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MINORITY POLICY IN SLOVAKIA IN 2011

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1. INTRODUCTION

Slovakia is a country with a relatively high degree of ethnic and religious heterogeneity. In the most recent population census carried out in May 2011, four in five Slovaks (80.7%) declared affiliation to the majority. While 80.3% of Slovaks indicated Slovak language as their mother tongue, only 73.3% described it to be the most frequently used household language. The overall share of Slovak citizens who felt as members of the majority declined by approximately five percent compared to previous population censuses of 1991 and 2001.

According to the most recent population census, 8.5% of Slovak citizens feel themselves as Hungarians, 2.0% as Roma, 0.6% as Czechs and Ruthenians and 0.1% as Ukrainians, Germans and Poles, respectively, while less than 0.1% of inhabitants indicated Croatian, Serbian, Russian, Jewish, Moravian and Bulgarian nationalities, respectively. Overall, 0.2% of respondents indicated "other nationality" and 7.0% of them refused to specify their ethnic affiliation. The available data fail to reveal the ethnic make-up of the "other nationality" category.

As far as religious make-up of the Slovak population goes, over three in five Slovaks (62%) declared affiliation to the largest religious community in the country, namely the Roman Catholic Church, which was followed by the Protestant Church (5.9%), the Greek Orthodox Church (3.8%) and the Reformed Christian Church (1.8%), while less than 1% of Slovak citizens indicated affiliation to other registered churches, respectively. The overall share of nondenominational citizens was 13.4%.[1] Again, the available data fail to reveal how many Slovak citizens declared affiliation to unregistered churches and religious associations.

Particularly due to the population's ethnic heterogeneity, minority rights have been the pivotal issue of the public and political debate ever since the first Czechoslovak Republic was established in 1918. Unfortunately, positive perception of cultural and religious dissimilarities has rarely been the dominant hallmark of this debate. Members of the country's political elite still tend to portray minorities and their legitimate demands as various forms of threats to the majority and its government. The largest minorities, namely ethnic Hungarians and the Roma, as well as communities of immigrants are often accused of harbouring ambitions to undermine Slovakia's territorial integrity, to culturally assimilate the majority or as other social, demographic or physical threats.

The most frequent strategy to defend minority rights has become appealing to Slovakia's international commitments. Such a strategy is rather understandable given the prevailing dynamism of interethnic relations that is dominated by security issues. While furthering their

1 Please see statistical data on the official website of the Statistical Office of the Slovak Republic, www.statistics.sk.

demands, minorities and their representatives frequently refer to international law, which serves as a neutral authority that can ill be accused of intentions to threaten the existence of Slovakia and the Slovaks.

The principal objective of the CVEK project titled *Minority Policy Monitoring*, which also includes the present **2011 Annual Report on Minority Policy in Slovakia**, is to contribute to the public debate on minority rights in Slovakia by theoretical reflections based primarily on political philosophy, security studies and legal theory. Our ambition is to go beyond Slovakia's international commitments when providing critical evaluation of policies that concern minority rights. We believe that fair and sustainable minority policy should be based not only on the country's international commitments but also on principles of justice and equality while taking into consideration Slovakia's specific context.

Although we do not question the legitimacy of international law in Slovakia, we believe that implementation and protection of minority rights solely through references to international law is insufficient for many theoretical and practical reasons. The minority rights that are currently guaranteed by international law have not necessarily been established by a debate on justice. Quite the contrary, they are primarily the result of a political compromise between those states whose leaders believe that justice for minorities requires recognition of collective rights and those states whose leaders believe it is enough to protect minorities from discrimination. As a compromise solution, they agreed to introduce so-called individual minority rights that are guaranteed to members of minorities as opposed to minorities as such. However, this type of minority rights envisages the existence of a group, otherwise they would be impossible to implement.[2] In our opinion, the scope and content of minorities' protection in Slovakia should not view a political compromise between different governments to be the pinnacle of the possible. After all, many countries around the world including our neighbours recognize collective rights that allow members of minorities to enjoy equal rights as members of the majority. At the same time, collective rights may increase the risk of systematic violation of individual rights of minorities within minorities, particularly women and children. In order to prevent emergence of such conflicts, there are various institutional solutions that deserve to be discussed. Unfortunately, the debate on security issues has stolen the spotlight from the debate on the conflict between collective vs. individual rights. Any reflections on this type of protection are virtually absent from Slovakia's public discourse.

The individual minority rights guaranteed by the most relevant international conventions such as the Framework Convention for the Protection of National Minorities or Article 27 of the International Covenant on Civil and Political Rights also fail to provide a sufficiently differentiated model of protecting minorities that are in qualitatively different situations. In Slovakia, a classic example of this is the Romani national minority. The existing standards of minority protection do not adequately take into account the social, economic and political deprivation of a substantial part of this community.[3] The full-fledged approach is consequently replaced by neologism categories such as "socially disadvantaged population group", which flattens the complexity of problems facing this community into a mere social aspect.

2 For further details, please see Patrick Thornberry, *International Law and the Rights of Minorities* (Oxford: Oxford University Press, 1991), p. 173; Jarmila Lajčáková, *Ethnocultural Justice for the Roma in Slovakia* (SJD thesis, University of Toronto, 2007) pp. 146 – 148.

3 Lajčáková 2007, *ibid.* chapter 1.3.

Also, shielding minority rights solely by international law is not likely to help inhibit existing dynamics of the securitization debate. On the contrary, focusing exclusively on international law without simultaneously seeking the justification to implement minority rights in values such as justice, equality and respect for human dignity that lie at the heart of the Slovak Constitution will eventually conserve the *status quo*.

The main ambition of our project is to substitute or at least complement the paradigm of security with a paradigm that is based on principles of respect for human dignity and justice. To this end, we highlight the risks and limitations of securitization in evaluation of minority policy and propose an alternative aspect to view minorities, their legal status and rights in Slovakia.

In the project we focus primarily on monitoring minority policy as opposed to minority rights. The term of minority policy encompasses more than that of minority rights that are granted to members of minorities or minorities as entities. Athanasia Akermark, an international law scholar, uses the term minority policy to refer to "the entire network of (legal) methods and mechanisms designed to support minorities".[4] When monitoring and evaluating minority policy, we examine the legal, administrative and strategic measures that may not only support minorities' interests but also may affect them negatively such as building segregation walls. Under policy we also see the absence of certain measures, for instance in the field of symbolic policy.

By minorities we refer to groups or communities whose members are defined by ethnic, language or religious characteristics that are different from those of the majority and who perceive themselves as minorities, either due to size or non-dominant nature. In the heart of our monitoring activities are not only already recognized national minorities but also policy measures with respect to newly-emerging communities of migrants or religious minorities, whether they have been officially registered or not.

In terms of structure, the present annual report partially accepts the division into so-called recognized (old) and emerging new minorities. The evaluation of minority policy with respect to migrant communities (i.e. emerging or new minorities) has been normally put into a separate section. The categorization reflects the current legislation, which distinguishes between already recognized national minorities and those that have not yet been recognized. However, this is not to say that we either endorse or oppose that distinction since we are far from rating their right to be recognized. As we argue in the section devoted to the definition of national minority, categorization of minorities is a relatively complex issue while minority policy should progress toward contextual protection. That implies incorporation of emerging minorities into the existing framework of minority protection that respects differences between particular minorities in terms of size, history, rate of disadvantage, territorial concentration, etc. As we conclude in the final chapter, there are two basic legal solutions: one is to create different legal categories for different population groups; the other is to preserve a single category that would provide sufficient room for protection that respects differences between particular minorities.

Deriving from existing legal categorization in Slovakia and partially from international law, we discuss the rights of religious minorities in a separate manner as well. To a certain degree, the security dimension of the public discourse also affects the debate on the rights of religious

4 Athanasia Spiliopoloulou Akermark *Justifications of Minority Protection in International Law* (London, the Hague, Boston: Kluwer Law International, 1996) p. 53.

minorities many of whom are simultaneously emerging communities of migrants. The country's legal order does not recognize the term (let alone the concept) of religious minority as it merely distinguishes between those churches and religious associations that have and have not been officially registered. As a result, the general legislation seemingly declares a certain degree of secularism. However, the very fact that the law enforces the same rules for religious minorities as it does for dominant denominations leads in our opinion to various direct and indirect forms of discrimination. While in the case of national minorities government does not hide the fact that Slovakia is not ethnically homogeneous and even attaches legal significance to it by granting minority rights to them, in the case of religious minorities it declares false neutrality. Due to different dynamism of the public discourse as well as a different nature of dissimilarities between religion and ethnicity or nationality as the source of individual identity, we decided to devote a separate chapter to this issue.

The present Annual Report on Minority Policy in Slovakia is divided into five main sections. In the first we describe the methodology of our approach, which is based on international law, constitutional law and political philosophy. The subsequent sections evaluate recent developments in the field of minority policy with respect to established national minorities, emerging communities of migrants and religious minorities. The section focusing on immigration policy also features a case study that examines in detail eligibility conditions to obtain Slovak citizenship through naturalization. An annex to the present annual report is an analysis of the political discourse on relevant minority policies, which also illustrates the dynamism of the discourse between advocates and opponents of minority protection.

Since this is the first volume of our annual report, a substantial part of it shall focus on evaluation of minority rights and minority policy in Slovakia to date. The final section is dedicated to short-term, medium-term and long-term recommendations regarding the desirable course of minority policy in the future.

2. JUSTIFICATIONS OF MINORITY RIGHTS

Our monitoring standards draw on Slovak constitutional law, international law and political philosophy. In giving the meaning and interpreting minority rights standards, we rely on the underpinning justifications of these legal norms. This interpretation of minority standards is based on a study by international lawyer Athanasia Akermark titled *Justifications of Minority Protection in International Law*.[5] Akermark wrote her study in response to a similar need we have identified in the case of Slovakia: the need to establish contextual protection of minorities that are in different situations.

Akermark argues that establishing minority protection based on justifications of minority rights would contribute to adopting a coherent theoretical approach to applying and expanding the standards of international protection.[6] By justifications Akermark understands "a rational construction that is based on combination and comparison of different data, determination of involved parties, the historical context, the needs of international community that has evaluated a certain rule (or principle) of logical construction of hierarchy of rules and practices of international monitoring institutions."[7] The approach to creating minority policy through justifications is broader as it does not merely encompass individual will of the legislator but simultaneously represents the way of perceiving minority rights.[8] Our research project has somewhat more modest ambitions as it does not focus on issues of legitimacy and observing international standards. We are rather interested in development of minority rights and minority policy that is targeted at establishing contextual protection of minorities so that it normatively corresponds to existing principles.

Akermark identified three justifications of minority rights in international law: peace and justice, human dignity and culture. These three principles are relevant normative sources for Slovakia's legal order as well. Although minority protection is influenced by national and regional specifics and ideologies, international law has strongly affected the form and substance of minority standards in the Slovak Republic.[9]

5 *Ibid*.
6 *Ibid*, pp. 55– 57.
7 *Ibid*, p. 18.
8 *Ibid*, p. 60– 62.
9 For more details, see Lajčáková *supra* note 2, c. 3.1

2.1 THREE JUSTIFICATIONS (PRINCIPLES) OF MINORITY RIGHTS

2.1.1 PEACE AND SECURITY

Defending minority rights through the prism of security and peace is aimed at protection of collective entities and prevention of conflicts within states and between them.[10] Typically, peace normally refers to the absence of war or military conflict between states or inside their boundaries. The concept of security has been developed primarily within international relations theory and security studies. Security is viewed as mitigation of threats in order to protect certain professed values. One of the most prominent schools in the field of international relations and security studies is the constructivist school that provides a useful analytical framework for examining the relation between ethno-cultural heterogeneity and the feeling of threat. The constructivists refuse to accept the universal abstract definition of security since they view security as a social construct: "construing something means creating an object or subject that objectively does not exist".[11] When construing security and the feeling of threat, they focus on exploring social, cultural and historical factors that participate in construing meanings that are attributed to different actors and their intentions.

Canadian philosopher Will Kymlicka, proceeding from the theory of critical constructivists argues that the political elite often deliberately reproduce the myths of past wrongs that were allegedly inflicted upon minority members' ancestors. This strategy facilitates the construction of minorities as a danger. Such securitization of minorities interferes with routine democratic processes and legitimizes adoption of measures that contradict the principle of justice and are obviously discriminatory. Also, securitization of minority issues very effectively prevents the debate on minority rights along the lines of justice even among academics. Relations between the majority and minorities are usually viewed as a priority in terms of national security, which is subordinated to issues of justice.[12]

Securitization of minority issues may lead to two paradox reactions. On the one hand, it is the reaction by minority rights' advocates who understand that cultural, religious and ethnic diversity may be viewed as a threat to the majority, yet they defend minority rights in order to prevent violence. However, this approach puts a smokescreen over who is actually threatened. For instance, Jacob Levy convincingly argues that governments tend to homogenize their populations ethno-culturally through two basic means: forced exclusion and forced inclusion.[13] Examples of the former include forced evictions, segregationist practices or forced sterilizations that are applied to eliminate ethno-cultural dissimilarities. However, members of minorities may alternatively or complementarily be subjected to practices of forced inclusion (i.e. assimilation) such as limiting minority members' use of their mother tongues or conditioning their acceptance within majority society in return for surrendering their identity. These facts

10 *Ibid*, p. 84. Although security and protection of peace are collectively-oriented approaches, they are eventually aimed at individual interests. The main reason is the liberal framework of the analysis, which also dominates the positive law. The moral basis for liberalism is an individual.

11 Matt MacDonald, "Constructivism" in Paul D.Williams, *Security Studies: An Introduction* (Oxon: Routledge, 2008) pp. 58 – 61 and sources cited therein.

12 Will Kymlicka, *Multicultural Odysseys: Navigating the International Politics of Diversity* (Oxford: Oxford University Press, 2007), p. 192.

13 Jacob T. Levy, *The Multiculturalism of Fear* (Oxford: Oxford University Press, 2000).

make it plain to see it is minority members who are physically, mentally, culturally, symbolically or materially threatened as a direct result of practices designed to further ethno-cultural homogeneity.

Nevertheless, the public discourse views minorities as the source of threat to the majority. Repressive measures that take on the form of structural discrimination or suppression of fundamental human and minority rights cause poverty and social exclusion of minority members. This in turn cements the vicious circle of securitization because both poverty and social exclusion are typically viewed as factors that augment the risk of conflict.

What is worse, securitization of minority issues leads the public discourse to a vicious circle. To a certain degree, it justifies adoption of measures designed to protect minorities but not to extend their collective rights as they are viewed as a threat to international stability.[14] On the other hand, this dynamism simultaneously justifies adoption of restrictive measures such as the threat to revoke Slovak citizenship from those Slovaks who apply for Hungarian citizenship (we shall discuss this issue in greater detail later on).

In our opinion, securitization of minorities is a dangerous foundation for shaping a sound minority policy. On the one hand, it leads to limited recognition of certain minority rights; on the other hand, it comes hand in hand with a multitude of justifiable restrictive measures that keep select minorities trapped within the poverty circle. Moreover, minorities in this discourse are more or less passive objects of the majority's ideas of what is best for them while their ability to comment on adopted policies remains rather limited. In Slovakia there are three principal minorities that are most commonly associated with security risks: ethnic Hungarians, the Roma and immigrants.

2.1.2 CULTURE AND CULTURAL DIVERSITY

The appeal to protect minority culture advocates protection of minority cultures through the value of cultural diversity. Like in the case of peace and security, this approach is primarily oriented on individuals' interests; unlike security, though, culture has a positive connotation as it represents value by itself.

In the context of minority protection, culture is usually understood as a system of traditions and beliefs.[15] For instance, the UN Human Rights Committee for the purpose of interpreting Article 27[16] defines culture as a specific "way of life" that may also include certain social and economic activities that are essential to the community's continuous existence.[17] According to the Committee, culture must be viewed as a dynamic category and the provision of Article

14 Will Kymlicka, "Reply and Conclusion" in Will Kymlicka & Magda Opalski (eds.), *Can Liberal Pluralism be Exported? Western Political Theory and Ethnic Relations in Eastern Europe* (Oxford: Oxford University Press, 2001) 347 p. 376.

15 Thornberry, *supra* note 2, pp. 187– 188.

16 Article 27 of the International Covenant on Civil and Political Rights reads: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

17 For further details, please see cases *Lubicon Lake Band v. Canada*, Communication No. 167/1984, UNGAO, Human Rights Committee, 45th Sess., Supp. 40 vol. II., annex IX sect. A, U.N. Doc. A/45/40 (1990) 1; *Kitok v. Sweden,* Communication No. 197/1985, UNGAO, Human Rights Committee, 43rd Sess., Supp. 40, Annex VII(G) UN Doc. A/43/40 (1988) 221.

