiative in this area failed to hear these alarming signals, most probably because they were deafened by the rumble caused by the fall of government in early October. The change in government is unlikely to change anything on the trend of growing interethnic tension in Slovakia. After all, portraying the Roma as a “social and demographic threat to the Slovaks” merely supports this trend.

We are strongly warning against this development, which is why we hereby call on the politicians not to support this dynamism further and during election campaigning refrain from scoring political points by advertising morally and legally unacceptable populist “solutions” such as boarding schools for Romani children or free sterilizations for Romani women. We hope Slovakia has a constantly growing number of voters who are sufficiently informed and know that systemic and patiently implemented measures that focus on minorities as well as the majority are the only way to secure better life for all of us.

The good news about government falling is that proposed legislative changes in the system of disbursing family allowance we discussed in our last issue will probably not be passed. On the other hand, we hope there will not be any reactionary attempts to “correct” the achievements that have been accomplished during the past nine months, especially passing the amendment to the law on the use of minority languages or establishing the Slovak Government’s Council for Human Rights, National Minorities and Gender Equality.

In this edition we discuss the policy measures proposed in the third quarter: an amendment to the law on disbursing material need benefits; a legislative intent of the bill on socially excluded communities, particularly with respect to proposed measures concerning reproduction health of Romani women; and a proposal to protect conscientious objection. Although we do not assume that these policies could be adopted in the foreseeable future, we kept them in this issue because they document the country’s discourse on minority policy and indicate its future course. After all, it is quite likely that their altered versions will resurface after early elections scheduled for March 2012.

Finally, I would like to thank you all for your input – reactions, suggestions and acknowledgements – concerning the previous edition of our quarterly newsletter. We firmly believe that the present edition will also turn your attention to some issue you would love to speak your mind out on.

Enjoy your reading. ■

than the majority population and the main (historical) reason for this is their ethnic origin. In Slovakia we normally discuss the so-called Roma issue while Romani people are regularly rejected as job applicants on account of their complexion and their children are placed in schools ‘reserved’ for mentally handicapped children due to the same reason. Slovakia does not view it important to eliminate the barriers that disadvantage the Roma ethnically; instead, it prefers the comfort of hiding behind so-called social disadvantage rhetoric.

“Slovakia does not view it important to eliminate the barriers that disadvantage the Roma ethnically; instead, it prefers the comfort of hiding behind so-called social disadvantage rhetoric.”

For the sake of comparison, the Faculty of Sociology and Social Work at the Bucharest University introduced a pilot project of temporary equalization measures designed to help the Roma already in 1992. Six years later, the policy of temporary equalization measures was adopted across the board at the level of secondary and higher education, which in next several years led to a relatively dramatic increase in the total number of Romani graduates from Romanian secondary schools and universities. A 2009 study examining the effects of these measures was relatively critical of the fact that Romani university students are disproportionately more represented in humanitarian and business fields of study compared to natural and technical ones.⁴

While I am far from disparaging that criticism, Romania’s approach clearly shows how much catching up Slovakia has to do in this area. A great number of public officials declare how much they would love to tackle the problem, yet the percentage of Romani students who manage to overcome the structural disadvantage and graduate from a university continues to be infinitesimal.⁵ The reason is that we live in a country where policy makers categorically rule out the very idea of temporary equalization measures on an ethnic basis, this despite lingering dramatic differences in educational structure of the Romani and non-Romani population. The revised Action Plan got stuck in perceiving the Roma as a social group because it is unable to admit that the roots of disadvantaging the Roma are ethnic as well as social.

IT IS IMPOSSIBLE TO MONITOR OR MEASURE THE PROGRESS IN INCLUDING THE ROMA

Secondly, the revised Action Plan accepts the limitations ensuing from the public administration’s notorious unwillingness to collect ethnically sensitive statistical data. This reluctance to admit the importance of ethnically sensitive data lingers on despite numerous recommendations from international human rights institutions and even the European Commission as well as elaborated methodologies of how to collect ethnically sensitive data while respecting individuals’ privacy and simultaneously providing valuable information for policy makers.⁶

“The myth that it is illegal to collect ethnic data ... prevents measuring the actual magnitude of ethnic discrimination against the Roma in the field of education, employment, housing and health care. Consequently, it is impossible to measure the progress in including the Roma in Slovakia.”

Ethnically sensitive data are the alpha and omega of policy makers’ ability to adopt effective antidiscrimination policies.⁷ Instead, our politicians and

4 *Analysis of the Impact of Affirmative Action for Roma in High Schools, Vocational Schools and Universities* (Roma Education Fund – The Gallup Organisation Romania, 2009).

5 Yet we don’t know what exactly that percentage is because collection of ethnically sensitive data is considered illegal in Slovakia.

6 *Beyond Rhetoric: Roma Integration, Roadmap for 2020, Priorities for an EU Framework For National Roma Integration Strategies* (OSI, 2011) p. 27.

7 Christina McDonald and Katy Negrin: *No Data – No Progress: Country Findings* (OSI, 2010).

bureaucrats prefer to stick to the myth that it is illegal to collect ethnic data, which is why they ‘cannot see’ the actual magnitude of ethnic discrimination against the Roma in the field of education, employment, housing and health care. Consequently, it is impossible to measure the progress in including the Roma in Slovakia. The revised Action Plan is based on the most recent available figures featured in the Atlas of Romani Communities issued in 2004; not only are these data old but they fail to cover all the necessary areas. This information can hardly be viewed as the basis for “measurable data” that were so praised by the government plenipotentiary.

ACTION PLAN HAS VAGUELY FORMULATED ACTIVITIES AND DEADLINES

Thirdly, too many activities spelled out in the Action Plan are too vaguely formulated. When reading the document, one can hardly resist the feeling that Slovakia has not achieved anything over the past 20 years. The document points out the necessity to “scout” the situation in a number of areas and launch further pilot projects. It features a lot of ambiguous

“The Action Plan features a lot of ambiguous and empty phrases; it points out the necessity to “scout” the situation in a number of areas and launch further pilot projects.”

and empty phrases that are extremely frustrating to read, for instance activity 2.5.6.: “Support interethnic and intercultural dialogue and understanding between the majority, national minorities and ethnic groups.” Is this supposed to be a clear and concrete task? Who

is supposed to lead the dialogue, how (and in what language) and what should be its focus? Like most other tasks spelled out by the document, the task must be implemented by 2015. Is this supposed to be a clearly defined deadline? Another example of the Action Plan’s ample vagueness is activity 4.4.3.: “Guarantee non-discriminatory, quality and free access for members of marginalized Romani communities to modern contraception methods and services of sexual and reproductive health that are based on the principles of voluntariness and informed decision and consent.” Who and how will guarantee the non-discriminatory approach? Particularly given the highly problematic reproductive health policy during the communist era, cases of forcible sterilizations after 1989 and still existing segregationist practices, the area of reproductive health should deserve more than an empty phrase.

REVISED ACTION PLAN DOES NOT INTEND TO TACKLE THE ROOTS OF SOCIAL EXCLUSION OF THE ROMA

My fourth and final reservation regarding the revised Action Plan is perhaps the most important: the document repeats all the previous

Main problematic areas of the *National Action Plan to the Decade of Roma Inclusion for the Period of 2011 – 2015*:

- The target group spelled out in the document are not the Roma but people from socially disadvantaged environment or, in a better case, from marginalized Romani communities which suggests reluctance of the Slovak Republic’s to address the ethnic aspect of disadvantage of the Roma;
- Acceptance of the state institutions’ unwillingness to collect data on ethnicity that are crucial in assessing the extent of discrimination and adopting effective and targeted measures;
- Vaguely formulated measures and objectives even in areas that are important (e.g. education) or sensitive social issues (such as the guarantee of an access to modern contraception methods in the context of forcible sterilizations of the Romani women in the recent past);
- Aversness to tackle the very roots of the problem, i.e. to implement systemic changes of majority institutions so that Roma have a chance to successfully participate in them, too.