27 "may be applied to protect lifestyle of the original population that is historically connected to a traditional way of life although it has seen certain changes in the course of decades or centuries".[18]

For the purpose of our project, we shall view culture as a historically determined yet dynamic and constantly reinvented system of beliefs and practices through which people define and structure their individual and collective lives. Cultural elements and their meaning may become the subject of differing and often conflicting interpretations.[19] Culture may be closely associated with religion. It is influenced and shaped by economic and political institutions.[20] Culture is manifested not only on the level of language, art or morality but may also include the most fundamental activities such as eating, loving or mourning.[21] The simple fact that we are able to distinguish values and beliefs of different cultures does not automatically mean that they mutually exclude each other; on the contrary, cultural standards and practices may become intermingled and transformed through multicultural interaction.

The perspective that is sensitive to protection of minority culture and cultural diversity is often used as an alternative to the discourse on security as it views minority cultures in a positive way. According to this argument, minority cultures are not only "harmless" but potentially beneficial to the majority. Tove Malloy even argues that the perspective of cultural diversity represents a paradigmatic transition from the binary perception of relations between the minority and the majority. According to her, their binary nature has been one of the reasons why their mutual relations have become excessively securitized. Malloy believes that the shift toward diversity may help de-securitize the public debate by replacing it with the perspective of diversity.[22]

Advocating minority rights through highlighting the value of cultural diversity is relatively rare in Slovakia. This approach is attractive both politically and pragmatically as it appeals to interests of the majority while portraying minority cultures in a positive "peaceful" way. The only question that remains is whether it is desirable to replace the perspective of security by the one of cultural diversity as there are multiple problems with argumentation through cultural diversity.

Most importantly, despite relatively broad and dynamic perception of culture there is a risk that the political elite and decision-makers might essentialize minority cultures. In other words, some politicians tend to associate cultural diversity with the image of folklore festivals, which may give birth to policies that perhaps unintentionally reproduce and deepen so-called positive stereotypes regarding minorities. This approach that repeatedly appears especially in various "well-intentioned" projects in the field of teaching or multicultural education may eventually lead to excessive supporting the talent for music or dance in Romani children while

18 Martin Scheinin, "The Right to Enjoy a Distinct Culture: Indigenous and Competing Uses of Land" in Theodore S. Orlin, Allan Rosas & Martin Scheinin (eds.), *The Jurisprudence of Human Rights Law: a Comparative Interpretative Approach* (Turku/Abo: Institute for Human Rights, Abo Akademi University, 2000) 159 p. 169.

19 Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (Hampshire and New York: Palgrave Publishers Ltd., 2000) pp. 144 – 148.

20 *Ibid*, p. 152.

21 *Ibid*, pp. 143 – 144.

22 Tove H. Malloy, "Acknowledging the Economic Potential of Cultural Diversity: the Case of National Minorities" in *Heritage for the Future: International conference proceedings* (Budapest, Office of the Hungarian National Assembly, 2011), pp. 103– 105.

ignoring the fact that some of them may not even have this talent and actually want to become medical doctors, managers or politicians. This way, supporting cultural diversity may easily produce undesirable consequences that border on restricting free will and lock people in expected roles throughout the policy of acknowledgement.[23]

Secondly, important minority rights that are normally targeted by minorities and their representatives lead to increasing minorities' autonomy to decide on issues that concern their own communities. The main problem is that an autonomous form of government fails to further greater interaction between members of minorities and the majority; quite the contrary.[24]

Last but not least, advocating protection of minority cultures, especially through recognition of collective rights such as customary, religious and cultural standards, may jeopardize individual rights of the most vulnerable minorities existing within minorities, for instance women.

2.1.3 HUMAN DIGNITY

In the project we argue for defence of minority rights through respecting human dignity. Although there is no commonly accepted definition of human dignity, in law and medicine this value is articulated in two principal ways: through references to autonomy and equality. The laws and measures that respect and increase the autonomy of human decision-making also support respect for human dignity. The alternative understanding of human dignity is through equality and non-discrimination. A policy that respects human dignity is the one that treats minorities in a non-hierarchical and non-discriminatory manner.[25]

In our project, we understand membership in a cultural community as something that may or may not shape individual identity. Individuals may relate differently to their culture. While some of them are capable of adopting a critical stance on it, others adopt only some of its elements, yet others get assimilated, change their cultural identity or feel affiliation to multiple cultural communities.

Crucial is the understanding that a policy based on respecting human dignity focuses on individuals' situation while respecting various sources that form their individual identities. Naturally, people's human identity is not formed only by affiliation to a cultural community but also by their socio-economic status within it, their gender, sexual orientation, occupation, etc.

When shaping a minority policy, one should also take into account other sources of individual identity and mutual interaction between policies that, for instance, strive for elimination of social disadvantage and achieving gender equality. Policies that strive to eliminate social and economic disadvantage may in practice clash with simultaneously pursued multicultural policies. In the case of educating Romani children, for instance, policies aimed at eliminating their social exclusion also attempt, in a way, to eliminate their ethno-cultural dissimilarities and peculiarities including the language.

A good example is zero grades at primary schools that have been introduced to allow children defined by the criteria of social disadvantage to 'catch up' with their non-Romani classmates

23 For further details on this issue, please see Patchen Markell, *Bound by Recognition* (Princeton & Oxford: Princeton University Press, 2003).

24 Will Kymlicka, *Multicultural Citizenship* (Oxford: Claredon Press, 1995) p.122.

25 For further details, please see Jeff Malpas and Norelle Lickiss (eds). *Perspectives on Human Dignity: a Conversation*, (Dordrecht: Springer, 2007).

by going through the first grade's schoolwork at a slower pace while simultaneously achieving proficiency in Slovak language. Zero grades, however, fail to eliminate the barriers and disadvantages built into the existing education system, for instance in the form of teaching methods, centrally stipulated performance-oriented curricula and inherent discriminatory practices. In other words, zero grades strive to fit children into a problematic environment in which they have minimum chances to succeed. As a result, Romani children are stigmatized as incapable. The association between their alleged incapacity and their ethnicity may be further deepened by insensitive multicultural policies aimed at highlighting and celebrating cultural dissimilarities.[26]

The principle of respecting human dignity provides the most challenging yet the most solid foundation to shape minority policy. Through contextual analysis of group members' identities, this principle encourages us to design policies that are sensitive to dissimilarities between and within particular population groups. Our critical evaluation of minority policy for 2011 is based on this very principle. In this respect, we positively view the recent inclination to the principle of human dignity in designing policies, which should gradually replace the principle of security. On the other hand, we negatively perceive policies that strengthen the tendency to construe minorities as a threat.

26 Jarmila Lajčáková, "The Uneasy Road towards Remedying the Economic & Cultural Disadvantage of the Roma in Slovakia" (2007) 14 (1) International Journal on Minority and Group Rights 59 (Lajčáková 2007a).

3. DEFINITION OF A MINORITY

Slovakia's legal system does not enact official definitions of national minority or ethnic group. Similarly, it fails to distinguish between a national minority and an ethnic group. Most legal rules pertaining to minorities use the term national minorities. Slovakia officially recognizes 13 national minorities: Hungarian, Romani, Ruthenian, Ukrainian, German, Croatian, Czech, Polish, Moravian, Bulgarian, Jewish, Serbian and Russian.[27]

The conditions a population group that feels as a national minority must comply with in order to be recognized as one are unclear. According to the Slovak Constitution, conditions for granting minority rights include Slovak citizenship and individual will to belong to the minority.[28] Besides citizenship, the constitution does not stipulate compliance with other so-called objective criteria such as, for instance, different language, culture or numerical size that are normally included in international law definitions.[29] It remains unclear what exactly the most recently recognized Russian minority did in 2003 to be recognized as a national minority. According to available documents, it was recognized through its incorporation into the Government Council for National Minorities and Ethnic Groups.[30] It seems that an important argument in favour of recognition was that ethnic Russians are autochthonous on Slovakia's territory, which was not among constitution-stipulated conditions for granting minority rights.[31]

3.1 MINORITIES AND CITIZENSHIP

Citizenship as an official condition to grant minority rights enacted by the Slovak Constitution is questionable from the viewpoint of international law.[32] It is obvious that if respecting human

27 Please see percentage shares of people who declare affiliation to these national minorities in Introduction above.

28 Article 12 Paragraph 3 and Article 34 of the Slovak Constitution, Law No. 460/1993, as amended.

29 For further details, please see Thornberry, *supra* note 2, pp. 6 – 10.

30 Second report on the implementation of the Framework Convention for the Protection of National Minorities in the Slovak Republic, Bratislava 2004 (ACFC/SR/II (2005) 001), p. 37.

31 The position of the Social Science Institute of the Slovak Academy of Sciences on autochthonous status of the Russian national minority on the territory of the Slovak Republic of May 9, 2005, in author's documents (hereinafter referred to as "SAV position").

32 According to interpretation by the UN Human Rights Committee, the minority rights guaranteed by Article 27 of the International Covenant on Civil and Political Rights do not only apply to citizens. According to the Committee, minority protection also applies to persons with the status of permanent or temporary residents in the country. Even protection of national minorities guaranteed by the Council of Europe's Framework Convention for the Protection of National Minorities is not conditioned by citizenship. The Convention uses the term of "persons belonging to national minorities". The advisory committee to the Framework Convention has clearly held that distinguishing between old and new

dignity includes people's freedom to live according to their culture, then it is a human right that should not depend on their citizenship. In the section featuring policy recommendations, we shall discuss this issue in greater detail, especially in the context of incorporating protection of emerging minorities into the existing framework of minority protection.

3.1.1 THE PROBLEM OF REVOKED CITIZENSHIPS

The public debate on dual citizenship for Slovakia's ethnic Hungarians sparked in May 2010 continued also in 2011. In May 2010, Hungary simplified access to Hungarian citizenship for foreign nationals of Hungarian origin who speak Hungarian. Applicants for Hungarian citizenship should see the application process accelerated and, most importantly, they do not have to have permanent residence in Hungary. In reaction to legislative changes adopted by Hungary, Slovakia followed suit and amended its own Citizenship Act. Slovakia's amendment represents a sad historic landmark as it prevents Slovak citizens from obtaining dual or multiple citizenships by extending possibilities of revoking Slovak citizenship in the event of obtaining foreign citizenship at one's own request. According to the currently valid law, Slovak citizenship is revoked on the day when a Slovak citizen obtains foreign citizenship based on explicit and voluntary display of free will. The loss of Slovak citizenship also implies the loss of civil service employment or similar labour relations conditioned by Slovak citizenship. In February 2011, the then ruling coalition that included Most-Híd, a party that represents ethnic Hungarians in Slovakia, unsuccessfully tried to remedy the problematic legislation by a deputy-initiated amendment.

Hungary's new Dual Citizenship Act is based on the *Jus sanguinis* (i.e. the right of blood), a social policy by which citizenship is not determined by place of birth but by having ancestor(s) or adopter(s) who are citizens of the nation. This principle is not singular in Europe. For instance, Italy's Citizenship Act makes all members of Italian diasporas with at least one ancestor who was an Italian citizen after March 17, 1967, eligible to apply for Italian citizenship. According to the law, Italian citizenship must be granted, say, to a Canadian who never visited Italy in his life, has no "emotional or other ties" to the country and does not speak a word Italian. Consequently, even these Italian citizens are granted suffrage and may take part in all kinds of elections from the place of their residence via mail.

The Hungarian law is far from ideal, particularly for its apparently nationalistic motives. Also, it is not constructive given Hungary's currently tense political relations with neighbouring countries and the relatively good status of ethnic Hungarians living there. Its adoption should have been preceded by a series of bilateral negotiations and subsequent agreements with countries that accommodate sizeable Hungarian minorities. Nevertheless, we believe that it is acceptable as some form of policy that symbolically acknowledges ethnic Hungarians' affiliation to their fatherland. It has positive practical implications particularly for those ethnic Hungarians who live in countries that are not member states of the European Union (EU).

On the other hand, Slovakia's reaction to the Hungarian law is not acceptable. Most importantly, it is questionable whether the problematic amendment of May 2010 conforms to Article

minorities is not justifiable. The guaranteed rights such as, for instance, use of minority languages in marking the names of towns and streets do not apply to immigrants while some of the rights, such as access to mass media, should be guaranteed. Rainer Hoffman, "Protecting the Rights of National Minorities in Europe: First Experiences with the Council of Europe Framework Convention for the Protection of National Minorities" (2001) 44 German Yearbook of International Law, s. 254 – 257.

5 of the Slovak Constitution, which stipulates that no one shall be deprived of Slovak citizenship against their will. It would be interesting to see the Constitutional Court adjudicate on a potential motion asking it whether an application for foreign citizenship may be construed as a voluntary waiver of Slovak citizenship. Also, the amendment may be qualified as retroactive since it punishes not only those who obtained foreign citizenship after it took effect (July 17, 2010) but also those who applied for it before this date. These applicants can hardly be accused of manifesting free will to waive Slovak citizenship by applying for foreign one because at the time of their application the law allowed for multiple citizenships.

In early 2011, several amendments seeking to alleviate the valid legislation's undesirable effects were submitted to parliament. MP Róbert Fico (Smer-SD) who led the administration to initiate the restrictive amendment submitted a proposal that was supported by several opposition deputies. His proposal sought to soften the amendment by suggesting that those Slovak citizens who obtained foreign citizenship of a country where they had held permanent, temporary or otherwise registered residence for at least six months should not be deprived of Slovak citizenship. If passed, Fico's proposal would remedy the situation of those Slovak citizens who live in countries such as Australia or Canada in the long term and who are the most frequent victims of the problematic legislation. The initiative did not muster sufficient support to be passed into the second reading.

MP Gábor Gál (Most-Híd) along with other government deputies submitted a proposal that sought to restore the legal status from before July 17, 2010. It included several declaratory clauses that circumscribed the concept of citizenship, defining it as a permanent bond that provides living conditions for all citizens regardless of race, nationality or religion. At the same time, it guarantees human, civil, cultural and economic rights and provides their protection abroad. On the other hand, it binds Slovak citizens to abide by the constitution and other laws. Gál's proposal wouldn't recognize the effects of granting foreign citizenship to Slovak citizens, provided it had been granted contrary to international law, customs or generally accepted principles, defining citizenship primarily as based on stronger bonds between state and individuals, for instance their preferred place of residence. While it is debatable whether these declarations have any other than symbolic meaning, the proposed amendment was a worthy reaction to Hungary's Dual Citizenship Act as it did not make ethnic Hungarians living in Slovakia potential enemies of the state.

Unfortunately, Gál was forced to withdraw his proposal after MP Igor Matovič (of Ordinary People, elected off the SaS ticket) suggested amending it in a way that would make Fico's mitigating proposal even stricter. Matovič proposed to double the period suggested by Fico during which an applicant for foreign citizenship must reside abroad from six to 12 months. Matovič's amendment was passed through the second reading, thanks in part to votes of the remaining three members of Ordinary People as well as MP Radoslav Procházka (KDH) and in part to 13 MPs for ruling parties who abstained. In protest, Gál withdrew his proposal from parliament's deliberations.

Guarantee of Slovak citizenship for members of national minorities is an essential condition of their full-fledged life in the Slovak Republic and acknowledgment of their minority rights. The Treaty of Versailles and the Treaty of Trianon of 1919 conditioned Germany's and Hungary's respective acknowledgment of newly-created Czechoslovakia by granting Czechoslovak citizenship along with guaranteeing minority rights and protection against discrimination to members of sizeable German and Hungarian minorities that emerged as the result of redraw-

ing the region's geopolitical map. Fico's amendment of May 2010 was very effective primarily in helping Hungarian Prime Minister Viktor Orbán to make ethnic Hungarians in neighbouring countries hostage to his efforts to usurp absolute political power at home.

We believe that Slovakia's most desirable reaction should have been ignoring Hungary's Dual Citizenship Act as opposed to making stricter its own Citizenship Act. Also, it remains unclear why Slovakia should be afraid of its ethnic Hungarians being granted the right to vote in Hungarian elections along with their Hungarian citizenship. Instead, this should be the source of anxiety for citizens of Hungary as their future fate would be co-decided by people who are not members of their political community and do not have to bear the consequences of their political preferences.

The emotionally charged debate on dual citizenship for ethnic Hungarians seemed to omit the fact that Slovakia's Citizenship Act ranked among the strictest citizenship standards in Europe already before May 2010. In 2007, the previous Fico administration amended it without any public debate whatsoever, increasing the period of permanent residence required for naturalization from previously valid five to eight years. At the same time, it introduced a condition of good command of Slovak language, life and institutions that created space for corruption due to its lack of clarity. Last but not least, it sent a signal that Slovakia viewed applicants' substantial degree of cultural and language assimilation as an important condition for granting full-fledged citizenship.

Slovakia's Citizenship Act is problematic mostly because it is based on the myth that some of its citizens automatically pose a threat to Slovakia solely due to their different ethnic or national origin. Foreigners are connected to terrorism and construed as a physical threat to the Slovaks. Their chances to obtain Slovak citizenship are minuscule, and only if they agree to assimilation and blending with the "majority". Ethnic Hungarians are generally perceived as a threat to the country's sovereignty and integrity as many believe they would automatically become enemies of the state after obtaining Hungarian citizenship. In other words, their legitimate demands will never be taken seriously on grounds of equality and non-discrimination but solely as long as they "comply" with the notion that they represent a threat. This short-sighted logic may in time make ethnic Hungarians or members of other minorities actually resort to violence.

4. PROTECTION FROM ETHNICALLY MOTIVATED VIOLENCE, HATE SPEECH AND DISCRIMINATION BASED ON ETHNICITY AND NATIONALITY

Minority rights have been introduced to equalize the specific, often disadvantageous position of individuals who belong to minorities. In line with the value of respecting human dignity, their principal objective is to create conditions that allow them to lead dignified lives in accordance with their culture and convictions, provided they do not limit the rights of others in doing so. Besides guaranteeing the so-called substantial rights (e.g. the right to access one's own culture), minority rights provide protection against ethnically motivated violence, defamation and discrimination.

Slovakia's currently valid Criminal Statute punishes extreme manifestations of defamation of race and ethnicity. The said criminal offences are defined in Article 423 (defamation of the nation, race, political and religious opinions), Article 424 (instigation of national, racial and ethnic intolerance) and Article 424 a) (instigation, defamation and threatening persons for their affiliation to certain race, nation, nationality, skin colour, ethnic group or origin).[33] These articles provide legal guarantees that no one shall be discriminated against on the grounds of their ethnicity or national belonging.[34]

Monitoring reports for 2011 indicate increasing interethnic tension, especially between Romani and non-Romani communities.[35] Since description of concrete racially motivated incidents and effectiveness of law enforcement organs in investigating them would go beyond the

33 Law No. 300/2005 (Criminal Code), as amended.

34 Article 33 of the Slovak Constitution, *supra* note 28.

35 Please see, for instance, complaints by Romani families from the village of Gemerská Poloma in the Rožňava district whose members were allegedly terrorized for weeks by a group of about forty unknown people. The incidents have been confirmed by Jana Mésarová, Spokeswoman of the Košice Regional Police Headquarters, who said that the police patrol had been called to Gemerská Poloma four times over a single week. Please see SITA news report of May 2, 2011, TASR.

scope of this annual report, we shall focus primarily on policies that were adopted in response to the situation.

4.1 STATE STRATEGY TO COMBAT EXTREMISM

Last year the cabinet adopted the *Strategy of the Interior Ministry to Combat Extremism for the Period of 2011 – 2014*[36] that focuses on elimination of right-wing, left-wing and religiously-oriented extremism. It is particularly important that the policy document attributes great importance to linking political extremism to populist campaigns that threaten democracy and fundamental human rights. The document points out that "history serves examples of exploiting uncertainty, xenophobia, stereotypes and prejudices to materialize political ambitions, which in conjunction with the global economic crisis led to the rise of fascism and Nazism in Europe".[37]

According to estimates cited in the strategy, the overall number of supporters and sympathizers of extremism in Slovakia is approximately 2,000. Dozens to hundreds of them are qualified as radical or risky, while the number of right-wing extremists is substantially higher than that of left-wing ones.[38] When eliminating extremism and racially motivated crime, the strategy identified three problematic areas.

Most importantly, it is the quality of education that is responsible for the lack of knowledge about extremism within the general public as well as insufficient qualification in this area among professionals who have impact over prevention of extremism and racially motivated crime.[39]

Secondly, the document criticizes inadequate legislation in this area. Certain criminal offences are incorrectly qualified as transgressions. The main problem with prosecuting these crimes is law enforcement organs' ability to prove intention. The document points out that most perpetrators of extremism-related crimes have been acquitted due to insufficient burden of proof demonstrated by summoned forensic experts. Since there is no respectable forensic department in this area, the prosecution is forced to rely primarily on history experts who are frequently queried in court.

Last but not least, a serious problem is personnel, technical and organizational capacities of agencies that are charged with combating extremism. The document sets the goal to eliminate causes, displays and implications of extremism and racially motivated crime. The document intends to achieve that goal through changing legal mechanisms, intensifying protection against extremism, improving education, increasing legal awareness and informing the public.

The shortcomings in the field of prosecuting displays of right-wing extremism were pointed out by Deputy Prime Minister for Human Rights and Minorities Rudolf Chmel who criticized the decision by the Regional Court in Banská Bystrica to abandon criminal prosecution of Marián Kotleba, leader of the nationalistic and xenophobic People's Party-Our Slovakia, for the public statements he presented while running for the post of Banská Bystrica regional governor. Chmel called on law enforcement, judicial and state administration organs to use all available

36 The document was approved as a Slovak Government Resolution No. 379/2011 of June 8, 2011.
37 *Ibid*., p. 9.
38 Ibid., p. 7.
39 *Ibid,* p. 13.

means to prevent escalation of interethnic tension and negative stereotypes with respect to any population group. According to Chmel, Kotleba's public statements that were challenged in court (Kotleba had called the Roma "Gipsy parasites") "had been aimed against the Roma as a whole ethnic group" and were inconsistent with morality and law.[40]

Law enforcement organs' notorious inefficiency in combating extremism can be illustrated by the fact that the Trnava municipal police last year employed a functionary of the People's Party-Our Slovakia. According to information brought by the media, videos containing his racist statements regarding the Roma have circulated on the Internet.[41]

4.2 CRIMINALIZATION OF THE ROMA

Although the document repeatedly describes the issue of intensified racism aimed against the Romani minority, the strategy to combat extremism comes across as somewhat half-hearted in the light of another cardinal policy line championed by the Ministry of Interior, i.e. combating Romani criminality. In early 2011, the said policy line was announced by Interior Minister Daniel Lipšic who introduced a new system of ensuring law and order in areas with increased crime.

The plan was announced by Interior Minister Daniel Lipšic amidst a crowd of armed police officers in Romani settlement of Jarovnice. The new approach focused (primarily) on marginalized Romani communities and its basic goal was to significantly increase the number of field police officers, particularly in order to protect non-Romani inhabitants. It is based on an analysis of so-called Romani crime; the analysis including a map of crime rate was elaborated by Minister Lipšic's advisor for Romani crime, which suggested that this type of crime had already been officially coined in Slovakia.

Students of Romani history will hardly be surprised by this approach. Part of every plan aimed at "civilizing" the Roma was measures based in a deeply rooted prejudice that there is causality between ethnicity and criminality. For instance, top priority in tackling the so-called "Roma issue" by the first Czechoslovak Republic (1918 – 1938) was combating Romani criminality, despite desperate socio-economic status of the Romani population. In its order of February 23, 1924, the Ministry of Interior ordered the police to create "a precise registry" of all Roma residing in the country. The registry was put together with the use of force and included detailed personal data that were in 1925 complemented by fingerprints. The basic purpose of the registry was to assist in persecutions that in the most extreme form led to show trials of Romani offenders.[42] The most tragic period of Romani history – the Romani holocaust – was based on a scientific theory that "characteristics of Gipsies include inborn propensity to antisocial behaviour and criminality; this trait of their race is impossible to uproot".[43]

40 Please see tyzden.sk of February 17, 2011; taken from the SITA news service, available at: http://www.tyzden.sk/domaci-servis/chmel-kotlebove-vyroky-boli-v-prikrom-rozpore-s-moralkou-a-zakonmi-2.html

41 Taken from the SITA news service, May 8, 2011; author: Lukáš Zuzelka.

42 For further details, please see Emília Horváthová: *Cigáni na Slovensku* [Gipsies in Slovakia], Bratislava: Vydavateľstvo Slovenskej Akadémie Vied, 1964, p. 157).

43 For further details, please see Arne B. Mann: "Najstrašnejšia kapitola: tragické osudy počas druhej svetovej vojny. Aby na ne väčšinové obyvateľstvo nezabudlo" ['Tragic Fates of World War II: The Most Dreadful Chapter the Majority Population Must Not Forget'], *Mosty*, March 26, 2011, p. 8).

It is highly disturbing that even modern and democratic Slovakia that views human rights as the moral foundation of a political community shamelessly accepts policies built around the concept of Romani criminality. Slovak Constitution stipulates that nobody shall be discriminated against on account of their affiliation to a national minority or ethnic group. In using the very notion of Romani criminality, the government actually stigmatizes the entire minority as criminal and thus discriminates against its members. Unjust treatment of the Roma and reproduction of the stereotype of Romani criminality based on personal characteristics that have nothing to do with individuals' abilities and actions coarsely infringes on human dignity and may become very dangerous as history teaches us.

On the other hand, policies that respect human dignity should allow individuals and/or population groups to feel self-esteem and self-respect regardless of personal characteristics such as ethnicity. Government is obliged to adopt measures aimed at guaranteeing real chances to lead a dignified life for everybody; with respect to the Roma, this means eliminating poverty and improving access to education, employment and health care for inhabitants of marginalized Romani settlements. Most of them live in conditions comparable to those of people in underdeveloped countries and totally incomparable to those of their neighbours. These measures have not been implemented in a complex and systemic manner by any administration in Slovakia's modern history. Yet, they represent the only truly effective means capable of eliminating from Romani settlements phenomena such as usury, violence or pilferage that is often existentially motivated. Increasing the number of cops in Romani settlements will not help eradicate these problems in the long term; on the contrary, it is likely to encourage the Roma's distrust in government, which may increase tensions within society and escalate mutual conflicts.

It is alarming that none of the public figures and authorities entrusted by law with protection and implementation of human rights (e.g. deputy prime minister for human rights, national minorities and gender equality, public defender of rights or the Slovak National Human Rights Centre) publicly and emphatically condemned the interior minister's policy. The fact that the then prime minister remained silent as well is ever sadder, especially given her long history of academic involvement in the subject. Of course, condemning discriminatory or demeaning policies is not likely to score political points; nevertheless, respect for human rights must be guaranteed for all, i.e. not only for "ordinary citizens" but also (and primarily) for those who live on the edge of society and happen to stink, make noise or otherwise differ from the majority's notion of "normality".

4.3 BUILDING WALLS SEGREGATING ROMANI COMMUNITIES

Recently, the most alarming trend is building walls designed to segregate marginalized Romani communities. This discriminatory and stigmatizing practice intensified especially before the most recent municipal elections in 2010. The walls apparently represented the way of drumming up political support. Last year we registered construction of a concrete fence on Kafendova Street in Vrútky as the way of 'solving' coexistence between Romani and non-Romani residents. Building the two and a half meter-tall fence was most probably local authorities' reaction to complaints filed by residents of this street about their Romani neighbours living across the street. According to information brought by the media, the residents of Vrútky requested local authorities to build the fence to separate the local kindergarten from the adjacent Romani ghetto; the construction was unanimously approved by the municipal council.[44]

44 Taken from the SITA news service, June 21, 2011; author: Dagmar Úradníková.

Like similar walls and various other segregation barriers built in Prešov, Michalovce, Ostrovany, Trebišov, Sečovce, Lomnička or Pezinok, the official purpose of the wall in Vrútky was to protect local inhabitants from physical attacks, property damage and pilferage allegedly perpetrated by the residents of neighbouring Romani community; however, regardless of whether they are walls, fences or other types of barriers or whether they are built by self-governance organs or on the self-help basis, the essence of the practice is to isolate local Romani communities. The barriers complicate their residents' access to social infrastructure such as shops, schools, kindergartens and so on. Some of them openly labelled these barriers as stigmatizing and discriminatory.

When construction of segregation walls intensified in 2010, they were inspected by the deputy prime minister for human rights and minorities, the state secretary of the Ministry of Labour, Social Affairs and Family, the government plenipotentiary for Romani communities and the public defender of rights. All of them basically agreed that building walls was not a solution that would further good neighbourly coexistence and that it signalized negligence of problems facing residents of Romani settlements. According to them, construction of the walls should also be viewed in the context of upcoming municipal elections, as an effort of those currently in power to muster political support among the 'white' majority. The Slovak National Human Rights Centre (SNSĽP) harshly criticized the practice and labelled it as segregationist action.[45] Back in 2009, the SNSĽP inspected a similar wall in Ostrovany. However, in this particular case it concluded that the construction of the wall in question could not be qualified as an unlawful form of discrimination. At the same time, it observed that local authorities had failed to protect Romani residents from discrimination and that the wall was a form of spatial segregation. As far as the wall in Michalovce was concerned, the public defender of rights concluded that "there has been no violation of fundamental rights or freedoms".[46]

Building of walls, fences or any other type of barriers whose principal purpose is segregation is neither a viable way toward good neighbourly coexistence nor a solution to problems facing some Roma. We believe that all instances of building the said barriers should be subjected to a detailed scrutiny from the viewpoint of abiding by human rights standards. The construction of *anti-Roma* barriers might be qualified as an unlawful discriminatory action as they physically prevent all residents of the Romani communities in question from access to goods, services, education or medical care solely on grounds of their ethnic origin.[47]

Regardless of whether residents of the Romani communities in question find it more difficult to access social infrastructure or not as the result of the barriers, the practice is in our opinion a form of unlawful racial segregation. By signing and ratifying Article 3 of the *International Convention on the Elimination of All Forms of Racial Discrimination*, Slovakia pledged to prevent, outlaw and eliminate all practices of racial segregation. Elaborating on the article, the UN Committee on the Elimination of Racial Discrimination stated that complete or partial segregation may be the result of public policies as well as actions by individual persons, regardless of public administration organs' direct or indirect involvement. Segregation action leads to emergence

45 Position of the Slovak National Human Rights Centre of September 10, 2010.

46 A media statement by the public defender of rights regarding construction of the wall in Michalovce following a personal inspection, September 13, 2010.

47 Please see Article 2a Paragraph 1 of the Law No. 365/2004 on Equal Treatment in Certain Areas and on Protection against Discrimination that Alters and Amends Certain Laws (Antidiscrimination Act), as amended.

of residential areas based on low income, sometimes in combination with racial or ethnic origin. As a direct result, their residents may suffer from stigmatization and discrimination.[48]

Segregation barriers have a negative symbolic connotation and deepen already existing spatial segregation. The construction of anti-Romani barriers has become a disturbing and dangerous trend and its silent toleration by the government creates conditions for its further intensification. At the same time, construction of the barriers shows that negligence of problems facing excluded Romani communities leads to their deepening and ultimately to adoption of repressive measures. The minority is construed as a physical threat, which suits political leaders on the local level as it gives them a chance to become the heroes who stave off the danger and muster political support for adoption of measures such as the barriers designed to protect the majority.

4.4 DEMOLITION OF ILLEGAL ROMANI SHANTY HOUSES AND SETTLEMENTS

Expansion of illegal settlements is a direct result of long-term complex processes of pushing the Roma to the edge of society. In each of its strategies aimed at integrating residents of segregated Romani settlements, the government reiterates that their chances to extricate themselves from the vicious circle of exclusion and poverty are infinitely small. Yet, unofficial estimates by the Centre for the Research of Ethnicity and Culture suggest that the number of illegal settlements in Slovakia continues to increase as they are often the last resort for people who live deep below the poverty line.

Another type of extreme measures with respect to long-neglected Romani communities that intensified in the course of 2011 was demolition of illegally built shacks in Romani settlements. The first locality where wooden shacks were demolished was Demeter in Košice, a settlement inhabited by approximately 700 residents. Municipal authorities argued that the wooden shanty houses were a potential source of infection and fire, citing an expert opinion by the Civil Defence Authority that called Demeter a free depot of flammable material. As alternative housing, the city offered a military tent pitched in a notorious Romani ghetto Luník IX, which Demeter residents strictly refused.[49]

Another locality to see application of such a radical measure was a Romani settlement Pod šibeničným vrchom in Žiar nad Hronom. In May 2011, half a year before municipal authorities bulldozed the settlement to the ground, the mayor issued an appeal titled "Wake Up!" calling on other mayors and local council chairmen to stop uncontrolled expansion of Romani settlements. The mayor publicly accused the central government of ignoring the issue of illegal settlements and allowing maladjusted citizens to take up other citizens' property with impunity. He argued that self-governments now had to bear costs of waste disposal in these settlements. The mayor charged that projects implemented by the central government had failed and proposed that the government allocate funds to building container houses where strict rules would apply and electricity or water would not be for free.[50]

48 Par. 2 and 3 of General Comment No. 19: Racial segregation and apartheid (Art. 3) received on August 18, 1995.
49 Taken from the SITA news service, May 16, 2011; author: Matúš Jaco.
50 Taken from the SITA news service, May 24, 2011; author: Martin Dušička.