(and unsuccessful) strategies in that it proposes identical and apparently ineffective measures that fail to address the essence of the problem. For almost 20 years, government strategies have pointed out the necessity to introduce “accurate, culturally neutral” pre-school diagnostics and re-diagnostics of children, which is inevitable to prevent unjustified placing of Romani children into special schools. The same government strategies have also observed that graduation from special schools almost completely eliminates any opportunities to continue in one’s education at higher stages and consequently any chances to find a qualified job. All those involved seem to agree that as long as special schools exist, they will always tend to be filled with children hailing from unpopular communities; yet the Action Plan does not envisage abolishing special schools and changing the country’s education system in order to improve the chances of children hailing from Romani settlements. In this situation, it is almost unrealistic to hope that the Action Plan will do anything to improve Romani children’s access to education. Instead, it will most probably keep busy psychologists who will rub their foreheads over how to ‘objectively’ measure Romani children by standards based on the construct of ‘normality’ created by the majority.

“The Action Plan does not envisage abolition of special schools, although they will always be filled with children from unpopular communities. Changing the country’s education system in order to improve the chances of children hailing from segregated Romani settlements is nowhere in sight.”

TOOTHLESS STRATEGIES MAY NOT ONLY FAIL TO HELP THE ROMA, THEY MAY ACTUALLY HARM THEM FURTHER

I am sure that the revised Action Plan’s elaboration has involved a great number of enthusiastic people who believed that their initiative would bring the long-awaited positive turnaround in this important yet neglected area. But the past experience with these strategies tells us that neither this nor any other similar document will be able to help the Roma in Slovakia unless there is political will to adopt systemic changes within majority institutions (including changes in ‘normal’ schools) that are indispensable to creating true conditions for inclusion. They can never help

“Unfortunately, the danger of adopting this and other toothless strategies is not only that they will fail to help the Roma but especially that they create an impression of enormous amount of energy and funds expended on ‘tackling the Roma issue’, which helps pave the way to popularization of ‘radical solutions.’”

them unless policy makers admit that the roots of Roma exclusion are ethnic as well as social and unless they find the courage to authorize collection of ethnically sensitive data that are the alpha and omega of adopting well-targeted and effective policies. In its framework document that should form the basis for national strategies of EU member states including Slovakia, the European Commission called for adoption of targeted policies based on affirmative action in favour of the Roma. The European Commission directly observed that traditional measures of social inclusion seem to be insufficient to eliminate the disadvantages facing the Roma living in the European Union.⁸

Unfortunately, the danger of adopting this and other toothless strategies is not only that they will fail to help the Roma but especially that they create an impression of enormous amount of energy and money expended on ‘tackling the Roma issue’, which helps pave the way to popularization of ‘radical solutions’. ■

8 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, COM (2011)173 Final, April 5, 2011.

RE: JARMILA LAJČÁKOVÁ: “LEGISLATIVE INTENT OF THE BILL ON SOCIALLY EXCLUDED COMMUNITIES MAY HAVE UNDESIRABLE IMPLICATIONS” AND STANO DANIEL: “ETHNIC PRINCIPLE IN THE BILL ON SOCIALLY EXCLUDED COMMUNITIES REMAINS INTACT” IN *MINORITY POLICY IN SLOVAKIA NO. 2/2011*, CENTER FOR THE RESEARCH OF ETHNICITY AND CULTURE

MARTIN VAVRINČÍK

HEAD OF DEPARTMENT FOR SOCIALLY EXCLUDED COMMUNITIES
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The most recent edition of the *Minority Policy in Slovakia* quarterly presented critical views by Jarmila Lajčáková and Stano Daniel of the proposed bill on socially excluded communities. Since the Ministry of Labour, Social Affairs and Family welcomes discussion regarding this issue, we decided to react briefly to some views of the said authors as they in many respects reflect the general criticism of the concept of socially excluded communities (SVS).

The mentioned objections could be summed up as follows: refusing to reduce the situation of the Roma to an exclusively social problem; alleging insufficient reaction to the roots of social exclusion, i.e. especially low inclusive capacity of the majority institutions; questioning the truly pro-integration character of the proposed measures; finally, fearing that half-hearted solutions embodied in the proposed legislation would conserve the unsatisfactory *status quo*.

We are not under the illusion that the law on SVS will be the panacea that will solve the situation of the Roma in Slovakia for once and for all as none such solution apparently exists. Neither do we believe that its adoption will amount to the wave of a magic wand. We are aware that the situation of the Roma in Slovakia is catastrophic. It is the result of a conglomerate of reasons most of which are rooted so deeply that our society is bound to keep uprooting them for several generations to come.

We are convinced, however, that it makes sense to try to systematize government social and inclusion policies. Besides partial attempts to tackle the problem at hand, government expends enormous funds mainly on eliminating the ramifications of a substantial population group's social exclusion. We believe that government in the past paid minimum attention and allocated minimum public funds to adopting systemic measures designed to prevent the undesirable effects of social exclusion. The few achievements may be attributed mostly to initiatives by local governments and non-governmental organizations rather than to central government's policies.

We agree with the author that “*an optimum policy in this area should carefully try to combine the social approach with the ethnic approach*”. The bill on SVS is meant to represent the social pillar of government policies aimed at tackling the so-called ‘Roma issue’. The said approach in no way questions the need to formulate and implement policies based on ethnic principle (do we know at all what they should entail?) or the principle of treating the Roma as a national minority. That, however, cannot be in exclusive power of the Ministry of Labour, Social Affairs and Family.

Therefore, the ambition of the law on SVS is not to provide the panacea to the overall situation of the Romani minority in the Slovak Republic but rather to make certain public services more effective through introducing the concept of SVS. In our opinion, improving their social status and their access to public services, which is an important aspect of the entire problem, may simultaneously become the prerequisite to (or the means of) their stronger emancipation as an ethnic group.

Our ministry does in no way dissociate itself from policies based on the ethnic principle; it only believes it cannot be the leader in this respect. At the heart of social policy aimed at the so-called environment of concentrated and generationally reproduced poverty – which is the ministry's mission – must be consistently non-ethnic principle, at least for two reasons: first, due to the need to define the exact target group of social policy (unlike policies potentially based on so-called ascribed ethnicity) and the related absence of the concept of collecting and evaluating ethnically sensitive data; second, due to existing limitations ensuing from the legal order of the Slovak Republic, i.e. the valid diction of Antidiscrimination Act and the valid ruling by the Constitutional Court that proclaimed affirmative action based on the ethnic principle unconstitutional. In this constellation, implementing socio-economic and territorial principles is a logical and probably the only effective choice possible.

As the author agrees herself, the problem of insufficient inclusive capacity of institutions that are supposed to integrate the Roma goes “*significantly beyond competence and powers of the labour ministry*”. Even though the quality and character of provided public services is an indisputably relevant issue, in the field of the labour ministry's powers it only concerns social services and employment services. The proposed bill on SVS truly does not focus on reforming education system, health service system or the system of housing subsidies; its principal effort is to apply practically tested and effective tools to eliminate barriers inhibiting the target group's access to these services and simultaneously enhance effectiveness of these services with respect to SVS through introducing the socio-economic concept and clear definition of the target group. On the practical level, it is primarily about systemic anchoring of time-tested tools and projects (including social fieldwork), which was exactly the author's point.

As far as the pro-integration character of adopted measures goes, it is our ambition to set the system in such a way that the benefits would not be disbursed primarily to individuals but rather to institutions that provide the services, which might at least partially eliminate the risk of increased interethnic tension and segregationist tendencies (e.g. in the field of education), which was the author's concern. This way, the disbursed funds would help develop the institutions and therefore indirectly benefit majority society, which might help reduce its feeling of burden. Today, for instance, education of children from socially disadvantaged environment has a special financing regime and in our opinion it would be difficult to speak of increased tension between these children and the children whose education is not subsidized. It is the absence of exact data and clearly defined government policies (i.e. transparently financed, monitored and evaluated) that helps built stereotypes and social tensions.