In late November 2011, municipal authorities run the Romani settlement to the ground, forcing members of several families with small children to compete with heavy machinery to rescue their belongings in the nick of time. The mayor called the locality an illegal waste dump "that had to be tackled."[51] "We know it is not ours but where should we go?" said one of the residents, Emília Kakarová, for the media while a bulldozer demolished her shack.[52] Those people who saw their homes eradicated at the expense of the municipal budget did not receive any replacement accommodation.

Demolishing illegal marginalized settlements without providing alternative housing to their residents is not only inconsistent with respecting human dignity but arguably violates their right to adequate housing.[53] According to interpretation of the UN Committee on Economic, Social and Cultural Rights, forced eviction or demolition of property must not lead to evicting "homeless persons and subjecting them to the risk of violating other human rights of theirs. If the residents threatened by eviction are unable to take care of themselves, the state is obliged to adopt all adequate measures including maximum allocation of available resources to secure adequate housing and relocation, respectively."[54]

According to United Nations interpretation, a decision to bulldoze an illegal settlement without consulting it in advance with their residents, without indemnifying them for damaging their personal property and without offering them adequate replacement housing is a coarse violation of human rights.

Like the practice of building segregation barriers, the practice of demolishing illegal shacks illustrates the recent dynamism of securitization with respect to the Roma. Thanks largely to local political leaders, the Roma living in marginalized settlements are perceived as a threat, be it with respect to infection, fire or disrupting public order. Public administration authorities are failing to create conditions for settlement residents to escape from the vicious circle of exclusion; on the contrary, they further marginalize members of these communities and deepen their poverty by adopting radical repressive measures such as demolishing illegal shacks. Furthermore, this strategy often serves to score political points, which may be illustrated by the growth in the number of segregation barriers before the most recent municipal elections.

4.5 INTRODUCING CRIMINAL RESPONSIBILITY OF PARENTS FOR THEIR CHILDREN'S OFFENCES

Another repressive tool enacted in 2011 that was indirectly targeted at the Roma was an amendment to the Criminal Code that introduced parents' criminal responsibility for their children's offences. "The families that include literally habitual offenders ought to be punished,"[55]argued Kamil Krnáč (SaS) who proposed the amendment that sought to punish Romani parents who abet their children in pilferage, especially in theft of food. According to the legislators, "society must show interest in sound development of minors and young people,

51 Taken from the SITA news service, November 29, 2011; author: Martin Dušička.
52 *Ibid.*
53 The Right to Adequate Housing (Art.11.1): Forced Evictions: 20.05.1997, CESCR General comment 7.
54 *Ibid*, para 17.
55 "Rodičom oddnes hrozí za priestupky ich detí dvojročné väzenie" ['Effective Today, Parents Face Two Years in Prison for Their Children's Transgressions']; available at: http://www.aktuality.sk/clanok/192743/rodicom-oddnes-hrozi-za-priestupky-ich-deti-dvojrocne-vazenie/

especially by sanctioning the persons who allow them to engage in activities that subsequently lead to their debauchery".[56]

The amendment extended Article 211 of the Criminal Code that deals with the criminal offence of jeopardizing morality of the youth. Any person who knowingly or not exposes a person younger than 18 to the danger of debauchery by allowing it to participate in "activities that are qualified as transgressions by specific laws" shall be punishable according to Article 211 and those found guilty may face a prison term of up to two years.[57]

According to MP Krnáč, the amendment tackled "the No.1 problem in East Slovakia".[58] According to Lucia Žitňanská who held the post of justice minister at the time, the new provision would be extremely difficult to enforce. The main problem according to her would be proving the parents guilty of abetting their children in transgressions and thus exposing them to the danger of debauchery.[59]

Government has an obligation to protect children from violence and negligence on the part of their parents; in certain cases, it is even entitled to 'enter people's private homes' and take their children to foster care. Nevertheless, these measures should be the very last resort in the long line of available measures. Like in the case of building segregation barriers and demolishing illegal shacks, government should first focus on adopting preventive measures to avoid such extreme instances of child negligence.

It is obvious that the amendment proposed by MP Krnáč indirectly targeted Romani parents who live in extreme poverty; however, tackling problems of marginalized communities requires adoption of complex measures in the field of education, housing, employment, social fieldwork and medical care. Over the past 20 years, government invested minimum effort to implementing these measures and it is highly questionable whether the actual goal of its policies was to create dignified living conditions for the Roma.[60] Using criminal law to enforce 'desirable' behaviour of people who are existentially threatened by poverty and deprivation is highly impropriate and fails to tackle the root of the problem. Besides running the risk of being abused by law enforcement organs, it conveys a highly negative symbolic message about how the majority in Slovakia perceives the Roma. Like building segregation barriers and demolishing illegal shacks, this initiative was apparently supposed to score political points for those who proposed it, not to address Romani parents' negligence of their children.

4.6 DISCRIMINATION AGAINST ROMANI CHILDREN IN EDUCATION: CASE OF ŠARIŠSKÉ MICHAĽANY ELEMENTARY SCHOOL

One of the most serious practices to violate minority and human rights in Slovakia is segregation of Romani children within education system that may take on many different forms.

56 *Ibid*.

57 Article. 22 of the Act No. 262/2011 Coll amending and supplementing Law no. 301/2005 Z. of. Penal Code, as amended, and amending and supplementing certain laws.

58 "Riešenie problému č. 1 na východnom Slovensku" ['Tackling Problem No. 1 in East Slovakia'], a blog by Kamil Krnáč; available at: http://kamilkrnac.blog.sme.sk/c/274743/Riesenie-problemu-c-1-na-vychodnom-Slovensku.html

59 "Rodičom od dnes hrozí… *supra* note 55.

60 See the section 9.2 below.

Perhaps the most serious is placing Romani children from deprived communities into special schools and special classes as it keeps them within a parallel education system that is not equivalent to the standard education system. Other equally problematic practices include placing Romani children into segregated classes, floors, buildings, refectories and playgrounds within the standard education system or seating Romani children at desks in the back of the classroom so that they do not hinder teachers in educating their non-Romani classmates.

Such practices were outlawed already in 2004 by Antidiscrimination Act. Yet, government institutions that are responsible for implementing the law, particularly the Ministry of Education, seem unable to enforce it in practice. Quite the contrary, government in the long term denies existence of segregation within the country's education system.[61]

The policy tools that were designed to improve Romani children's access to education, for instance zero grades that have been in place for two decades, *de facto* support segregation of children from the very beginning of their school attendance. Strategic litigation in the case of the Center for Civil and Human Rights (POĽP) versus the Elementary school with kindergarten in Šarišské Michaľany was extremely important in that POĽP strove to use judicial help to catalyze the process of social change. Its endeavour was helped by the recent introduction of the institution of class action, which gave civic associations the right to challenge segregationist practices in court. The problem is that discrimination victims find access to justice hampered due to a variety of financial and social reasons. Even if a civic association that specializes in protection of discrimination victims offers legal assistance to Romani parents, they have every reason to fear that bringing an action against the school will have negative effects on their children who attend the school.

Before the Prešov District Court POĽP challenged the long-term existence of special segregated classes at the Primary school with kindergarten in Šarišské Michaľany that are attended exclusively by Romani children.[62] According to testimonies given by teachers, the school organized the education process in order to prevent practical contact between Romani and non-Romani children, even during breaks and leisure time. The school advocated the existence of special classes and continues to do so after the court issued its verdict. School officials argued that the main reason for segregation was not children's ethnic origin but their social deprivation; in order to overcome it, special classes were established to provide "individual approach to children from socially disadvantaged environment who encounter significant problems coping with their schoolwork".[63] School officials also reasoned that this way they tried to make sure that "Romani children do not feel handicapped in the teaching process by the knowledge that other children have better results than themselves".[64] The school even tried to justify the segregation by approvals from Romani parents who had allegedly agreed that their children would be educated according to valid curricula but in segregated classes.

61 Please see the Slovak Government Resolution No. UV-32346/2011 of October 5, 2011, regarding a document submitted by the Ministry of Foreign Affairs, which states that of 91 recommendations delivered in May 2009, nine were rejected or viewed as irrelevant by the Slovak Republic. The rejected recommendations included calls to adopt legislative and practical measures aimed at eliminating discrimination against Romani children within education system.

62 Center for Civil and Human Rights vs. Elementary school with kindergarten in Šarišské Michaľany, Verdict No. 25 C 133/10-229 of December 5, 2011.

63 *Ibid*., p.2.

64 *Ibid.*, p.10.

In its defence, the school also cited Schooling Act provision that entitles schools to educate children while applying specific forms and methods that correspond to these children's needs. But the case judge refused to accept this argument, emphasizing that the school had created purely Romani classes regardless of children's school results and stating that "the defendant must not apply specific methods and forms of educating pupils from socially disadvantaged environment in a way that contradicts the valid and international legislation for the protection of human rights."[65]

The judge, however, argued that interpretation of any law must not provide excuse for segregation and that Schooling Act must not be interpreted contrary to Antidiscrimination Act, Constitution of the Slovak Republic or international conventions on human rights protection. According to the judge, the only reason for placing Romani children into segregated classes was their Romani origin as they were placed there regardless of whether they hailed from socially disadvantaged environment or not. The judge viewed parents' informed approvals irrelevant since they were not made freely. "The parents consented to the said method of education because they had gotten used to the situation and because they feared bullying and humiliating [of their children] in mixed classes."[66] According to the judge, the school resigned to its role in education process because it preferred illegal segregated education to development of inclusive education. She reasoned that segregation cannot be considered a so-called temporary equalization measure introduced to eliminate a certain handicap. "It is obvious that their measures are not of equalization nature as they would not allow for elimination of deficits caused by possible social deprivation; on the contrary, their sole purpose is separation of non-Romani children from Romani ones," she argued.[67] The judge also noticed the fact that in the long term, not a single pupil has been transferred from a Romani class into a non-Romani one and that the school did not try to hide the fact that the main reason for segregation was fear of the outflow of non-Romani pupils. In the end, the judge concluded that the school had violated Antidiscrimination Act and ordered it to remedy the unlawful state of affairs within 30 days of the verdict taking effect.

The defendant appealed the decision before the regional court. According to information brought by the press, the school in its appeal argued that it did not discriminate against Romani children and that the segregated classes had not been created on the ethnic basis but merely to provide different methods and pace of learning to children from disadvantaged environment.[68] It seems that the school based its appeal on Article 107 of Schooling Act, which in Paragraph 3 provides for creation of individual conditions for children from socially disadvantaged environment through adjusting organization of upbringing and education, adjusting the environment where upbringing and education takes place and applying specific methods and forms of upbringing and education.[69]

Although it is difficult to predict the position of the regional appellate court, it is almost certain that the school's argumentation would stand very thin chances before the European Court of Human Rights (ECHR).[70] The facts of the case of *Oršuš et al vs. Croatia* that was adjudicated by

65 *Ibid*, p.9.
66 *Ibid*., p.9.
67 *Ibid*., p.10.
68 "Šarišské Michaľany nechcú triedy zmiešať" ['Šarišské Michaľany Refuse to Mix Classes'], *Korzár*, *Sme*, January 23, 2012.
69 Article 107 Paragraph 3 Letters b-d of the Law No. 245/2008 on Upbringing and Education (Schooling Act) that Alters and Amends Certain Laws.
70 In the case of class action it is impossible to appeal to the European Court of Human Rights.

the ECHR two years ago very much resemble those of the case from Šarišské Michaľany.[71] In the case, complainants Oršuš et al took action against primary schools in Croatia for placing Romani children into separate classes within the mainstream education system on account of their insufficient command of Croatian. Like the school in Šarišské Michaľany, the Croatian schools argued they had been forced to adjust their teaching methods. Like the Prešov district court, the ECHR noticed that there had been no method in place to monitor transferring of Romani children into non-Romani classes and that the children were segregated throughout all primary schools grades. Also, the ECHR pointed out that even though the schools had not directly placed children into special classes based on the language criterion, the result of the practice was creation of classes made up solely based on pupils' ethnic origin, which the court qualified as unlawful indirect discrimination.

Defending the case of *Oršuš et al vs. Croatia* seems more difficult than in the case of school in Šarišské Michaľany as temporary measures designed to overcome the language barrier might be viewed as justified to a certain degree. However, it is highly improbable that the ECHR would view Romani children's social deprivation and outflow of non-Romani children from the school as acceptable arguments in favour of different treatment of Romani pupils.

It is only a matter of time when schools that segregate Romani children like the one in Šarišské Michaľany begin to lose human rights litigations and are ordered to desegregate by courts of justice.

That is why we believe that the public debate should not focus on whether segregation is acceptable but on how to desegregate.

It is obvious that mixing up children in classes will not be enough on its own. It is equally obvious that the burden of desegregation must not be left solely up to schools. It is inevitable to tackle exclusion of Romani communities in a more complex manner that includes developing social housing, working with Romani parents, creating job opportunities for them, intensifying community fieldwork and targeting provision of medical care. But the schools need assistance from central government as well as self-governance institutions, not only in already mentioned areas but also in eliminating systemic barriers to introducing inclusive education. These barriers include challenging curricula, rampant bureaucracy or practical impossibility to reduce the average number of children in classes substantially. Also, central government organs must remove the mechanisms that force primary schools to compete with each other for best pupils through comparative monitors and tests that measure memorized information as opposed to knowledge and the ability to apply it critically. Government in cooperation with universities should help primary schools by preparing skilled pedagogues who are able to educate children with different mental capacities in an inclusive manner.

This is not to say that schools should not play the key role in the process of desegregation. Our study examining tools aimed at improving integration of Romani children revealed that if the schools truly want, they are able to apply inclusive elements to education by themselves, even though their possibilities are limited. Driven purely by their enthusiasm and often despite low support from the system, many individual teachers have managed to create relaxed and friendly atmosphere that made Romani children feel comfortable at school. [72]

71 *Oršuš et al vs. Croatia*, Case No. 15766/03 of March 16, 2010.

72 An excellent overview of successful methods of inclusive education corroborated by research findings may be found in Mitchell, David (2008): *What Really Works in Special and Inclusive Education: Using*

We believe that placing children into classes should reflect their natural diversity, which is best and most justly attained by random selection. The current education system is extremely selective; from early childhood, children are divided according to their capacities presumed by schools into excellent (A classes), average (B classes) and below average (C, D and E classes). Our survey confirmed what people from the domain of social science have known for a long time: every single child is gifted in one way or another. The art of good education is to develop that special gift or skill. Education should at any cost avoid appreciating only certain skills and eliminating those children that do not seem to have them. Although government officials apparently underestimated the importance of the case of elementary school in Šarišské Michaľany,[73] we believe that this case will eventually become the impulse to adopt measures that will help eradicate one of the most serious violations of human and minority rights in Slovakia.

4.7 FORCED STERILIZATIONS OF ROMANI WOMEN: CASE *V.C. VS. SLOVAKIA*

It took more than 11 years for a Romani woman from one of the most deprived settlements in East Slovakia to win a legal battle over her forcible sterilization. On November 8, 2011, the European Court for Human Rights ruled that doctors at the Prešov hospital had treated her in a demeaning and inhuman manner and thus seriously encroached on her private and family rights.[74] Regardless of the ruling, Slovak government officials have yet to issue public condemnation of forcible sterilizations of Romani women, which is one of the communist regime's most deplorable practices vis-à-vis ethnic minorities. Despite repeated calls by international human rights organizations, including the most recent requests by the United Nations Committee for Human Rights and the Council of Europe's Commissioner for Human Rights, the practice has been neither abandoned nor properly investigated until the present day.

The facts of the case are as follows. At the age of 20, the complainant came to the maternity ward of the Prešov hospital to deliver her second child. While in labour, she was asked to give consent to her sterilization shortly before the obstetricians performed a Caesarean section. The doctors wrested the complainant's consent by frightening her that her next pregnancy could end in her death. Although the complainant did not completely understand the term 'sterilization', she authorized the doctors "to do whatever they wanted to do" because she was in too much agony and anxiety. Her Romani origin was explicitly specified in her medical file and after the delivery she shared a room without a bathroom or lavatory with other Romani women. Following the operation, the complainant suffered from hysteric pregnancy with phantom pregnancy symptoms for seven years. Because she was unable to bear children anymore, her marriage fell apart in 2009; consequently, she was ostracized in her own Romani community.