On the general level, the law on SVS creates conditions for better integration of individuals because SVS members who are better educated and healthier, live in higher-standard homes and are economically self-sufficient

stand a dramatically greater chance to get integrated into majority society, regardless of its inclusive capacity. Nevertheless, one must bear in mind that in the current situation there is no solution that would bring about a fundamental change in the status of the Romani minority and simultaneously would enjoy broad support by the majority. In our opinion, implementation of successful policies in a significantly racist, discriminating and xenophobic society can hardly avoid a temporary increase of tension. Southern states in the USA also had to deploy National Guard to enforce access of black children to non-segregated education, which is not to question the need for measures aimed at changing public attitudes.

The reservation alleging that a single law may conserve the *status quo* is far-fetched as this argument could be used to turn down any reform that does not intend to cure all agonies of this world. The need to tackle the problem at hand (i.e. seek new and revise existing policies) will remain as long as there is a problem that requires solution. That being said, it is hard to believe that a new law alone could justify “government’s

feeling that all problems related to the Roma have been solved”. In no way does the law on SVS as an effort to tackle one part of the problem (i.e. social exclusion) detract from legitimacy or urgency of formulating other policies and efforts aimed at tackling other, non-social aspects of the problem.

We see the main argument in favour of introducing the new legislation in our ambition to eliminate the reasons for the failure of all those efforts spelled out in various programs, policies and strategies that have not lived to see practical implementation. For various reasons, the goals spelled out in these documents were of largely verbal and declaratory nature with minimum practical effects on the situation of the Romani minority. Other important factors for their failure included non-systemic and non-sustainable nature of various measures implemented usually through short-term projects as well as the strictly sectional character of existing policies. The ambition of the law on SVS is to eliminate the said deficiencies. ■

FREE CONTRACEPTION FOR PEOPLE FROM SOCIALLY EXCLUDED COMMUNITIES: REPRODUCING PAST WRONGS?

BY ADRIANA LAMAČKOVÁ

One of the most controversial measures in the legislative intent of the bill on socially excluded communities is to introduce free contraception including sterilization of these communities’ members. The proposal is highly problematic especially given the long record of violating reproductive autonomy of Romani women who are obviously the measure’s main target. Since contraception remains financially unaffordable for many women in Slovakia, government should adopt measures aimed at problem-free availability of contraception for all women, not only those who live in law-stipulated socially excluded communities.

ACCESS TO CONTRACEPTION REMAINS LIMITED IN SLOVAKIA

The freedom of women to decide on whether and when they will have children is important not only from the viewpoint of public health and economy but especially from the viewpoint of human rights. Women’s problem-free access to a wide range of modern contraception methods and reliable information on contraception demonstrably reduces the occurrence of unwanted pregnancies. This alone is good for women’s health as it reduces the total number of abortions as well as sick and mortality rates among mothers. Last but not least, it reduces overall health care costs.

Besides, women’s access to a wide range of contraceptives increases their freedom of choice and improves their status within the commu-

“The freedom of women to decide on whether and when they will have children is important not only from the viewpoint of public health and economy but especially from the viewpoint of human rights... But Slovakia has not created conditions for proper implementation of this right.”

nity and entire society, which significantly promotes gender equality. On the other hand, insufficient availability of contraceptives amounts to discrimination against women as it is related to health care services that due to biological, social and cultural reasons primarily concern women and therefore their scarcity much more negatively affects the lives of women than the lives of men.¹

The right to decide freely on the number of children and the time of their birth and to have access to information, education and means that help exercise this right is spelled out in the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was also signed by the Slovak Republic. But Slovakia has not created conditions for proper implementation of this right. Non-governmental organizations specializing in human rights have repeatedly urged government to improve availability of services related to reproductive health including contraception.

Recently they did so in greater detail by *Calculated Injustice: Failing of the Slovak Republic to Provide Access to Contraceptives*, a study that was based on interviews with users or potential users of contraceptives among women as well as other involved experts. Most respondents criticized high prices of contraceptives that reduced access to them altogether or options to choose the most suitable method, particularly for women with low income, women who live in violent partnerships and young women.²

Completely ignoring these findings, parliament acting on an initiative by the Ministry of Health Care recently passed a law that explicitly forbade health insurance companies to reimburse contraceptives designed to prevent unwanted pregnancies from public health insurance.³ The discriminatory practice was thus officially enacted by law; neither ruling nor opposition parties presented any objections to it. In this respect it is a legitimate question whether any proposal aimed at

(Bratislava/New York: 2011), cited by CEDAW in *General Recommendation No. 21: Equality in Marriage and Family Relations*, 13th Sess., 1994, U. N. Doc. HRI/GEN/rev. 5, § 21.

2 Center for Reproductive Rights – Možnosť voľby – Občan, demokracia a zodpovednosť: *Vypočítaná nespravodlivosť. Zlyhávanie Slovenskej republiky v zabezpečovaní prístupu k antikoncepčným prostriedkom*, pp. 27-42, 49, (Bratislava/New York: 2011). Other significant deficiencies pointed out by the study include scarcity of complex, reliable and accurate information on contraception including complex sex education in schools, lack of time or willingness on the part of gynaecologists to discuss properly possibilities of contraception with their patients, as well as the Catholic Church officials’ lingering influence over political decision-making in the field of reproductive health and rights.

3 *Zákon o rozsahu a podmienkach úhrady liekov, zdravotníckych pomôcok a diietických potravín na základe verejného zdravotného poistenia a o zmene a doplnení niektorých zákonov*, passed as Law No. 593/2011 on September 13, 2011. The law does not rule out reimbursement of contraceptives prescribed due to health reasons.

1 Center for Reproductive Rights – Možnosť voľby – Občan, demokracia a zodpovednosť: *Vypočítaná nespravodlivosť. Zlyhávanie Slovenskej republiky v zabezpečovaní prístupu k antikoncepčným prostriedkom*, p. 45,

improving financial availability of contraceptives has any chance to be passed in Slovak parliament that is occupied by political parties that clearly ignore women's human rights.

MEASURES ENVISAGED BY THE BILL ON SOCIALLY EXCLUDED COMMUNITIES SHOULD BE VIEWED IN BROADER CONTEXT

In this situation, one should be grateful for any initiative aimed at improving availability of family planning services. The legislative intent of the bill on socially excluded communities that was submitted to the interdepartmental debate procedure in August 2011 by the Ministry of Labour, Social Affairs and Family includes an ambition to introduce free contraception including sterilization of these communities' members.⁴

The proposal seems rather harmless on the first glimpse but a question immediately arises whether it is acceptable to tackle the issue through

"Is it possible to accept improving availability of family planning services proposed by the bill that concerns primarily marginalized Romani communities if one realizes the long record of violating reproductive rights of Romani women?"

a bill designed primarily for marginalized Romani communities, especially given the long record of violating reproductive rights of Romani women.

In the past, social fieldwork with "the Gypsy population"⁵ also included persuading and even pressuring many Romani women to agree with sterilization.⁶ A sizeable financial compensation for sterilization was only disbursed to Romani women and often served as an incentive to make them consent to sterilization.⁷ Although forcible sterilizations of Romani women have been discussed for several years, individual cases have never been properly investigated and government has not found the strength to condemn these serious violations of women's reproductive rights, much unlike its Czech counterpart that in 2009 officially expressed regret over individual cases reported.

Not that the pressure would not be big enough. International human rights institutions under the United Nations and the Council of Europe have repeatedly called on the Slovak Government to investigate cases of involuntary sterilization that continued to occur even after the fall of the communist regime.⁸ In March 2011, the UN Human Rights Committee that supervises implementation of the International Covenant on Civil and Political Rights expressed concerns over the progress of investigation and the lack of information on concrete measures aimed at eliminating forcible sterilizations. The committee urged the cabinet to adopt measures that would guarantee observance of legal provisions regulating women's informed consent with sterilization.

Two years earlier, the UN Committee against Torture that supervises implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment called on the Slovak Government to promptly order a thorough and independent investigation into cases of involuntary sterilization of Romani women, punish those responsible for unlawful actions and provide just and adequate indemnification to the victims. At the same time, the committee urged government to adopt guidelines that would clearly define the particu-

4 *Legislatívny zámer zákona o sociálne vylúčených spoločenských, a version submitted to interdepartmental debate procedure in August 2011.*

5 "Gypsy population" was the official term during the communist era.

6 *Podnět ministra pro lidská práva ke sterilizacím žen v ČR provedeným v rozporu s právem* [Motion by the Minister for Human Rights Regarding Unlawful Sterilization of Women in the Czech Republic], a rider to the Czech Government's Resolution No. 1424 of November 23, 2009, p. 2.

7 Also documented were numerous sterilizations performed without victims' consent or without properly informing them about the operation. For further details, please see Vera Sokolová: "Planned Parenthood behind the Curtain: Population Policy and Sterilization of Romani Women in Communist Czechoslovakia, 1972-1989" in *AEER* Vol. 23, No. 1 (2005), p. 80.

8 See, for instance, Centrum pre reprodukčné práva – Poradňa pre občianske a ľudské práva: *Telo i duša: Násilné sterilizácie a ďalšie útoky na reprodukčnú slobodu Rómov na Slovensku* [Body and Soul: Forcible Sterilizations and Other Attacks on Reproductive Freedom of the Roma in Slovakia], 2003.

lars of free and informed consent to sterilization along with the procedure of obtaining it from women. Both mentioned UN committees also recommended that medical staff should receive special training regarding free and informed consent.⁹

Informed consent, also known as informed decision or informed choice, is one of basic rules to be observed when providing health care including sterilization. Just a few months ago, the International Federation of Gynaecology and Obstetrics issued a new guideline regarding sterilization of women, calling free and informed choice cardinal. Explaining what an informed consent should include and how it should be obtained, the guideline emphasized that doctors must not perform sterilization of women without an informed consent obtained from them in advance and under no duress.¹⁰ Although the guideline provides useful and detailed instructions to be followed by individual states, Slovakia has not yet adopted a detailed guideline regarding women's informed consent to sterilization.¹¹

Unless government faces the issue of involuntary sterilizations head on and with due respect to women that have been subjected to it, any proposal seeking to provide free contraception including sterilization and targeting the population group that comprises mostly the Roma will always remain untrustworthy, no matter how well intentioned it may be. Those responsible should unambiguously condemn the practice of forcible sterilizations and accept responsibility by ordering proper investigation and even approving financial indemnification of the victims. Otherwise there will always be suspicion that the actual goal of such measures is not to strengthen autonomy and rights of individual Romani women and the entire Romani community but to continue to regulate the Romani population's birth rate.

TERRITORIALITY AS THE MAIN PRINCIPLE OF PROVIDING FREE CONTRACEPTION

Last but not least, the territoriality principle of the bill on socially excluded communities invites a question what was the ministry's motive to make one poor population group eligible to free contraception and distinguish it from other people with equal or similar socio-economic status who do

not belong to the singled out group. From the viewpoint of human rights, economic effects or pursuing trustworthy policies in the field of public health, it would certainly be more logical to provide free contraception to *all* women or at least to *all* women with low income, women who live in violent partnerships and young women who are threatened the most by unavailability of contraceptives. At the same time, it is necessary to define and observe human rights principles that are crucial to providing family planning services in order to strengthen women's autonomy in the field of reproductive rights. ■

"The territoriality principle of the bill on socially excluded communities invites a question what was the ministry's motive to make one poor population group eligible to free contraception and distinguish it from other people with equal or similar socio-economic status who do not belong to the singled out group."

9 UN Human Rights Committee: *Final Findings: Slovakia*, CCPR/C/SVK/CO/3, 2011, §13; UN Committee against Torture: *Final Findings: Slovakia*, CAT/C/SVK/CO/2, 2009, §14. Please see also UN Committee for the Elimination of Racial Discrimination: *Final Findings: Slovakia*, CERD/C/SVK/CO/6-8, 2010, §18.

10 International Federation of Gynaecology and Obstetrics, March 2011, *Female Contraceptive Sterilization*; available at: <http://www.who.org/files/figo-corp/FIGO%20-%20Female%20Contraceptive%20sterilization.pdf>.

11 Vanda Durbáková: "Problematika násilných a vynútených sterilizácií rómskych žien v Slovenskej republike a diskriminácia v prístupe k zdravotnej starostlivosti, sociálnemu zabezpečeniu. Vynútiteľnosť práva v súvislosti s prípadmi diskriminácie rómskych žien" [The Issue of Forced and Forcible Sterilization of Romani Women in the Slovak Republic and Discrimination in Access to Health Care and Social Security: Law Enforceability in Cases of Discrimination against Romani Women] in Adriana Mesochořitsová – Jana Zezulová (eds.): *Monitorovacia správa o plnení Záverečných zistení Výboru pre odstránenie diskriminácie žien v SR* [Monitoring Report on the Fulfilment of Final Findings of the Committee for the Elimination of Discrimination against Women in the Slovak Republic], (Bratislava: Možnosť voľby, 2011, p. 67).

REVISED BILL ON MATERIAL NEED BENEFITS SHOULD SEEK TO HELP THE POOR, NOT SAVE MONEY ON THEM

BY JARMILA LAJČÁKOVÁ

In August 2011, the Ministry of Labour, Social Affairs and Family submitted to the interdepartmental debate procedure a bill on assistance

“Adoption of such a radical change should be preceded not only by a thorough financial analysis of how much the state would save on the poorest but also by sufficient demonstration of how the existing system demotivates benefit recipients and whether it truly perpetuates the vicious circle of their poverty.”

in material need along with a bill on housing allowance. According to the ministry, “the currently existing system of disbursing material need benefits is non-transparent, costly and de-motivating for citizens,” which is why it needs a relatively fundamental revision.¹

The proposed bill seeks to change the method of calculating the amount of disbursed benefits. From now

on, it should be calculated as a percentage of the law-stipulated subsistence level divided into three segments: the first, basic segment should cover basic living conditions of benefit recipients (20%); the second, solidarity segment should be disbursed to persons who due to strong reasons are unable to secure income by their own work (40%); the third, motivational segment is designed for adult individuals with minor children with or without means. The amount of motivation allowance should depend on the type of motivation and activation works eligible recipients participate in. Those recipients who take part in programs managed by, say, community centres would be eligible to collect half of it (i.e. 20% of the full amount); those who take a demon-

“The bill’s initiators should consider the actual chances of material need benefit recipients to secure income by their own work, especially if they live in regions with high unemployment.

Also, they should submit a very detailed analysis that would give an overview of the type and number of available activation work positions as of the day when the law takes effect.”

strable effort to improve their qualifications or participate in activation works would be eligible for the entire segment (i.e. 40% of the full amount). Compared to the *status quo*, the amount of basic benefit will be reduced substantially, from €62.50 to €37.97.

Since we at the Center for the Research of Ethnicity and Culture believe that the measure targets primarily residents of marginalized Romani communities, we filed objections to the proposed

bill during the debate procedure and recommended that it be withdrawn and revised. In our opinion, adoption of such a radical change should be preceded not only by a thorough financial analysis of how much the state would save on the poorest, which was the bill’s advertised ambition, but also by satisfactory demonstration of how the existing system demotivates the benefit recipients and whether it truly perpetuates the vicious circle of their poverty. The bill’s initiators should consider the actual chances of material need benefit recipients to secure income by their own work, especially if they live in regions with high unemployment. Also, they should submit a

1 Justification report to the bill, p.1.

very detailed analysis that would give an overview of the type and number of available activation work positions as of the day when the law takes effect.

Since the bill’s initiators failed to demonstrate that there would be enough activation job positions, passing of the proposed bill would in our opinion lead to a drastic reduction in the total amount of disbursed material need benefits and further deepening of poverty in segregated Romani settlements. This situation would contravene the constitutional principles and international conventions on the protection of fundamental human rights, including social rights that guarantee government assistance necessary to secure people’s basic living conditions.