Evidence-Based Teaching Strategies. London and New York: Routledge.

73 Please see, for instance, blogs by Jaroslav Ivančo, then state secretary at the Ministry of Education ("Michaľany ako precedens s nechcenými následkami" ['Michaľany as a Precedent with Undesirable Implications'], available at: http://ivanco.blog.sme.sk/c/286026/Michalany-ako-precedens-s-nechcenymi-nasledkami.html) or Lucia Nicholsonová, then state secretary at the Ministry of Labour, Social Affairs and Family ("Zákaz segregácie na Slovensku je smiešny" ['Slovakia's Ban on Segregation is Ridiculous'], available

at: http://aktualne.atlas.sk/komentare/lucia-nicholson/zakaz-segregacie-naslovensku- je-smiesny/).

74 Case *V.C. vs. the Slovak Republic*, an ECHR ruling No. 18968/07 of November 8, 2011.

In its ruling, the European Court for Human Rights observed that sterilization was not a life-saving operation and pointed out that its performance required the complainant's free and informed consent based on comprehensive information regarding all consequences of the operation. Wrenching out complainant's consent at the peak of her labour pains and failing to explain to her the full meaning of the term 'sterilization' contradicted the principle of respect for human dignity and human rights guaranteed by the Convention. In other words, the doctors violated the complainant's right to make an informed and autonomous decision on her body and left her with no other option but to consent to the operation with irreversible effects. According to the court, the Slovak Republic must take full responsibility for violation of the ban on torture and other inhuman and demeaning treatment and of the principle of protection of private and family life.

Unfortunately, most ECHR judges refused to deal with the part of the complaint claiming that the basic reason for this inhuman and demeaning treatment was the complainant's Romani origin. The judges took notice of the reference to the complainant's ethnic origin in her medical file as well as of a testimony by the head of the Prešov hospital's maternity ward who said he did not recollect the complainant's case but he assumed "that the case was identical to all the others". Despite these facts, a majority of judges agreed that in this particular case the complainant failed to provide sufficient proof that her ethnic origin was the basic reason for her inhuman and demeaning treatment.

The only exception was Justice Ljiljana Mijović in her dissenting opinion. She argued that the doctors' conduct amounted to the worst form of discrimination. According to Mijović, "sterilizations of Romani women were not performed randomly but were the residue of negative attitudes to the Romani minority that are deeply rooted in Slovakia". Since there were no medical reasons for sterilization, it was obvious that her ethnic origin was the principal reason for performing the operation.

The complainant's case is representative of similar stories of hundreds of Romani women documented in *Body and Soul*, a report prepared by the Centre for Civil and Human Rights and the Centre for Reproductive Rights in 2003. Perhaps the ECHR judges would have been convinced by statistical data indicating disproportionately high occurrence of sterilizations among Romani women. Unfortunately, such statistics are not officially available because the currently valid law outlaws collection of ethnically sensitive data in Slovakia. Government officials continue to use this notorious alibi, although human rights organizations as well as the European Commission have repeatedly urged them to reconsider it, arguing that collection of such data under certain circumstances is not only possible but inevitable in order to document the scope of discrimination. The reason is simple: the statistics would reveal a problem they refuse to see.

Besides, the doctors and hospitals that apparently performed these inhuman operations – and reportedly continue to do so – do everything in their power to make it difficult for their victims to seek legal remedy. The women who find the courage to take their case to court must struggle for years to get access to their medical files. The case *K.H. et al vs. the Slovak Republic* the ECHR adjudicated in 2009[75] and ruled against Slovakia illustrates how hospitals in Prešov and Krompachy refused to allow legal representatives of aggrieved Romani women to inspect their medical records or make copies, citing "protection against abuse". Eventually, they allowed the patients to review their medical files and make handwritten excerpts. Needless to

75 Case *K.H. et al vs. the Slovak Republic*, an ECHR ruling No. 32881/04 of April 28, 2009.

say, handwritten transcripts of medical records would be incomprehensible even for women with university education, let alone uneducated women from marginalized environment.

Unfortunately, government policies of compulsory or forcible sterilizations that targeted particularly women belonging to unpopular minorities or suffering from various genetic disorders are not typical only for Slovakia and its Romani minority. Similar eugenic and strongly racist policies were also used vis-à-vis African American women in the United States or native women in countries of North and South Americas. Democratic governments of countries that once performed such practices condemned them emphatically and publicly, apologized to the victims and indemnified them. Forcible sterilizations were proclaimed a crime against humanity by the Rome Statute of the International Criminal Court.

The Centre for Civil and Human Rights has managed to win a case that revealed a demeaning practice, a residue of the communist-era policy that abused poverty of Romani women and introduced financial incentives to make them consent to these inhuman operations. It was hardly any coincidence that the Prešov obstetricians wrested consent to sterilization from a woman in labour who happened to be a Roma.

While Slovak governments after November 1989 abandoned forcible sterilizations as official policy, these practices apparently continue to be silently tolerated as they have never been thoroughly investigated nor publicly condemned. One would expect that the administration that boasted a total absence of former Communist Party members and a full respect for human rights would make an effort to condemn the practice, investigate the cases, indemnify the victims and candidly and publicly apologize to Romani women. Instead, the cabinet's official reaction amounted to arrogant and trivializing comments by then female justice minister[76] and complete silence of then female prime minister.

4.8 PARLIAMENTARY ELECTIONS AND POPULISM

The fall of the previous administration in October 2011 led to calling early parliamentary elections for March 2012 and effectively launched political canvassing. During the subsequent election campaign, political parties along the left-right continuum strove to increase voter support by advocating adoption of restrictive and even racist anti-Romani measures. The country's political elite very actively participated in dangerous processes the Centre for the Research of Ethnicity and Culture has warned about for years, i.e. in construing minorities as a threat for the majority, in this particular case in portraying the Roma as a demographic, social and economic threat.

The elections tend to accelerate the said negative trends, which can be perfectly illustrated by the final quarter of 2011 that was dominated by anti-Romani agenda. MP Ľudovít Kaník (SDKÚ-DS) drafted and proposed a discriminatory bill that sought to cut family allowance by one half while specifically targeting Romani mothers.[77] The assembly turned down the initia-

76 For the justice minister's full statement, please see http://www.gipsytv.eu/gipsy-television/spravy/slovensko/sterilizacia-romskych-zien-reakcia-ministerky-spravodlivosti-lucie-zitnanskej.html?page_id=2307

77 Apparently fearing that his idea to reduce family allowance might be rejected after the Iveta Radičová administration had fallen, Kaník tried to put his legislative proposal through by altering the cabinet-initiated amendment to the law on childbirth allowance. Combining the two original initiatives and seeking an indirect amendment to the Family Allowance Act, his proposal was turned down after being rejected by government deputies for KDH and Most-Híd. For further details on Kaník's proposal, please see http://www.nrsr.sk_web_Default.aspx?sid=schodze_nrepdn_detail&id=1278.

tive but that did little to stop Kaník who together with his party fellow Štefan Kužma (SDKÚ-DS) also proposed a bill seeking to simplify the process of demolishing Romani shacks and even made it one of their campaigning priorities. KDH MPs Radovan Procházka and Jana Žitňanská did not lag too much behind and drafted a bill that sought to facilitate segregation of Romani settlements from non-Romani municipalities.

The myth that minorities (particularly the Roma) constituted the kind of threat to the majority that called for protection lay at the heart of election programs and priorities of most parliamentary parties running in early parliamentary elections scheduled for March 2012. Particularly MPs for SaS and SDKÚ-DS lately seemed to compete in seeking solutions to protect the majority against the social and demographic threat posed by members of the Romani minority who allegedly abuse the social security system.

While presenting the slogan of "The Future is in Labour, Not in Welfare Benefits", Minister of Labour, Social Affairs and Family Jozef Mihál (SaS) stated there is enough work in Slovakia and everybody who wants to work is able to find a job.[78] In a country where overall unemployment nears 14 percent and local unemployment in some districts exceeds 30 percent, such a statement is not only audacious but flat out insolent. Minister Mihál's ignorance of reality is truly baffling, for a labour minister should know that in districts where unemployment exceeds 30 percent, the chances of Romani job applicants – who bear the stigma of inferior and lazy workers – to find a job are minuscule. In fact, they near zero due to inadequate education status that is a direct result of discrimination within education system.

In terms of populist proposals seeking to put an end to alleged discrimination against working families, the SDKÚ-DS did not lag behind its coalition partner. The party's election program headlined "4x4" teemed with ideas that are more or less openly based on the widespread stereotype that the Roma not only abuse the social security system but they also neglect their children and refuse to send them to schools. It is most unfortunate the authors of SDKÚ-DS election program did not give more thought to segregation practices within education system and the quality of schools for Romani children; perhaps that would reveal to them the true reasons for inadequate education status of most Roma in Slovakia.

Both parties' initiatives were based on an erroneous concept that the Roma from excluded communities have freely chosen to be unemployed, uneducated, poor, generally deprived and fully dependent on welfare benefits. There is only a thin line between this concept and the conclusion that alleged Romani parasitism poses a social and demographic threat to working Slovaks who deserve protection, which these parties will gladly provide. In this respect, the SKDÚ-DS and SaS are not essentially different from the People's Party-Our Slovakia (ĽS-NS) led by Marián Kotleba, a far-right party that divides people to more and less worthy and that in our opinion has no place in a truly democratic society.

Most-Híd was the only relevant parliamentary party whose election program respected principles of a modern minority policy. Building its program on completely different priorities than most other parties, Most-Híd focused on protection and implementation of minority rights, which included drafting a long-term strategy of minority policy, improving the system

78 Please see "SaS chce vymeniť sociálne dávky za prácu" ['SaS Intends to Replace Welfare Benefits with Labour'], *HN online*, January 12, 2012; available at: http://hnonline.sk/slovensko/c1-54406360-sas-chce-vymenit-socialne-davky-za-pracu

of financing minority culture and extending education in mother tongues, including the Romani language.

With respect to the Romani minority, the party deserved praise for its courage to stick to principles. Unlike its coalition partners, Most-Híd did not blame the Roma for their socio-economic situation nor Romani children for their poor proficiency in the majority's education system; on the contrary, the party proposed several systemic solutions seeking to improve the mainstream education so that it offers better opportunities to Romani children. The party even found the courage to propose gradual abolition of special education.

In the field of social security, Most-Híd refused the restrictive approach championed by other parties of the incumbent administration. Its election program proposed to analyze the system of disbursing material need benefits before passing any legislative changes to it; furthermore, the changes should focus not on cutting the benefits but on creating conditions for gradual social inclusion of the poorest. All in all, Most-Híd was the only relevant party that avoided radical solutions in this area and preferred long-term measures to populist slogans designed to drum up immediate support of voters who share the stereotypical notion of Romani parasitism.

The recently established party of Ordinary People and Independent Personalities (OĽaNO) paid the greatest emphasis on tackling problems of the Romani minority. They introduced concrete proposals aimed at improving the quality of education, especially narrowing down the mandatory content of education and reducing the scope of government education program. This section of the party's elections program would have been much more convincing if it avoided the generally repressive tone; the program even spoke of sanctions or cutting welfare benefits to enforce the target group's desired behaviour.

The issues of discrimination against immigrants, rights of religious minorities and separating church from state did not appear in relevant parties' election programs, if we disregard slogans on the need to prevent islamization of Europe in general and Slovakia in particular presented by the Slovak National Party (SNS).

One of important trends accompanying early parliamentary elections of 2012 is the high number of Romani candidates featured on candidates' lists of non-Romani political parties, for instance Peter Pollák (OĽaNO), Ingrid Kosová, Janette Maziniová or Radoslav Ščuka (Most-Híd), Alexander Patkoló (KDH), Denisa Havrľová (Robíme to pre deti-SF) and Jozef Červeňák (SMK). Several of these candidates have emphasized that the main reason for placing them on the candidates' list was not their ethnic affiliation but their expertise and experience in areas that concern not only the Romani minority. We believe that appointing educated Romani men and women with expertise in particular areas to political posts is crucial in the process of deconstructing the myth that it is impossible to find Roma with necessary education and expertise to participate in shaping policies concerning the Romani minority.

As we have pointed out before, Kymlicka observed that established western democracies have abandoned the concept of minorities' securitization as a result of two principal factors: first, it was a deliberate consensus between politicians across the political spectrum that they would refrain from playing the so-called security card; second, it was voters' rejection of the populist argument that the majority must be protected. The election campaign in fall and winter 2011 indicated exactly the opposite development trend on Slovakia's political scene.

5. SYMBOLIC POLICIES

The acts of symbolic respect aimed at acknowledging ethno-cultural dissimilarities, appreciating the contribution of minorities or apologizing for historical wrongs against them should in our opinion form an important part of fair minority policy. Reluctance to such acts along with the tendency toward primitivism, degradation and defamation may damage identity of individuals who belong to marginal population groups so seriously that their lack of self-esteem and acceptance of the inferior status may become one of the most powerful tools of oppression and tyranny. According to Taylor, recognition is not only a 'favour' to minorities but a vital human need.[79] The policy of recognition is based on respecting human dignity of every human being.

Symbolic policy of recognition is considered generally unimportant in Slovakia. On the contrary, election campaign before the most recent parliamentary elections showed that the country's political elite openly and shamelessly disparage minorities, particularly the Roma. In this context it is interesting that pioneer works by western multiculturalists consider the so-called dash war between the Czechs and the Slovaks in 1990 as the case example of how important symbolic policy may be.[80]

Most Slovaks find it difficult to understand how the refusal to abolish Beneš decrees or threats to revoke Slovak citizenship affects ethnic Hungarians. They fail to see that the key to the Roma breaking out of the circle of poverty is not repression, reducing welfare benefits and building walls but offering assistance, showing mutual respect and acknowledging obvious past wrongs such as forced sterilizations of Romani women. This policy of recognition[81] might, for instance, help the Roma not feel ashamed for their ethnic origin and perhaps encourage them to declare their ethnicity more freely in population censuses. Members of other national minorities, including ethnic Hungarians or Ruthenians who were generally disparaged in the past, would also have felt freer if government had let them know that it viewed them as an integral part of the Slovak nation and that their cultural and language dissimilarities are not something they should be ashamed of but quite the contrary.

Last year, we recorded several incidents that illustrate the lack of understanding for symbolic policy as a tool of reconciliation. Unveiling the bust of János Esterházy on a private property in

79 Charles Taylor, "The Politics of Recognition" in Amy Gutman, ed., *Multiculturalism: Examining the Politics of Recognition* (Princeton, New Jersey: Princeton University Press, 1994) p. 26. .

80 Jacob Levy, "Classifying Cultural Rights" in Ian Shapir and Will Kymlicka (New York: New York University Press, 1995) 22, p. 48.

81 See also section 13, below.

Košice created a furore in March 2011. One of the main representatives of the Hungarian irredentist movement, Esterházy was described as a victim of communist reprisals and advocate of civil and human rights. The idea to unveil the bust had been criticized by the mayor of Košice along with a relatively broad and heterogeneous community that included Slovak National Party officials, historians from the Slovak Academy of Sciences as well as representatives of Matica slovenská, the Slovak Union of Antifascist Fighters and several other civic associations. The private event was disrupted by a protest during which artist Peter Kalmus wrapped the bust in toilet paper and was immediately attacked by young men in uniforms resembling those worn by members of the Hungarian Guard paramilitary organization.

As usually, Slovak neo-Nazi organizations also intensified their activities around March 14, which is the anniversary of establishing the wartime Slovak State. Last year, they sustained them throughout the first half of 2011, supporting a group of nationalistic historians in their effort to rehabilitate high officials of the wartime Slovak State. On June 10, 2011, the town of Rajec unveiled a bust of Ferdinand Ďurčanský, Slovak politician and a high representative of the Hlinka's Slovak People's Party, ignoring the opposition of local citizens led by the local Jewish religious community, the Slovak Union of Antifascist Fighters and other civic associations.

Public glorification of a person who had openly advocated suppression of human rights, anti-Semitism and is considered a symbol of the genocide provoked a reaction from the Government Council for Human Rights, National Minorities and Gender Equality. Its communiqué of June 28, 2011, called the move a mockery of all those who value the ideals of humanity, human dignity and universal human rights, alleging it was "not merely an unfortunate decision or a deep blunder". The Council called on the deputy prime minister for human rights and other government officials "to vest their authority into finding a solution that would correspond to the image of Slovakia as a decent democratic country that honours true heroes and luminaries, not protagonists of regimes that represent a sad chapter in our history."