According to information brought by the press, Prime Minister Iveta Radičová joined the great number of critics from among non-governmental organizations and politicians who expressed scepticism over procuring sufficient amount of activation works and referred the bill back for revision.² We believe that the revised bill will be based on actual findings as opposed to assumptions. At the same time, we would like to point out that the bill’s initiators must abide by the Slovak Constitution, which guarantees social rights in the form of material need benefits. Undiscerning adoption of foreign models that may have inspired the bill’s initiators in this particular case may not always be appropriate, since most western democracies are not bound by constitutions that guarantee social rights. ■

2 Daniela Krajanová: “Mihál prerába hmotnú núdzu” [Mihál Reworks Material Need], *Sme* daily, September 5, 2011.

GLOSSES

SLOVAK FAMILY ROBINSONS

BY BARBORA MAŤAŠOVÁ

Computer skills are an absolute must when applying for virtually any job these days. At least that is a conviction shared by the authors of Mobile School, a project designed primarily for young Roma that is currently being pilot-tested in four Romani settlements in East Slovakia where Romani lecturers aspire to improve computer literacy of 115 potential Romani job seekers.

Projects of this kind have a peculiar way of dividing the rest of the population into supporters and harsh critics who accentuate more fundamental needs of the targeted population segment. Of course, one must never forget about the remaining group of permanent critics who would love to rescue these Robinsons only to drop them in busloads before the parliament in Bratislava or drive them even farther, say, to Romania or East Indies.

Naturally, the project is unlikely to produce immediate results and we all will have to wait some time before we can evaluate it. This may provide a lot of space to sceptics. Some of them will flare up with ‘righteous anger’ over society’s inability to solve the so-called Roma issue. Others will throw their hand and say there is nothing one can do to help these human wrecks. Or –

Or they can all try something new and wait. If they decide to give the project a chance, maybe some of its graduates will find it a little easier to find a job in not-so-distant future. Once they do, it is very unlikely that they will remain stranded on their godforsaken islands of poverty; instead, they will make their shipwrecked families leave the settlements and serve an example to their children and friends. Is it not worth it to give these extras a chance to play lead characters?

LAZY JOURNALISTS REPRODUCE STEREOTYPES

BY KAROLÍNA KOŠČOVÁ

“Now back to domestic problems. This week we have brought you several stories on a misfit Romani family from Malacky. They are noisy, their yard is a heap of rubbish that has become a rich breeding ground for rats and they are at loggerheads with their neighbour ... This is truly disgusting, nobody would like neighbours like that – there are rats, excrements, noise, endless quarrels – a nightmare! Not only the neighbour but even the Roma have apparently lost hope. One should note that some of them go to work every day at a nearby factory while others are involved in activation works, their children go to school. So they are able to socialize. So what went wrong? There is one big “but”, though. The government is unable to deal with the Romani minority despite incredible amounts of money earmarked for their integration into society.”

This was the opening of a news piece aired on TV Markíza’s main evening news program, which has the highest ratings in the country. Apparently in an effort to entertain or shock the viewers, the reporter decided to stir up emotions. No matter what kind of emotions, for it is the excited reaction that counts. What an average agitated viewer has learned from the story is that ‘Romani’ is a synonym for ‘misfit’; that it is the Roma who can’t stand their neighbour and not the other way round; that nobody would want such maladjusted people for neighbours.

In several stories from Malacky, various reporters asked various respondents: an ambitious civil rights activist, people from non-governmental organizations and even the government plenipotentiary for Romani communities. Unfortunately, none of them asked if the viewer ever needs to know whether the misfit family was Romani. Does a skirmish between neighbours, which is how the conflict had originally started, deserve space in the primetime news program throughout an entire week? And even if it does: do the viewers need to know the ethnic origin of participants? Quarrels between neighbours can be found in virtually every village or town in Slovakia. Why was the story on a Romani family being at loggerheads with their neighbour and not about a Slovak who can’t stand his disorderly neighbours?

Now let’s imagine that the tables turn. This is exactly what happened during ethnic tensions in the north of the Czech Republic in August 2011. Apparently frustrated by the constantly reproduced negative stereotypes, server Romea.cz deliberately changed the tone of its news coverage. Holding up a mirror, it began to report on developments under the following headlines: “400 Ethnic Czechs March through Town”; “Police Handled Demonstration in the Šluknov Region Well This Time”; “Water Cannon Used against Neo-Nazi and Local Ethnic Czechs”; “Four Ethnic Czechs Beat up a Roma with Baseball Bats before His Pregnant Girlfriend”. All of a sudden, it looked as if it was ethnic Czechs who were the rowdies and brutes, didn’t it?

A Czech journalist Patrick Zandl recently summed up the condition of local media in a simple sentence: “Serious news is expensive.” Finding information is time consuming and planting it in the context requires general knowledge of the problem at hand. The problem is not that people do not care about serious news today. Even complicated issues and events can be rendered in a correct and interesting way, all one needs is to work hard.

But are modern journalists willing to work at all? Today, reporters prefer to pitch a story they know is bound to provoke as excited reactions as possible. Then they call up two high-profile people they assume should be experts on the subject. They pick the juiciest quotes and show the rats, ragamuffin kids, a shabby house and an unkempt yard. They call it a Romani yard, regardless whether this reference to ethnicity holds any relevance to the story.

On the one hand, this laziness of modern journalists boosts ratings; on the other hand, it boosts something much more serious that is bound to last much longer than yesterday’s ratings: a reproduced stereotype. News professionals should know better than anybody it takes decades to get rid of stereotypes.

Setting limits to informing on race and ethnicity in media coverage is the matter of political correctness. It is a question for a political and philosophical debate whether colour-blind media are desirable at all. But professional approach to processing media outputs should be the essence of quality news reporting. The Slovak media need not to strive for ethnic-free reporting just yet. For starters, it will be enough if they are able to place ethnicity in the context and recognize the limits of its relevance.

The problem of the whole public debate on the so-called Roma issue is that a single adjective stigmatizes the entire population group. That is not fair any more than reporting on violent ethnic Czechs or thieving ethnic Slovaks. No word is able to capture diversity of the whole population group but a single word is able to stigmatize it all at once.

IS MINARET REALLY THE PLACE WHERE DIFFERENT LAW SYSTEMS COLLIDE?

BY IVAN ŠIMKO

At a press conference of the Slovak National Party (SNS) in early September, MP Andrej Danko promised to draft a bill that would seek to outlaw building minarets on Slovakia’s territory. Trying to justify his odd initiative, Danko argued that minarets represent “a serious and dangerous clash between different law systems” and did not forget to add that “immigrants must adapt themselves”.

First of all, let us say a word or two about minarets. While it is truly difficult to define minaret without a reference to religion, minaret is a Turkish form of an Arabic expression for beacon and has nothing to do with Islamic law. This was also admitted by many of those who supported the first legal ban on building minarets enacted by Switzerland in 2009. It is quite interesting that radicals from both cultures who love to disagree otherwise are in complete accord over this. Ibn ‘Abd al-Wahháb, a conservative thinker who lived in the 18th century, also opposed building of minarets on grounds that ancient Muslim houses of prayers did not have them either.¹ While Islamic law stipulates a number of details as far as formal attributes of prayers are concerned, none of them concerns architecture. At first, the Muslim community lacked the know-how to build high-rise structures; the first muezzins were known to climb onto rooftops to make themselves heard. A minaret – just like a Christian bell tower – is a technical feature rather than manifestation of religion. After all, medieval law according to Gottheil allowed muezzins to call believers to prayers even while riding², although it was as far back as in the time of caliph Mu’áwija that a special place for the muezzin had to be built next to every mosque.

Even if we disregard Danko’s clumsy attempt to finger-point the symbol of his and his party’s Islamophobia, the definition of minaret as ‘Islamic’ should not have much legal implication since Slovakia does not officially recognize Islam as a religion. Therefore the ban would be totally symbolic from the legal viewpoint. In using minarets as an excuse to present anti-immigration rhetoric aimed at emphasizing cultural differences, Danko unwittingly

1 Gottheil, Richard, “The Origin and History of Minaret” in *Journal of American Oriental Society*, No.2, Vol.30, March 1910; available at: <http://www.jstor.org/stable/3087601> (3.10.2011)

2 Ibid.

betrayed that minarets hold a great symbolic value for nationalistic parties such as the SNS and that the initiative may have been about symbolism all along.

Although some people in Switzerland also seem to need to take a crash course on the basics of Islamic law³ and although it was the overly general definition that allowed France⁴ to enact a similarly symbolic ban on Muslim women's veils, it would not be wise to laugh at people's ignorance. The point is that the problem in the context of Slovakia is even broader than in the case of Switzerland or France.

The Muslim community in Slovakia is relatively small, comprising primarily converts who were already born here. In Slovakia where a vast majority of immigrants hails from other EU member states or from Ukraine⁵, the public opinion on Islam is largely shaped by foreign views. Generally speaking, Slovak media reproduce two quite stereotypical Muslim images.⁶ One is European and relates to Albanians, Bosnians, Chechens and maybe Turks although the latter have been included solely due to the recent flurry of Turkish soap operas. Here, the Muslim identity is secondary as this type of Muslims is primarily defined by ethnicity. Besides traditional pan-Slavism, which is hostile to Muslims due to historical reasons, this perception has been certainly influenced

3 Please see the show *20 Minuten Online*; available at: <http://www.20min.ch/news/ostschweiz/story/11984803> (3.10.2011)

4 The law also bans wearing masks, balaclavas and other face covers in public places; the full version of the law is available at: http://www.assemblee-nationale.fr/13/dossiers/dissimulation_visage_espace_public.asp (3.10.2011)

5 Please see <http://portal.statistics.sk/showdoc.do?docid=31412> (3.10.2011)

6 For example of the former image, please see HN Online (http://hnonline.sk/c6-10157090-21127090-kL0000_detail-posledna-krajina-bez-mesity); for example of the latter, please see *Sme* daily (<http://www.sme.sk/c/5150676/moslimovia-pod-tatrami.html>) (3.10.2011)

by "frontier Orientalism".⁷ In this case, foreign culture is perceived as sufficiently 'modern' and some stereotypes that are normally criticized (e.g. nepotism, speculation) are positively reinterpreted (i.e. as emphasis on family or commercial spirit, respectively).

The second stereotype is Arabic and has been largely imported; it is generally related to underdeveloped countries and besides ethnic Arabs it also includes Iran, Indonesia and other countries. Here, ethnicity is overlooked and replaced by religious identity as well as political and economic status as main determinants of their behaviour. Unlike a 'Europeanized' Muslim, a stereotypical Arab is active on the missionary and political field, using minarets to mark his victories on the cultural battlefield. Most people in Slovakia are not well-versed in the era of colonialism, which is why they are content with ignorance or resort to the opinion that maintaining military or political hegemony is the best solution.

The recent attempt by the SNS to open the minaret issue may be interpreted rather as a signal to far-right parties in the West. Perhaps Danko's initiative was aimed at reinventing the image of his party, which has become notorious for constantly abusing historic resentment with respect to local non-Slovak ethnic groups and would be certainly interested in integration into the mainstream of European nationalistic parties.

Although the signal came belatedly and completely off downbeat, it did illustrate one thing: the European Union cannot make the problem of xenophobia go away simply through official statements and guidelines on tolerance as the problem apparently spreads further eastward. For some, European integration is not an opportunity to leave old conflicts behind but to pick up quarrels with new common enemies. ■

7 Gingrich, Andre, "Frontier Myths of Orientalism" in Brumen, B. (ed.), *MESS vol. II*, Ljubljana 1998.

RELIGIOUS DIVERSITY STILL UNWANTED IN SLOVAKIA

BY MONIKA NÁGLOVÁ

The traditional notion of Islam that is reproduced in the laymen, political and media discourse in Slovakia perceives Muslim worship as the means to gain political power and a mosque (usually with minaret) is therefore viewed as the hub of these efforts. Participants of this discourse often tend to forget that although Islam is a compact religious and cultural system and although state and religion are closely interconnected in most Muslim countries, it still does not make Islam a political system. According to representatives of the Islamic Foundation in Bratislava, the most recent effort by the Slovak National Party (SNS) to ban construction of minarets on Slovakia's territory is somewhat tragicomic because minaret is not mandatory equipment of a mosque.¹

A mosque, be it with or without minaret, is a place of worship for the Muslim religious community. Yet, all previous efforts of the Muslim community in the Slovak capital to build a mosque have been repeatedly rejected by municipal authorities, which is why Slovakia remains the last European country without a mosque.

But the Bratislava town hall merely seconds the attitude of the central government, which does not officially recognize Muslims as a religious community. In May 2007 parliament passed an amendment to the Law on Freedom of Worship and the Status of Churches

1 Please see <http://www.islamweb.sk/stranky/vyhlasenia/vyhlas%2024.htm>

and Religious Associations, introducing stricter requirements applicable to registering churches and religious associations.² Now, a petition must be signed by 20,000 members of a religious community who have permanent residence in Slovakia and are Slovak citizens; previously, it was 20,000 sympathizers. Interestingly enough, drafting and passing the amendment coincided with launching the petition to register the Muslim community as an officially recognized religious association.

According to many experts, the said law ranks among the strictest in Europe. Article 12 of the Slovak Constitution guarantees that no one shall be discriminated against or disadvantaged based on their belief or religion³ while the already cited Law No. 308/1991 reads: "Everyone has the right to manifest their religion or belief freely, alone or together with others, in private or in public, by the means of worship, instruction, religious rites or ceremonies."⁴

Unfortunately, the recent initiative by the SNS as well as the most recent amendment to the Law No. 308/1991 sends a clear signal to the Muslim community that religious diversity continues to be viewed undesirable in Slovakia.⁵ ■

2 §11 Zákona č. 308/1991 Z.z. o slobode náboženskej viery a postavení cirkví a náboženských spoločností v znení neskorších predpisov.

3 Article 12 of the Constitution of the Slovak Republic (Law No. 460/1992).

4 §1 Zákona č. 308/1991 Z.z. o slobode náboženskej viery a postavení cirkví a náboženských spoločností v znení neskorších predpisov.

5 Lajčáková, Jarmila (2009), "Právne postavenie a politika k novovznikajúcim etnickým, jazykovým a náboženským menšinám na Slovensku" ['Legal Status of Newly Emerging Ethnic, Language and Religious Minorities in Slovakia and Policies toward Them'] in Gallová-Kríglerová, Elena – Kadlečíková, Jana – Lajčáková, Jarmila (eds.), *Migranti. Nový pohľad na staré problémy* ['Migrants: A New Look at Old Problems'], pp. 75-119, (Bratislava: CVEK).

PROTECTION OF CONSCIENTIOUS OBJECTION IS IN LINE WITH POLICY OF MULTICULTURALISM

BY JARMILA LAJČÁKOVÁ

The issue of conscientious objection, which has a way of periodically appearing in Slovakia's public discourse, appeared again in the third quarter of 2011 as government proposed to enact it through amending the Labour Code. According to available information, employees could exer-

“According to available information, employees could exercise the right to conscientious objection provided it does not endanger life and health. The proposal shall not apply to people employed in health service and judiciary.”

cise the right to conscientious objection, provided it does not endanger life and health. The proposal shall not apply to people employed in health service and judiciary.¹

It is quite safe to assume that the right to conscientious objection will be exercised by those for whom it is unacceptable to work on religious or church holi-

days. In the field of education, there might be cases of teachers who would refuse to teach, say, evolution theory or sex education on account of conscientious objection. Since the proposal to protect conscientious objection is drafted relatively broadly, there might even be cases when a lecturer at a medical faculty would refuse to teach students about reproductive health.