Based on a motion filed by the Human movement, the police launched investigation into unveiling Ďurčanský's bust on account of suspected criminal offence of supporting and promoting groups aimed at suppressing fundamental human rights and freedoms. It is our earnest belief that responsible authorities will find ways to remove the shameful bust and prevent similar initiatives in the future.

On a more positive note, the Museum of the Slovak National Uprising (SNP) in Banská Bystrica deserves praise for its regular efforts to commemorate the Jewish and Romani holocausts. The first Memorial of Romani Holocaust was unveiled in 2005 next to the SNP Monument in Banská Bystrica; since then, seven similar memorials have been unveiled around Slovakia.

Despite these sporadic events, the policy of symbolic reconciliation continues to be underrated and even ignored by most Slovak politicians.

6. MINORITY LANGUAGE RIGHTS

Language rights are among the most important minority rights guaranteed by the constitution. According to the Slovak Constitution, "citizens who belong to national minorities or ethnic groups are guaranteed, under conditions stipulated by a specific law, the right to get a good command of the state language as well as

a) the right to be educated in their language;

b) the right to use their language in public."

The definition of language rights has been circumscribed primarily by the European Charter of Regional or Minority Languages adopted in 1992.[82] For the purpose of the Charter, the Slovak Republic officially recognizes the following languages as regional or minority: Bulgarian, Croatian, Czech, German, Hungarian, Polish, Romani, Ruthenian and Ukrainian.

The scope of language rights' implementation differs and depends on the size of particular minorities. The Slovak Republic agreed to provide most extensive guarantees of language rights with respect to the largest Hungarian minority. Ethnic Hungarians living in Slovakia are guaranteed the use of their mother tongue in pre-school education, in primary and secondary schools, in technical schools and teaching establishments, in university and higher education, in further education of adults, in judiciary, in civil and administrative actions, and have the right to at least one broadcast medium of mass communication. The second category of regional or minority languages with a smaller scope of guaranteed language rights' implementation includes Ruthenian and Ukrainian, followed by the third category that includes all the remaining languages.

During the second monitoring cycle of the European Charter of Regional or Minority Languages in Slovakia in 2009, the Council of Ministers recommended the Slovak Government to lower the 20-percent quorum required to exercise the right to use minority languages in official contact, improve teaching of all minority languages, enhance the quality of teachers' training, improve public television and radio broadcasting in all minority languages as well as publishing of newspapers, eliminate the practice of placing Romani children into special schools and introduce their education in Romani language.[83]

82 European Charter for Regional or Minority Languages, November 5, 1992, ETS no.148 (entered into force March 1, 1998), Slovakia ratified the Charter on September 5, 2001 and it came into force on January 1, 2002.

83 Recommendation RecChL (2009) Committee of Ministers on the implementation of the European Charter for Regional or Minority Languages in the Slovak Republic. See expert advice available at http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/SlovakiaECRML2_sk.pdf

The public debate on the implementation of language rights in Slovakia takes place primarily between two poles, i.e. the right of the majority nation to protect its own language that has the status of state language and the right of minorities' members to use their native languages. The public discourse about the space where state language must be used and when the use of minority languages should be accepted is a highly securitized issue, as it is documented by a discourse analysis by Alena Chudžíková and Tina Gažovičová that forms an annex to the present annual report.

The attempts to circumscribe spheres where particular languages should be used continued to be the focus of political debates and legislative changes also in late 2010 and early 2011. The incumbent ruling coalition drafted an amendment to State Language Act in an attempt to mitigate its restrictive tone introduced by the most recent amendment adopted in 2009 by the Robert Fico administration. Toward the end of 2010, Deputy Prime Minister for Human Rights, National Minorities and Gender Equality Rudolf Chmel officially presented the initial draft of an amendment to the law on the use of minority languages.

State Language Act stipulates an *obligation* to use Slovak language in a broadly defined public sphere and to some degree in the private sphere as well. The law decrees the use of Slovak in the so-called official contact, including areas such as keeping public agendas of churches and religious associations, which may be qualified as infringing upon religious freedoms. The law also decrees the use of Slovak in the field of geographic names in education system and other areas of public contact, for instance in television and radio broadcasting, print media and during cultural events. State language must also be used in "remaining areas" of public contact, including keeping financial and technical documentation of private organizations and statutes of societies and associations, advertising or marking consumer goods. The law goes as far as regulating situations that have nothing to do with the public sphere, for instance communication between patients and doctors. The only point of concern is whether this communication takes place in a municipality where the use of a minority language is allowed or not; in other words, mutual understanding between the doctor and the patient is irrelevant. While this kind of regulation defies common sense, we believe it is merely one of many areas and aspects of the law that cry for amending.

The principal question is whether government should be entitled to dictate the use of particular languages in concrete situations to its citizens. Or better yet, does Slovakia need such a law at all? State Language Act "protects" the language of the majority. Does a language that is spoken every day by most inhabitants of Slovakia need to be protected? Suppose there were no minorities living on Slovakia's territory. Would it be necessary to protect Slovak language against anybody then? Probably not and we believe that the law is meant to protect the Slovaks against minorities, particularly ethnic Hungarians and alleged "Magyarization", despite the fact that the total number of people declaring Hungarian origin decreases with each population census.

As far as its practical implications go, State Language Act does not protect members of the majority. By contrast, we believe it rather harasses them by dictating to them the language of communication. Much more problematic is that it practically facilitates assimilation of minorities. The ability of minorities to preserve their language identity is lower compared to the majority that is stronger in terms of number as well as economically, politically and socially. The assimilation pressure created by State Language Act significantly reduces minorities' ability to

preserve their respective mother tongues. For instance, minority schools are *required* to keep school documentation (in an unspecified extent) in the state language while they may merely *opt* to keep it in a minority language. Since this relatively aggressive bilingualization imposed by State Language Act is time consuming and financially costly, it is quite realistic to expect that some minority schools will simply give up in time and become bilingual and subsequently Slovak schools.

Last year, politicians failed to revive the public debate on abolishing State Language Act and possibly replacing it by a less aggressive enactment of Slovak as the official language; on the other hand, State Language Act was softened in 2011.[84] While the amendment slightly narrowed down the scope where state language must be used (i.e. leaving out the areas of transport, post and telecommunications, fire brigades and certain aspects of keeping school documentation at minority schools), it failed in several aspects as it refused to address a great number of truly fundamental problems. For instance, it did not enact a provision unambiguously stipulating that implementation of this law shall not restrict the scope of exercising minority language rights. Also, the amendment did not reduce minorities' excessive burden of maintaining mother tongues such as the obligation of minority broadcasters to equip their broadcasts with subtitles or reprise them in state language. Television and radio broadcasting in languages of national minorities is disproportionately more costly, which represents a heavy burden particularly for smaller private broadcast media. Last but not least, the amendment did not abolish the possibility to impose sanctions (i.e. fines) for violating this otherwise meaningless legislation, which apparently contradicts the Framework Convention for the Protection of National Minorities.[85]

6.1 AMENDMENT TO MINORITY LANGUAGE USE ACT

Since minority members often find it quite difficult to maintain and practice their mother tongue, international law stipulates an obligation for national governments to protect their use by law, i.e. pass legislation entitling or rather *allowing* minority members to use their native languages; on the other hand, international law does not require national governments to impose an obligation on their citizens to use the official or state language. Minority Language Use Act passed in 1999 was imperfect in many respects. For instance, it failed to enact the right of minority members to use their mother tongue in criminal proceedings. Furthermore, State Language Act along with other legal rules strongly restricted the use of minority languages.

The mutual relation between State Language Act and Minority Language Use Act has not been clearly settled yet. The principal question is how can the law designed to protect minority languages be effective unless it is made clear that its provisions are superior to those of State Language Act and as long as this restrictive law continues to apply in Slovakia. It is important to circumscribe the mutual relation between State Language Act and laws that enact minority rights, particularly in order to avoid *restriction of national minorities' language rights*. According to Article 1 Paragraph 4 of State Language Act, "unless this law stipulates otherwise, the use of languages of national minorities and ethnic groups is regulated by specific rules".[86]

84 Law No. 35/2011 that alters and amends Law No. 270/1995 on State Language of the Slovak Republic, as amended.

85 See the third periodical report of the Slovak Republic adopted on 27 May 2010 Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC / OP / III (2010) 004).

86 State Language Act, *supra* note 83.

Article 1.2 also stipulates that "state language has preference over other languages used on the territory of the Slovak Republic".[87]

Mutual application of both laws may lead to situations in which existing minority language rights are limited by the provisions of State Language Act. It also means that even a minor amendment to State Language Act may gradually curtail national minorities' language rights in the future.

6.2 NON-RECOGNITION OF RUSSIAN AS A MINORITY LANGUAGE

A serious shortcoming in the current language legislation is that Russian language is currently not recognized as a language that is protected in compliance with Minority Language Use Act. In 2003, ethnic Russians became the last officially recognized national minority in Slovakia. Since the country had signed and ratified the European Charter of Regional or Minority Languages before it recognized ethnic Russians as a national minority, Russian language does not officially rank among languages that are protected by the provisions of the language charter.[88]

It remains a question, though, why parliament did not place Russian language among officially recognized minority languages when it last amended Minority Language Use Act. The initiator of the amendment described minority languages that are protected by Article 1 Paragraph 2 of Minority Language Use Act as standardized or codified languages that have been *traditionally used* on the territory of the Slovak Republic by its citizens who belong to respective national minorities.[89] The provision on traditionally used languages has apparently been borrowed from the European Charter of Regional or Minority Languages, which in Article 1 reads: "a regional or minority language is a language that has been traditionally used on a certain territory of the country … and is different from the official language".[90]

In their numerous letters to government officials, representatives of ethnic Russians repeatedly argued that Russian language was a traditionally used language in Slovakia. They also rightly pointed out that in the sense of constitution-guaranteed minority rights it was irrelevant whether a minority language has or has not been traditionally used on Slovakia's territory.[91] The Slovak Constitution guarantees the right of minority members to use their native languages in official contact while leaving the particulars up to a specific law. If that law stipulates different conditions for the use of different minority languages without a good reason, a question arises whether it conforms to Article 12 Paragraph 1 of the Slovak Constitution, which guarantees fundamental rights and freedoms (including those of national minorities and ethnic groups) regardless of nationality.

One should take into account that the Slovak Constitution takes preference to international conventions, especially when it grants a greater scope of fundamental rights and freedoms. Also, one should note that another relevant international convention regulating minority rights, namely the International Covenant on Civil and Political Rights, in Article 27 guarantees

87 *Ibid.*
88 *European Charter of Regional or Minority Languages*, *supra* note 80.
89 Law No. 204/2011 that alters and amends the Law No. 184/1999 on the Use of Minority Languages in the wording of Law No. 318/2009 and amending and supplementing certain laws.
90 *European Charter of Regional or Minority Languages*, *supra* note 80.
91 Letters to the Prime Ministers are on the file with the author.

minority rights not only to citizens.[92] The non-recognition of one minority language (even on grounds that it has not been traditionally used) would hardly stand in the light of Slovakia's commitments ensuing from this convention. It is quite unlikely that a restriction of constitution-guaranteed minority rights that is based on the criterion of traditional usage would be qualified as justified unequal treatment by the UN Human Rights Committee. The non-recognition of Russian language for the purpose of protection by Minority Language Use Act appears as discrimination against citizens who feel as members of this minority.

The questions of why it took such a long time to recognize ethnic Russians as a full-fledged national minority and why their language is still not officially recognized are puzzling. According to representatives of ethnic Russians, the main reason was their unjustified linking to the communist regime and the Soviet Union. Perhaps the true reason is that the Russian minority emerged in Slovakia as a result of migration and its recognition along with its language would open the door to official recognition of other migrants and their languages. In other words, those national minorities that have already been recognized may fear that recognizing new minorities might reduce the scope of their legal protection as well as the funds allocated to it.

6.3 EDUCATION IN MINORITY LANGUAGES

The system of minority education has a relatively strong tradition in Slovakia. Like the right to use native languages in public, the right to education in native languages ranks among important constitution-guaranteed minority rights.[93] Based on the European Charter of Regional or Minority Languages, the greatest scope of this right is guaranteed for ethnic Hungarians whose education is fully financed by government from kindergarten to university. Financing of minority schools is based on the per capita principle, i.e. the more pupils a school has the more state budget funds it receives.

Per capita contributions from state budget are slightly higher for minority education (1.08% compared to regular schools) due to higher costs of providing education in minority languages. At all minority schools, state language is taught as a separate subject of Slovak language and literature. The curricula at minority schools are identical with those at regular schools, except minor dissimilarities in native language instruction, national minorities' literature and the content of the Slovak language curriculum where elements of world literature form part of the subject of mother tongue and literature. The schools are free to use textbooks of their own choice. However, those textbooks that are not listed by the Ministry of Education are not financed from the state budget.[94] Also, one should note that minority education is repeatedly subjected to restrictions through various projects introduced by nationalist politicians. A perfect example is the already mentioned bilingualism required by State Language Act.

A vivid debate in the context of education in minority languages revolves around education in Romani language, which is virtually non-existent for the time being. The public debate on the use of Romani language within education system takes place on two different levels: first, it is

92 Please see Chapter 3.1 on definition of minorities, above.

93 Article 34 Paragraph 2 Letter a) of the Slovak Constitution, *supra* note 28.

94 For further details, please see the Second Report on the Implementation of the European Charter of Regional or Minority Languages in the Slovak Republic (Bratislava, 2008) MIN-LANG/PR(2008)5; Article 12 and following of the Law No. 245/2008 on Upbringing and Education (Schooling Act) that Alters and Amends Certain Laws, as amended.

the informal use of Romani (e.g. by assistant teachers) as a tool to improve efficiency of teaching Slovak language; second, it is teaching of Romani language as a subject, i.e. on a level that is not instrumental to teaching other subjects.

On both levels, the public debate reflects one of basic dilemmas of minority rights protection, i.e. the impossibility to apply the uniform system of protection to minorities in different situations. Given the existing degree of segregating Romani children within the country's education system, establishing minority education system for the Roma threatens to take segregation to another, possibly worse level. The idea may even be abused by those who endorse the existing level of segregation, especially within the mainstream education system.

Nevertheless, we believe that the government cannot restrict this salient minority right in case of the Roma. That is why we believe that Romani parents should have the right and possibility to educate their children in Romani at state schools if they freely choose to.

7. FINANCIAL SUPPORT OF MINORITY CULTURES

Another important minority right guaranteed by the constitution is the right of national minorities to receive government's financial support for their cultures. This right is exercised through allocating grants to projects implemented by organizations that specialize in supporting and preserving minority cultures. In 2011, the responsibility for the mechanism of minority cultures' financial support was transferred from the Ministry of Culture to the Office of Deputy Prime Minister for Human Rights, National Minorities and Gender Equality.

In 2011, government earmarked €4 million for financing minority cultures that were distributed through subsidy schemes to the following programs: live culture, periodical press, non-periodical press and cultural policy. Within these programs, government disbursed subsidies to festivals, theatres, folklore, art, exhibition, literary and research activities, original works by ethnic authors, books on translation, social and art science literature, multicultural presentation activities, multicultural seminars for experts, research and conferences.[95]

When assessing government's support of minority cultures, the model of re-distributing state budget funds is particularly important. We positively view the fact that when distributing funds among recognized national minorities, government does not only take into account the results of the most recent population census that are apparently distorted, especially for minorities that have been and/or continue to be stigmatized and discriminated against. According to supplied information, the Section of National Minorities at the Slovak Government's Office applies the principle of affirmative action as smaller national minorities receive more funds than they would be entitled based solely on census results. On the other hand, the largest national minority (i.e. ethnic Hungarians) receives proportionately less funds. We evaluate this redistribution model very positively as it illustrates government's effort to contextualize minority policy, i.e. take into account particular minorities' specifics ensuing, for instance, from historical exclusion and stigmatization.

State budget funds are allocated to particular minority culture projects by a commission that forms an advisory body for the head of the Slovak Government's Office or the deputy prime minister for human rights and national minorities.[96] The commission usually comprises an ex-

95 The information is available on the official website of the Section for National Minorities at the Slovak Government's Office.

96 Article 2 Paragraph 1 of the Regulation of the Slovak Government's Office No. 21/2011 of January 24, 2011, that stipulates details regarding the make-up, decision-making, organization of labour and procedures of the commission in evaluating applications for provision of subsidies and criteria for evaluating applications for provision of subsidies in the competence of the Slovak Government's Office.

pert from a relevant field that may hail from the Slovak Government's Office, another state administration organ, a self-governance organ, another legal person or any physical person. Needless to say, commission members must not be in any relation to organizations applying for financial support. Last year, the recently established Committee for National Minorities and Ethnic Groups that represents officially recognized national minorities[97] was also responsible for approving the report on implementation of the subsidy program titled Culture of National Minorities 2011.