THE CASE OF BAYATAN VS. ARMENIA

Recently, there was an interesting development on the European level as the Grand Chamber of the European Court of Human Rights adjudicated on the case of Bayatan

“The ruling issued by the European Court of Human Rights confirmed the recent trend in international law to respect conscientious objection as a manifestation of religion (or non-religious belief), but only with respect to refusing compulsory military service and not with respect to, say, refusing to perform abortions or prescribe or sell contraceptives.”

vs. Armenia and overthrew its previous judicature in the case.² Citing the necessity to apply a dynamic approach to interpretation of the European Convention on Human Rights (ECHR), the court established violation of Article 9 of ECHR that guarantees freedom to manifest religion and belief.³ Vahan Bayatan, an Armenian citizen who was a member of Jehovah's Witnesses, was drafted to compulsory military service at the age of 17, which he refused, arguing that his belief

did not allow him to serve in the army. He evaded the draft, for which he was criminally prosecuted and subsequently convicted by a court martial to 18 months imprisonment. Bayatan declared he was willing to do alternative service, which at that time was not possible in Armenia.

Unlike UN Human Rights Committee, for instance, the European Court of Human Rights in its previous judicature did not interpret Article 9 in the way that would construe conscientious objection as manifestation of belief or religion, leaving it up to individual contracting states to interpret conscientious objection with respect to compulsory military service. In the case of Bayatan vs. Armenia, the court changed its own interpretation and ruled that if “opposition to military service, where it is motivated by a serious and insurmountable conflict between the obligation to serve

- 1 It remains to be seen how the proposal will define those areas of health service it should not concern. In any case, due to ambiguities in this area it would be desirable to set clear rules in order to avoid cases of doctors exercising conscientious objection in a situation when reproductive health services are unavailable in the entire region.
- 2 The case of *Bayatan vs. Armenia*, No. 23459/03, a decision by the Grand Chamber of July 7, 2011.
- 3 Belief also includes non-religious convictions.

in the army and a person's conscience or his deeply and genuinely held religious or other beliefs, then this conviction deserves protection under Article 9”;⁴ however, the court was cautious not to make interpretation of Article 9 too broad, pointing out that “whether and to what extent objection to military service falls within the ambit of that provision must be assessed in the light of the particular circumstances of the case.”⁵

The ruling issued by the European Court of Human Rights confirmed the recent trend in international law to respect conscientious objection as a manifestation of religion (or non-religious belief), but only with respect to refusing compulsory military service and not with respect to, say, refusing to perform abortions or prescribe or sell contraceptives.

THE GIST OF THE SLOVAK PROPOSAL LIES IN THE THEORY OF MULTICULTURALISM

However, the proposal to enact conscientious objection in the Labour Code fundamentally differs from objecting to compulsory military service. The thing is that nobody in Slovakia is forced by the law to perform a job that requires them to work during religious or church holidays or lecture on scientific theories on the origins of life on earth. Everybody has the right to choose their profession freely and the law does not force anybody to take positions whose performance may in some respects contradict their beliefs.

Although it would probably be fruitless to try to find an international precedent of enacting conscientious objection through amending the Labour Code, I do believe that under certain conditions the protection of conscientious objection has its place in Slovakia's legal order. The advocates of conscientious objection among conservative politicians will probably be surprised to hear that institution is endorsed by the theory of liberal pluralism – multiculturalism.

“The support to granting exceptions from generally applicable laws ensues from the basic premise of multiculturalism according to which positive law ... reflects normative systems of majority society. For members of some minorities, abiding by generally applicable laws may constitute an excessive burden due to their religion or belief.”

CONSCIENTIOUS OBJECTION IS IMPORTANT ESPECIALLY TO RELIGIOUS AND CULTURAL MINORITIES

The support to granting exceptions from generally applicable laws ensues from the basic premise of multiculturalism according to which positive law is not neutral from the viewpoint of values, religion or culture but reflects normative systems of majority society. For members of some minorities, especially religious or cultural ones, abiding by generally applicable laws may constitute an excessive burden due to their religion or belief as it forces them to do something they consider forbidden or something that goes against their religious traditions. In order to balance inequalities and guarantee equal chances to lead a free life in line with one's own convictions, the advocates of multiculturalism

“In order to balance inequalities and guarantee equal chances to lead a free life in line with one's own convictions, the advocates of multiculturalism support granting exceptions from generally binding laws. Conscientious objection represents such an exception.”

- 4 Bayatan vs. Armenia, §110.
- 5 Ibid.

support granting exceptions from generally binding laws. Conscientious objection represents such an exception. After all, similar exceptions (e.g. from compulsory school attendance for Amish children in the United States or from the obligation to wear helmets on motorcycles for Sikhs in Canada) rank among pioneering policies of multiculturalism. In Slovakia, it would be desirable to grant an exception to the Jewish community in the field of burials. As we pointed out in the previous edition of our newsletter, the currently valid Funeral Act discriminates against the Jews by forbidding them to bury their deceased within 24 hours of death, which is required by the Jewish religious law.⁶

CONSCIENTIOUS OBJECTION MUST NOT INADEQUATELY INFRINGE ON RIGHTS OF OTHERS

When enacting conscientious objection, legislators should bear in mind that it is a form of manifesting one's religion or belief, which according to the Slovak Constitution (Article 24, §4) as well as the ECHR (Article 9, §2) must

6 Tina Gažovičová: "Even Funeral Act Should Respect Diversity" in *Minority Policy in Slovakia* No. 2/2011, p.7.

be enacted in a way that does not endanger life and health or inadequately infringe on the rights and freedoms of others. For instance, biology teachers who decide to exercise conscientious objection on grounds of protecting their freedom of worship should remember that they may violate their students' right to education. If that happens, it is up to government to make sure that such violations do not occur; in other words, government must provide substitute pedagogues to lecture the subjects or curricula party in question.

"Legal protection of conscientious objection must be guaranteed to people professing any religion (i.e. not only registered ones) as well as non-religious convictions."

At the same time, legal protection of conscientious objection must be guaranteed to people professing all religions (i.e. not only registered ones) as well as non-religious convictions. It is safe to assume that especially members of minority religious communities find Slovak laws contravening their religious beliefs much more often than members of the religious majority who in the long run lobby legislators to enact conscientious objection. ■

MIGRATION STRATEGY: AN ATTEMPT TO HOMOGENIZE SOCIETY BY 2020?

BY ALENA CHUDŽÍKOVÁ

In August 2011, the Slovak Government adopted *Strategy of Migration Policy of the Slovak Republic until 2020*¹ and introduced the so-called migration doctrine whose absence was often the main reason for criticizing the original migration strategy adopted in 2005. Top priority in the field of managing migration has become supporting economic migration in line with economic interests of Slovakia and needs of its labour market. One of the goals of managing legal migration is to prevent undesirable effects of the so-called population crisis.

MIGRANTS AS THE MEANS OF TACKLING SLOVAKIA'S PROBLEMS

Policy makers often automatically reduce the term "legal migration" to economic migration. While the first chapter of the said document is titled *Legal Migration* and is rather extensive, it does not seem to distinguish any other type of migration besides humanitarian and economic migration. The reasons for migration such as, for instance, family reunification, more developed democracy, better education or health care system that may affect individuals' decision to emigrate are almost completely ignored.²

"New approach to migration policy [is] strongly utilitarian as it views migrants primarily as tools of pursuing Slovakia's interests."

In the light of the Interior Ministry's rhetoric, the new approach to migration policy may be described as strongly utilitarian as it views migrants primarily as tools of pursuing

interests of the majority, i.e. of the Slovak Republic. The document completely lacks a human dimension since it fails to see migrants arriving in Slovakia as complex human beings that have their lives, individual needs and ambitions as well as their inalienable rights. Such

1 *Koncepcia migračnej politiky SR s výhľadom do roku 2020* passed by Slovak Government's Resolution No. 574 of August 31, 2011, regarding the draft of migration policy of the Slovak Republic with an outlook until 2020.