97 Please see the section 8.3, below.

8. MINORITY PARTICIPATION RIGHTS

Besides substantive rights that guarantee their cultural and language reproduction, the Slovak Constitution guarantees members of national minorities or ethnic groups the right to participate in decision-making in matters that concern them.[98]

The Constitutional Court interpreted the content of this constitution-guaranteed right very narrowly. According to the Constitutional Court, this right merely represents some sort of minimum protection against adoption of measures minority members have been unable to comment on in the course of standard legal procedures. It does not mean that the proposed measures require minority members' approval or consent or that minority members are guaranteed any concrete form and/or course of decision-making. According to the Constitutional Court, "this right safeguards members of national minorities and ethnic groups against the 'cabinet' style of adopting measures that concern them, i.e. against the situation in which members of a particular minority were denied a chance to learn about the content of prepared measures, express their opinion about them and attempt to advocate their idea of the best solution via legal means".[99]

According to this interpretation by the Constitutional Court, it would suffice if minority members were guaranteed a chance to comment on bills and amendments drafted by the cabinet or individual ministries just like any other citizen, during the so-called interdepartmental debate procedure. On the other hand, Article 15 of the Framework Convention for the Protection of National Minorities defines the content of minorities' participative right substantially more broadly as it guarantees "participation of national minorities' members in cultural, social and economic life as well as in public affairs, particularly those that concern them".[100] According to interpretation of Article 15 by the Council of Europe's advisory committee, the degree of minority members' participation in the country's economic and social life indicates the quality of democracy in society. Keeping minority members on the edge of society may lead to various forms of marginalization and social exclusion.[101]

98 Article 34 Paragraph 3 of the Slovak Constitution, *supra* note 28.
99 I ÚS 191/03 resolution of November 5, 2003.
100 Article 15 of the *Framework Convention for the Protection of National Minorities*,
101 Commentary No. 2 regarding effective participation of members of national minorities in cultural, social and economic life and public affairs adopted by the advisory committee for the *Framework Convention for the Protection of National Minorities* of February 27, 2008, p. 8

Effective participation applies to a broad spectrum of areas of economic and social life, including access to adequate housing, medical care and social protection such as social security and social assistance systems, access to the labour market and independent gainful employment.[102] The interpretation of Article 15 of the Framework Convention along with that of Article 4 on effective equality requires furthering so-called full and effective equality of national minorities' members in all areas of life. That means providing protection against non-discrimination while simultaneously adopting special measures aimed at eliminating structural or historical inequalities. In Slovakia, adoption of such measures is a notorious problem, partly due to the confusing interpretation by the Constitutional Court. We shall discuss this issue in greater detail in Chapter 9 below.

8.1 POLITICAL PARTICIPATION OF NATIONAL MINORITIES

Political participation of national minorities is left up to standard democratic processes, which means that the valid law provides for establishing of political parties on the ethnic principle but does not strive in any way to create equal opportunities in political competition, for instance by lowering the quorum for minority candidates to enter parliament or introducing quotas for minority members in parliament. On the contrary, the currently existing territorial arrangement of self-governing regions was enacted in order to reduce the chances of the largest territorially concentrated minority (i.e. ethnic Hungarians) to dominate in elections to self-governance organs in one of the regions.

Last year we did not register any initiative that would seek to improve political participation of national minorities. As mentioned earlier, tremendously positive trend was political parties' willingness to place Romani candidates on their candidates' lists for the early parliamentary elections in March 2012.

8.2 SPECIALIZED GOVERNMENTAL AGENCIES

According to interpretation of Article 15 by the Council of Europe's advisory committee, the minimum commitments ensuing from this minority right rest in creation of specialized governmental institutions that deal with issues concerning national minorities on the national, regional and local level.[103] These specialized agencies should not substitute the role of those government institutions that shoulder the main burden of minority protection. Their purpose is to "initiate and coordinate government policies in the field of protecting minority rights. They are thus considered important communication channels between government and minorities".[104]

In Slovakia, this type of organ was especially Office of Deputy Prime Minister for Human Rights, National Minorities and Gender Equality whose powers were significantly strengthened at the end of 2010 by the means of amending the Competence Act. It is an office that does not manage a ministry but "guides and coordinates discharging of tasks in the field of human rights, minority rights, equal treatment and gender equality. It monitors implementation and protection of human rights including the rights of national minorities as well as equal treatment and gender equality laws. It helps discharge tasks in the field of upbringing and

102 *Ibid.* pp. 10 – 11.
103 *Ibid*. p. 22.
104 *Ibid*. pp. 22 – 23.

education including minority upbringing and education, tasks in the field of supporting culture of national minorities and tasks related to redistribution of funds earmarked for implementation and protection of human rights, supporting culture of national minorities and furthering gender equality. It participates in discharging tasks concerning television and radio broadcasting in minority languages".[105]

The Office of Government Plenipotentiary for Romani Communities is another specialized governmental agency that operates a network of regional branches. It acts as an advisory body with respect to the cabinet; it reports directly to the prime minister and its position was also partly strengthened by the change in statutes in 2010.[106] The Office of Government Plenipotentiary is primarily a coordination body that drafts strategic documents and implements programs financed from EU structural funds.

Tackling the complex problems of Romani communities, particularly the marginalized ones, requires adoption of systemic measures that involve all ministries. It would have been impossible to create an office that would be charged with anything more than coordination. Creating a separate ministry for Romani affairs would carry the risk that all other ministries would soon ignore the issue; such a ministry would clearly be unable to tackle the issue from all aspects. Integration of the Roma requires creating conditions for the integration and changing the basic philosophy of majority institutions, for instance education system. On the other hand, in a situation when other ministries practically ignore the problems of excluded Romani communities, the Office of Government Plenipotentiary is virtually helpless in carrying out crucial changes. It only has real influence over tackling very urgent local problems such as demolition of illegal Romani shanty houses and settlements.

Recently a question arose whether the post of government plenipotentiary for Romani communities should be filled by members of the Romani minority or not. Ever since it was introduced in 1999 until 2010, the post had been held by persons who openly declared their Romani origin. The current government plenipotentiary who was appointed in 2010 declares Slovak origin, which we do not view positively. Appointing a person of Romani origin to the post conveys a very important symbolic message. After all, filling these posts by members of minorities ensues from the basic principle of minority rights, which says it is necessary to encourage minority members to decide about their affairs themselves, including the scope and content of exercised rights.

8.3 CONSULTATIVE AND ADVISORY BODIES

According to the Council of Europe's advisory committee, in countries that have not enacted minority self-governance and/or collective rights that would directly ensure participation of national minorities, it is crucial to create strong and stable consultative organs. The principal mission of these bodies is to establish a dialogue with minorities and allow them to participate in decision-making on matters that concern their communities.

Last year marked a significant improvement in this area establishing advisory body called Government Council for Human Rights, National Minorities and Gender Equality that replaced the

105 Article 1 Paragraph 1 of the Law No. 403/2010 that altered and amended the Law No. 575/2001 on Organization of Government and Organization of Central State Administration, as amended.

106 Please see the *Statutes of the Slovak Government Plenipotentiary for Romani Communities* approved on December 17, 2003, as amended.

previously existing Government Council for National Minorities.[107] The Council has created a number of committees, including the committee for national minorities and ethnic groups as a *permanent expert organ for issues concerning national minorities and ethnic groups*.

The Committee for National Minorities and Ethnic Groups should not be merely a body of experts but primarily advisory and to some extent political organ. It is the only government institution to guarantee that seats reserved for representatives of minorities will be truly held by them and that they will not be filled by the majority in line with its often distorted ideas of who should represent particular minorities.

Given the non-existence of minority self-governance (which also includes democratic election of minority representatives and leaders) it is noticeable how creators of the new institution dealt with election of committees' minority members so that they represent individual minorities as truthfully as possible.

Those committee members who are supposed to represent minorities shall be elected by so-called electoral assemblies that comprise "organizations that demonstrably operate in the field of supporting, preserving and developing culture and cultural identity of members of national minorities".[108] These organizations shall nominate their candidates through electoral assemblies that differ for each national minority. Each registered minority organization is allowed to nominate as many candidates as the number of committee seats earmarked for each particular national minority. Each organization shall nominate its candidates along with their substitutes and simultaneously delegate electors who are entitled to elect representatives at the electoral assembly. All candidates must be Slovak citizens with impeccable criminal records.[109] The secretariat of the committee shall issue registration calls at least ten working days before the electoral assembly. Voting is by secret ballot.[110]

This election model guarantees a very high probability that elected to the committee will be those who feel affiliated to particular national minorities and ethnic groups and are perceived as such by other members of the minority in question. The first elections according to the new key were held in May 2011.

Besides elected representatives of national minorities, the committee comprises government officials. The post of committee chairman was held by the deputy prime minister for human rights, national minorities and gender equality; the post of secretary was held by an employee of the Section of National Minorities at the Slovak Government's Office; finally, the post of vice-chairman was held by an elected member that was appointed by the chairman acting on a proposal by other committee members. The committee also included state administration officials such as the general director of the Section of National Minorities and general directors of applicable sections at interior, education, culture, social affairs and justice ministries. The

107 Please see the Statutes of the Government Council for Human Rights, National Minorities and Gender Equality approved as the Slovak Government's Resolution No. 158/2011 of March 2, 2011, as amended by the Slovak Government's Resolution No. 346/2011 of June 1, 2011.

108 *Ibid*.

109 The original design was that all candidates must be Slovak residents. Limiting candidates' eligibility to Slovak citizens indicates that the Committee does not have an ambition to evolve into a participative organ representing newly-emerged communities of immigrants in the future.

110 Standing order of electoral assemblies of the Committee for National Minorities and Ethnic Groups at the Slovak Government's Council for Human Rights, National Minorities and Gender Equality that was issued by the chairman of the Committee for National Minorities and Ethnic Groups on April 27, 2011.

committee could summon to its sessions various experts who specialized in issues concerning national minorities and their rights. The right to vote rested only with elected committee members who represented minorities and the committee chairman. The number of committee members representing each of the 13 duly acknowledged national minorities was set according to their total number established by the most recent population census.[111]

The committee was vested primarily with the power to pursue activities aimed at enhancing protection of minority rights and participated in elaboration of reports for international monitoring organs that focused on minority protection, particularly the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. Last but not least, it cooperated with public administration organs, academic institutions and scientific establishments. The committee was to issue annual reports to evaluate government's support of national minorities' culture and to monitor the use of minority languages and submit them for approval to the Slovak Government's Council for Human Rights, National Minorities and Gender Equality.

The committee adopted a principle that committee sessions shall not discuss issues concerning a particular national minority unless members or substitutes representing the minority in question are present. When voting on minority affairs, the votes of committee members representing the minority in question shall be decisive.

The described model of implementing minority rights differs from autonomous self-rule that treats national minorities as collective legal subjects. Within the framework of existing individual minority rights, the model strives to maximize legitimacy of minorities' elected representatives from the viewpoint of their representativeness. The committee lacks any fundamental powers that would for instance allow it to veto the cabinet's legislative initiatives or policy documents that threaten to have an adverse effect on national minorities or minority rights standards. Though it is rather imperfect, the model allowed members of national minorities to exercise their participative right through associations, interest and non-profit organizations.[112] It was completely up to committee members to use their potential and contribute to improving government's minority policy, if only with respect to already acknowledged national minorities as opposed to newly-created communities of immigrants.

111 The committee comprised five representatives of the Hungarian minority, four representatives of the Romani minority, two representatives of the Czech minority, two representatives of the Ruthenian minority, two representatives of the Ukrainian minority, one representative of the German minority, one representative of the Polish minority, one representative of the Moravian minority, one representative for the Russian minority, one representative for the Bulgarian minority, one representative for the Croatian minority, one representative for the Jewish minority, one representative for the Serbian minority (the number of committee members representing the Roma was increased by one after a suggestion by the government plenipotentiary for Romani communities who objected that population censuses did not correctly establish the actual size of the Romani minority) (Statutes of the Committee for National Minorities and Ethnic Groups adopted by Resolution No. 3 of the Slovak Government's Council for Human Rights, National Minorities and Gender Equality of April 12, 2011).

112 Please see committees that decide on financing culture.

9. POSITIVE MEASURES AIMED TO ADDRESS SOCIO-ECONOMIC INEQUALITIES

The principle of respecting human dignity requires not only creating conditions for equal access of minority members to culture and language but also eliminating social and economic inequalities. This calls not only for enacting a general ban on discrimination in social and economic area but also for achieving actual or material equality.[113] A generally accepted tool to eliminate such inequalities is affirmative action.

Unfortunately, this tool remains largely misunderstood by government authorities in Slovakia. In 2003, the cabinet adopted a strategy titled *Basic Theses of Integration of Romani Communities in Slovakia*[114] that was based on affirmative action on the ethnic and socio-economic basis. It expressed government's ambition to tackle abysmal disparities and extreme poverty, particularly in marginalized Romani communities. A year later, parliament provided the necessary legislative framework to adopt affirmative action measures by passing Antidiscrimination Act.

Paradoxically, several months upon passing Antidiscrimination Act the cabinet filed a motion with the Constitutional Court, asking it to examine constitutional conformity of its provision that allowed for adoption of affirmative action measures. The contentious provision read as follows: "…in order to guarantee equal opportunities in practice and to enforce the principle of equal treatment, special equalization measures may be adopted to prevent disadvantage ensuing from racial origin or ethnic origin".[115] In October 2005, the Constitutional Court found the contentious provision of Antidiscrimination Act incongruent with several provisions of the Slovak Constitution and abolished its validity.[116]

The ruling is unfortunate and problematic in a number of respects. On the one hand, the Constitutional Court observed that the material approach to equality is by itself consistent with

113 Please see Article 4 of the *Framework Convention for the Protection of National Minorities*, February 1, 1995, CETS, No. 157.

114 Slovak Government's Resolution No. 278/2003 of April 23, 2003.

115 Wording of the abolished Article 8 Paragraph 8 of the then valid Antidiscrimination Act, *supra* note 45.

116 Ruling of the Constitutional Court, US 3/2001 Coll. of December 20, 2001 and the majority decision on the constitutionality of temporary equalizing measures, Ruling of the Constitutional Court US 539/2005 Coll of October 18, 2005..

the rule of law principle [117] as it is based on "universal values of human dignity, autonomy and equal worth of every individual"[118] and that "persons in unequal situations should be treated in a way that captures their unequal status".[119] The verdict even admitted that the rule of law requires observance of equal treatment in practice.[120] Such derogation of the general ban on discrimination assumes that the used means are inevitable and proportionate to achieve the desired goal.[121]

On the other hand, the Constitutional Court held that a failure to accentuate the temporary nature of such measures might lead to reverse discrimination against persons and subsequently to violation of the universal principle of equality.[122] The Constitutional Court concluded that the contentious provision allowing for "adoption of affirmative action measures that also include equalization measures constitutes privileging (i.e. affirmative action) of persons based on their racial or ethnic origin"[123] and abolished it as unconstitutional. The Constitutional Court confused the qualitatively different tool of so-called affirmative action, which is of permanent nature in line with the Slovak Constitution, with temporary equalization measures.

One may only hope that two differing legal opinions simultaneously issued by Constitutional Court justices will prevail over time as they are more convincing. A dissenting opinion jointly issued by Constitutional Court judges Ľudmila Gajdošíková, Juraj Horváth and Alexander Bröstl was based on the established judicature of the Constitutional Court in the sense that out of two possible interpretations of the contentious provision (i.e. constitutional and unconstitutional) it preferred the one that was congruent with the Slovak Constitution.[124] This justified their argumentation from the viewpoint of international law, which provided the ground to interpreting the contentious provision in a way that conforms to the constitution.

Gajdošíková, Horváth and Bröstl emphasized that the contentious provision of Antidiscrimination Act strove to seek constitutionally acceptable solutions to Slovakia's international commitment to furthering universal principles of equality. They argued that when examining constitutional conformity of the contentious provision one ought to "examine the solution proposed by the contentious provision in the context of other international conventions that are binding for the Slovak Republic and that are similar in type, content and subject-matter".[125] When examining the contentious provision and interpreting its conformity with the constitution, the judges based their opinion on international documents such as the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the International Covenant on Civil and Political Rights (ICCPR) and others, which led them to the conclusion that the contentious provision was constitutional.