2 For instance, researchers Bonka S. Boneva and Irene H. Frieze examined the concept of a migrant's personality and concluded that apart from traditionally acknowledged 'push and pull' factors migration processes are also affected by personality factors, which undermines the concept of migration as a primarily economic phenomenon (Boneva, B.S. – Frieze, I.H. (2001), "Toward a Concept of a Migrant Personality" in *Journal of Social Issues*, 57(3), pp. 477-491).

an approach conspicuously resembles the rotation immigration model Germany introduced in the 1960's; according to the model, so-called "guest workers" (*gastarbeiter*) arriving in Germany received work permits for one or two years after which time they had to leave to make room for new ones coming from abroad. Needless to say, the main goal of such a policy was to prevent foreigners from settling in Germany.³

SAFETY REMAINS THE OVERRIDING PRINCIPLE

The new policy document is also strongly dominated by the safety principle, which conditions or may in the future lead to almost discriminatory preference of migrants from culturally close countries "that do not have problems with integration, i.e. do not form communities that tend to segregate and create serious tensions and problems".⁴

FAILURE OF MULTICULTURALISM AND OTHER EMPTY PHRASES

Although 'cultural closeness' may be assessed at many different levels or from a number of aspects, the Interior Ministry seems to view the term as unambiguous as it did not see any need to elaborate on it any further. Preferential acceptance of migrants from culturally close countries should therefore prevent emergence of isolated communities that according to Interior Minister Daniel Lipšic constitute a "safety risk this government will not allow".⁵

"The failure of multiculturalism is becoming a mantra but those who repeat it the most are apparently unfamiliar with its true meaning."

We may only guess what communities the minister referred to; however, during the weeks before adopting the policy document he reiterated that "the project of multiculturalism has obviously failed in

3 Özcan, Veysel: *Germany: Immigration in Transition*; available at: <http://www.migrationinformation.org/Profiles/display.cfm?ID=235>

4 Please see <http://www.sme.sk/c/6012116/lipsic-modra-karta-je-pre-cudzincov-ktori-nemaju-problem-integrovat-sa.html>

5 Please see <http://www.sme.sk/c/6036602/podla-lipsica-multikulturalizmus-zlyhal.html>; <http://www.sme.sk/c/5989012/kvalifikovani-migranti-by-mali-mat-prednost.html>

Europe". Given the fact that this empty phrase is in public as well as political discourse often associated with generalized and stereotypical images such as 'burning suburbs of Paris', it is clear to see what categories of immigrants shall not be viewed as hailing from culturally close countries.⁶ But was it multiculturalism that truly failed in Western Europe or was it rather integration policies that in Germany, for instance, prevented existence of immigration in the long term while preferring "benevolent, pseudo-egalitarian and paternalistic apartheid" that is symbolically summed up by the euphemism "our foreign fellow citizens" (*unsere ausländische Mitbürger*)?⁷

ASSIMILATION UNDER THE MASK OF INTEGRATION

While the new migration policy strategy envisages foreigners' integration, it seems to construe it rather as assimilation: "The Slovak Republic prefers an integration model that is based on full acceptance of life and institutions of the Slovak Republic."⁸ This contradicts the definition of integration spelled out in the Strategy of Foreigners' Integration in the Slovak Republic, which circumscribes integration as a bilateral process that requires adapting on the part of foreigners as well as creating conditions for foreigners' integration on the part of majority society;⁹ furthermore, the document contradicts itself as the first paragraph of the chapter titled *Integration* defines the process in compliance with the concept of integration.

The Ministry of Labour, Social Affairs and Family raised an objection to the described assimilation model during the interdepartmental debate on the bill, arguing that such a concept was contradicting priorities defined by the European Union. While the objection was accepted as valid, the definition remained unchanged in the document's approved draft.

RISKS OF ASSIMILATION POLICIES

The assimilative approach to the issue threatens to encourage immigrants to resist assimilation pressures by isolating themselves in their communities, which is exactly opposite to what Slovakia is trying to achieve. The majority tends to keep distance from foreigners and accept them only after they have agreed to become similar to the majority (i.e. once 'they' begin to behave like 'us'). When this approach is combined with structural discrimination,¹⁰ it may force immigrants to identify with their own ethnic group and isolate themselves in their communities,¹¹ which is a certain form of defence mechanism; this was the case in the Netherlands where the idea of multiculturalism was replaced by promoting assimilation.¹²

BLOOD IS NOT WATER

In order to understand different ways in which immigrants may identify themselves with the host country, it is important to become familiar with host country's national identity. Citizens in multicultural countries have significantly greater opportunities to build dual or multiple identities compared to countries with clearly defined and strongly established ideology of one dominant population group (i.e. national states such as Slovakia).¹³ The concept of Slovakia as a national state of the Slovaks is further underlined by the country's orientation on foreign countries and regions inhabit-

6 For further details, please see an article by Reuters reporter Tom Heneghan titled "Why We Don't Call Them 'Muslim Riots' in Paris Suburbs", which focuses on nonsensical generalization and stereotypes of portraying "burning Parisian suburbs"; available at: <http://blogs.reuters.com/faithworld/2007/11/29/why-we-dont-call-them-muslim-riots-in-paris-suburbs/>

7 Brubaker, Rogers (2001), "The Return of Assimilation? Changing Perspectives on Immigration and Its Sequels in France, Germany and the United States" in *Ethnic and Racial Studies*, 24(4), pp. 531-548.

8 *Koncepcia migračnej politiky SR s výhľadom do roku 2020* passed by Slovak Government's Resolution No. 574 of August 31, 2011, regarding the draft of migration policy of the Slovak Republic with an outlook until 2020.

9 *Koncepcia integrácie cudzincov v SR* passed by Slovak Government's Resolution No. 338 of May 6, 2009, regarding the draft of a strategy to integrate foreigners in the Slovak Republic.

10 An example of structural discrimination is the refusal to recognize Islamic religious communities.

11 Verkuyten, Maykel – Yildiz, Ali Aslan (2007), "National (Dis)identification and Ethnic and Religious Identity: A Study among Turkish-Dutch Muslims" in *Personality and Social Psychology Bulletin*, 33(10), pp. 1448-1462.

12 Ibid.

13 Phinney, J., Berry, J. W., Vedder, P., & Liebkind, K. (2006), "The Acculturation Experience: Attitudes, Identities, and Behaviors of Immigrant Youth" in J. W. Berry, J. S. Phinney, D. L. Sam, & P. Vedder (eds.), *Immigrant Youth in Transition: Acculturation, Identity, and Adaptation across National Contexts*, pp. 71-116, (Mahwah, NJ: Lawrence Erlbaum).

ed by ethnic Slovaks, primarily in order to preserve and revitalize their way of life.¹⁴ Consequently, if Slovakia must accept foreigners, they better be someone with Slovak blood. Again, we are struggling with essentialist and rigid notions that understand culture and identity. At the same time, this concept pretty much rules out dual or even multiple identities, which is why the notions of 'Slovak' and 'Muslim' will remain in mutual opposition in the eyes of most ordinary citizens as well as public figures in Slovakia.

Although the new migration policy strategy is slightly more concrete than the one adopted in 2005, it further cements the national character of the state that belongs to ethnic Slovaks, descendants of 'ancient Slovaks'. Unfortunately, this policy is a foolish attempt to ignore ongoing natural macro-social processes it will not only be unable to prevent but will further complicate by creating conditions for interethnic tensions. ■

14 In this context it is worth mentioning an official comment filed by the Office for Slovaks Living Abroad (Úrad pre Slovákov žijúcich v zahraničí – ÚSŽZ) regarding one priority of the migration policy, which is "checking submitted documents and exposing forgeries thereof, increasing effectiveness of the centre to recognize education certificates at the Ministry of Education and active participation of consulates of the Slovak Republic in the process". The ÚSŽZ demanded that it played an active role in the process, reasoning that "the Office for Slovaks Living Abroad is participating in the process of managing economic migration by issuing certificates to Slovaks living abroad. A routine part of this process is checking documents submitted by foreigners to demonstrate their Slovak nationality and **national consciousness** [highlighted by author] and exposing forgeries, often in cooperation with applicable sections of the Slovak Police Force." A legitimate question is what documents are necessary to demonstrate one's national consciousness and what is the official notion of national consciousness after all.

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