According to dissenting opinion of judge Lajos Mészáros, an abstract analysis of the challenged provision is in principle impossible. Abstract examination of the provision that allows for adoption of equalization measures suggests that it is unable to come into contradiction with the

117 *Ibid*. paragraph 22.
118 *Ibid*. paragraph 16.
119 *Ibid.* paragraph 15.
120 *Ibid.* paragraph 22.
121 *Ibid*. paragraph 17.
122 *Ibid*. paragraph 22.
123 *Ibid*. paragraph 25.
124 Differing opinion by Gajdošíková et al; *ibid.,* paragraph 2.
125 *Ibid*. paragraph 1.

principle of justice and interfere with human dignity of others. Only a concrete measure might come into such contradiction.[126] In support of legality of measures in favour of racially and ethnically defined population groups, Judge Mészáros observed that by signing and ratifying the CERD Slovakia had incorporated its provisions into its own legal order.[127]

The problematic ruling by the Constitutional Court has had a negative impact on government policies with respect to Romani communities. Since then, state administration organs have refused to adopt affirmative action measures on the ethnic basis and have viewed segregated Romani settlements as socially disadvantaged communities. A provision on equalization measures that would comply with international and European law has never made it back to Antidiscrimination Act. The currently valid wording of the law merely features a confusing provision that allows for adoption of temporary equalization measures on grounds of social and economic disadvantage as well as disadvantage ensuing from age and disability.[128] Furthermore, the law's wording is cumulative and may therefore apply to non-existent categories of persons.

In this context, one should note that the failure to act and adopt measures aimed at preventing discrimination violates the right to equal treatment. It remains unclear why these measures should not be adopted on the ethnic basis, especially given the fact that the reason for inequality is predominantly ethnic as well as the fact that the Slovak Republic has ratified the CERD that envisages adoption of such measures. Last but not least, part of the provision is problematic as it explicitly grants the right to adopt these measures to state administration organs but not to self-governance organs or private subjects that are often in a better position to implement them.

Last year we did not record any attempts to adopt temporary measures or policies aimed at eliminating socio-economic inequalities that would target the Roma who are clearly the most marginalized population group in the long term. In the course of 2011, public administration organs continued to use substitute categories such as "socially disadvantaged persons" or even a collective approach based on the definition of "socially disadvantaged communities".[129]

At the same time, social disadvantage as the reason to adopt temporary equalization measures may be abused to rationalize segregation practices. In a lawsuit against the elementary school with kindergarten in Šarišské Michaľany that segregated Romani children in special classes, the defendant used the argument of the children's social disadvantage. According to school officials, "the classes that are attended exclusively by children of Romani origin were not created out of racial reasons but in order to implement a measure of equalization character. The intention of the defendant (i.e. the school) was to apply individual approach to children from socially disadvantaged environment that face problems coping with their schoolwork. As far as the individual approach goes, the defendant stated that children from these classes have less homework and go through less school work at a slower pace in order to cope with it. The defendant has not demonstrated application of any other special education and teaching methods."[130]

126 Differing opinion by Mészáros; ibid, paragraph 3.
127 *Ibid*. paragraph 6.
128 Article 8 of Antidiscrimination Act, as amended, *supra* note 45.
129 For further details on the rejected bill, please see Jarmila Lajčáková, "Bill on Socially Excluded Communities May Have Undesirable Implications" in *Minority Policy in Slovakia*, 2/2011; available at: http://www.cvek.sk/uploaded/files/2011_08_mensinova_web.pdf .
130 Ruling, 25 C 133/10-229 of December 5, 2011, p. 9.

The school maintained that it had merely implemented equalization measures provided for by the law. The case judge turned down this argument, partly because the school had not been eligible to adopt such measures. School officials failed to demonstrate that adoption of the measure had eliminated any handicap and was adequate to the desired goal. Based on further evidence indicating that the Romani children had been segregated even during breaks and that their school results had not been monitored, the case judge qualified this segregation as illegal discrimination.

The vivid debate that followed the publication of the verdict brought views that segregation of Romani children could have been justified by Article 107 Paragraph 1 of Schooling Act that provides for education of children from disadvantaged environment through specific methods and forms for which schools are entitled to create individual conditions.[131] According to Article 107 Paragraph 3, such individual conditions include education according to individual teaching programs, adjusted organization of upbringing and education, adjusted means of upbringing and education and application of specific methods and forms of upbringing and education. The case judge correctly observed that this interpretation did not have any footing in Anti-discrimination Act, international human rights conventions or in the Slovak Constitution. Segregation based on racial and/or ethnic origin is subject to strict scrutiny, since origin is a very suspicious reason for directly or indirectly different treatment.

Despite the verdict, it seems that segregation of Romani children within the mainstream education system is becoming a widely applied and publicly accepted standard. Most importantly, though, it illustrates the perverted consequences of policies that hide behind the concept of so-called social disadvantage.

9.1 REVISED NATIONAL ACTION PLAN FOR THE DECADE OF ROMA INCLUSION (2005 – 2015) FOR THE PERIOD OF 2011 – 2015

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.[132]

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".[133] According to Government Plenipotentiary for Romani Com-

131 Article 107 Paragraph 3 of the Law No. 245/2008 on Upbringing and Education (Schooling Act) that alters and amends certain laws.

132 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.

133 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.

munities 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".[134] 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.

However, the Action Plan is problematic due to four main reasons. 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 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.

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.[135]

While we are 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.[136] 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.

134 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.

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

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

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.[137] Ethnically sensitive data are the alpha and omega of policy makers' ability to adopt effective antidiscrimination policies.[138] Instead, our politicians and 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.

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 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.

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

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

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

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 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 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.[139]

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'.

9.2 MEASURES AIMED AT IMPROVING EDUCATION OF ROMANI CHILDREN: A SUMMARY OF RESEARCH FINDINGS

Within Slovakia's education system there is a variety of measures aimed at improving education of children with special educational needs, particularly children from marginalized Romani communities. Unfortunately, available data on the overall educational status of the Roma do not seem to indicate any positive change in this area.[140] The Centre for the Research of Ethnicity and Culture (CVEK) carried out a research project examining to what extent were selected supportive measures in line with basic principles of inclusive education. The survey was conceived as a qualitative one and consisted of in-depth interviews and personal observations at ten primary schools located in different regions of Slovakia. The project was financially supported by the Slovak Government's Office as it formed part of its subsidy program titled Support and Protection of Human Rights and Freedoms.

We approached our survey from the theoretical perspective of inclusive education. At the heart of its definition lies a concept that it is possible to educate all children together while applying individual approach. This brings diversity into a classroom, which is beneficial for children's development and is perceived as an opportunity rather than a threat. Inclusion is

139 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.

140 Jarmila Filadelfiová, Daniel Gerbery & Daniel Škobla, D., *Správa o životných podmienkach rómskych domácností na Slovensku* [Report on Living Conditions of Romani Households in Slovakia] (Bratislava: UNDP, 2006)

a process that is simultaneously aimed at increasing children's participation and eliminating barriers in education.

Our principal goal was to find out whether existing measures implemented in the framework of inclusive education contribute to respecting specific educational needs of Romani children. In particular, we focused on the following concrete measures: zero grades, assistant teachers, multicultural education, individual integration, Romani language and model of financing.

Research Findings

Zero grades[141] and assistant teachers[142] currently form the 'backbone' of most policy measures aimed at equalizing chances of children hailing from marginalized Romani communities. Both tools were experimentally introduced in the 1990s and have been a solid part of education legislation since 2002.

From the viewpoint of schools, these measures are very helpful in education of Romani children. A vast majority of pedagogical employees seems to agree that **zero grades** are indispensable to the effort to equalize the shortcomings Romani children bring from home. According to them, zero grades help 'normalize' Romani children to the point they are able to participate in further education process.

Since zero grades are in essence a tool of Romani children's adaptation into education system, they are unable to support inclusion processes on their own. At the same time, their significant deficiency is that they form part of existing segregationist practices. All examined schools that divide children into separate classrooms use zero grades as the cornerstone of their segregation model. It is an institution specifically designed for children from socially disadvantaged environment; in practice, though, the key of distinction is often a combination of social deprivation and ethnic affiliation. In an optimum situation, zero grades might support the integration process (i.e. physical presence of Romani children at schools), provided of course that they do not become segregated in higher grades; besides, that alone is not sufficient to achieve their inclusion.

Assistant teachers represent a typologically different tool that has a potential to take pupils' individual needs into account and diversify pedagogical approach to them, which offers great possibilities in terms of creating an inclusive environment at the school. Crucial to the fulfilment of their inclusive function is that they help primarily children as opposed to teachers. Also, they should not be reduced solely to 'peacekeepers' but should focus on doing everything that helps children be more effective.

The question of who should be the primary beneficiary of assistant teachers is closely related to the question of whether Romani children should be taught by Romani pedagogues. The fact that someone is Roma is by no means sufficient characteristics, let alone pedagogical qualifi-

141 According to the valid Schooling Act, zero grades are designed for children that have reached the age of six but have not attained schooling capacity and hail from socially disadvantaged environment. These children may be placed into zero grades as an alternative to postponing their regular school attendance, provided that their lawful representatives agree (Law No. 245/2008 on Upbringing and Education (Schooling Act) that Alters and Amends Certain Laws, Article 19).

142 According to valid legislation, the main purpose of assistant teachers should be "creating equal opportunities in upbringing and education" and overcoming "architectonic, information, language, health, social or cultural barriers" (Law No. 317/2009 on Pedagogical Employees and Professional Employees that Alters and Amends Certain Laws, Article16 (1)). The position of assistant teachers is further regulated by Education Ministry Regulation No. 437/2009.

cation; however, Romani assistant teachers have a potential to interconnect pupils and their families on the one hand and schools and public institutions on the other. They may also serve an example as, in the words of one teacher and member of an external expert group, *"the Roma are not alone in need of positive Romani examples"*. Romani members of teaching staffs may be very helpful in eliminating social stereotypes and offering positive examples, not only to Romani pupils but also to non-Romani ones, their parents and those non-Romani teachers who have given up hopes that their Romani pupils are capable of attaining higher education.

At the same time, Romani pedagogues (i.e. assistant teachers, teachers, principals) are free to introduce the **Romani language** into education process and school environment.[143] In survey interviews, the Romani language appeared primarily in the context of overcoming the language barrier encountered by Romani children upon enrolment. *"Certainly, had they had a good command of Slovak, their school results would have been much better,"* said a school principal from the Prešov region.

At schools where some members of the teaching staff have a good command of Romani, the language is used mostly to help children overcome the initial language barrier upon enrolment. All pedagogues who speak Romani and use the language to teach their pupils speak Slovak were very happy about their advantage; yet, some of them shared with us their inner feeling that such a method was not completely correct or desirable. Several respondents even spontaneously apologized for applying it, assuming that the authorities might not fully accept it, which may be illustrated by the following quotes: *"Perhaps the inspection would not like to see it all that much,"* said one school principal from the Košice region. *"I never openly use Romani during classes because it is not a language that should be used to communicate in a classroom,"* seconded one Romani assistant from the Bratislava region.

From the viewpoint of inclusive education it is absolutely acceptable, even desirable, that the school helps pupils overcome the language barrier by using their own mother tongue. Sensitive inclusion of the Romani language into the education process could be perceived as a natural part of multicultural education that was introduced in Slovakia at the beginning of the 2008/2009 academic year as a cross-section subject.

Multicultural education emerged as a critical reaction to the mono-cultural and Europe-centric approach to education. Mono-cultural education produces individuals who perceive the world exclusively from the perspective of their own culture and therefore are unable to accept diversity and other cultural and/or value systems as equal to theirs. In its essence, multicultural education has a strong potential to spark and fuel inclusive processes in schools. Its cross-section character is capable of transforming the education curriculum so that it teaches the children to respect differences between them as something that benefits the entire community. In other words, all children are treated as equal members of the community and are not forced to hide the language or cultural identity they brought from home.

While scouting the schools, our researchers often encountered with respondents' amazement over questions concerning multicultural education. Many of them were unable to define exactly what should be its purpose. Multicultural education in practice is often based on so-called *positive stereotypes*, i.e. romantic notions of Romani children and the Roma in general as unrestrained musicians and dancers. The problem is that it is generally assumed that *all* Ro-

143 Since the number of schools that teach Romani language as a separate subject is very low, the survey focused rather on informal use of Romani in the school environment.

mani children like to sing and dance, that *they do best* at these activities and therefore *should be encouraged* to specialize in them. This approach tends to pigeonhole children into certain categories and subsequently cast them into expected social roles. That is in direct contradiction with the basic concept of inclusive education, which is respecting children's individual talents and needs. Of course, this is not to say that music, dance and art be eliminated from the system of multicultural education. But the greatest risk of this misconception is that it reproduces stereotypical notions about Romani children, strengthens division categories of 'us' and 'them' and interprets Romani culture as perceived by non-Romani teachers.

The **model of financing** education at primary schools features several tools designed to improve conditions for educating children from socially disadvantaged environment, particularly Romani children. Of all existing financial tools,[144] our research focused on those that may be regarded inclusive to at least some extent, i.e. they contribute to equalizing chances of various children to obtain adequate education. Naturally, financial tools are not enough to introduce inclusive education on their own. A classic example in this respect is boarding allowance, which is unable to guarantee that all children will eat together in the same refectory.

The financial tools that in our opinion have the potential to further inclusive education are especially subsidies allocated to improving education conditions of children from socially disadvantaged environment as well as boarding and school things allowances. While disbursing of subsidies increases schools' administrative burden, this disadvantage is outweighed by positive side effects. For instance, the boarding allowance has improved Romani children's school attendance as for many of them it is the only chance to get a hot meal every day. Despite all reservations, the financial tools may be evaluated positively because they are aimed at adapting the school environment to children's needs and not the other way round. After all, children cannot influence what family they come from and whether this family is able to provide sufficient conditions for their education – be it boarding, clothing or school things.

Individual integration is a specific tool designed for pupils with special educational needs. It allows for them to be educated together with other children based on individual educational plans. Over the past ten years, the total number of individually integrated children increased from approximately 7,000 to about 25,000. A substantial part of that increase represented children with teaching disorders (especially dyslexia, dysgraphia or dyscalculia) and behaviour disorders (e.g. activity and attention defects).[145]

According to most interviewed teachers, the main advantage of individual integration is that it places different requirements on individual children; however, it is crucial to establish whether teachers perceive individual integration as a benefit for the child or for themselves, i.e. smooth education process and reduced workload. When children are merely tolerated in regular classes and teachers feel that lowered requirements placed on the children in fact equal less work for themselves, it has very little to do with inclusive education; on the other hand, if lowered requirements defined by an individual teaching plan mean adequate attention to children's

144 Financial tools designed for the support of children from socially disadvantaged environment can be divided into direct and indirect, normative and non-normative, etc. For further details, please see Gallová Kriglerová, Elena (ed.), 2010. *Žiaci zo sociálne znevýhodneného prostredia na Slovensku a v zahraničí* [Pupils from Socially Disadvantaged Environment in Slovakia and Abroad]; available at: http://www.governance.sk/index.php?id=1834

145 Monitoring of individual integration of children and pupils with special educational needs (UIPŠ, 1996 – 2010).

individual needs, then we may speak of an inclusive approach. Needless to say, the teacher in this regime is required to work more, not less.

Inclusive education should be reflected in the school's general atmosphere, the teachers' attitudes and mutual cooperation between all actors of the education process, including children themselves. The measures such as assistant teachers, multicultural education and the use of Romani language have a strong potential to catalyze the process of including Romani children into majority schools. It is essential that the process respects the principles and values of inclusive education. The main reason why the existing tools fail to produce desired results is lingering of the general education model that views children as the basic reason for their failure in school (i.e. "the child is the problem" approach). Instead of seeking adequate forms of education that would respect children's individual talents and needs, the education system uncompromisingly forces them to adapt to its requirements. Consequently, those children that do not comply with these standards continue to fail in school. If the overriding goal is to improve education status of children from marginalized Romani communities, the country's education system must try to achieve that goal through systemic measures. As long as the system waits for the children to change, it simply passes the buck for its own failure.

10. LIMITS TO EXERCISING MINORITY RIGHTS: THREATS TO SOVEREIGNTY, TERRITORIAL INTEGRITY AND DISCRIMINATION AGAINST THE ETHNIC MAJORITY POPULATION

Article 34 of the Slovak Constitution does not only guarantee the rights of members of national minorities and ethnic groups. It also anchors the principle of protecting the majority against minorities according to which "exercising the rights of citizens belonging to national minorities and ethnic groups, which are guaranteed by this constitution, must not lead to jeopardizing sovereignty and territorial integrity of the Slovak Republic and to discrimination against the rest of the population".[146]

According to constitutional lawyer and former Constitutional Court judge Ján Drgonec, it is a so-called balancing provision that in his opinion had not been completely correctly incorporated from the viewpoint of constitution articles' system.[147] This provision is a relatively explicit example of the securitization perspective of minorities and their rights and has been described in earlier chapters. Based on this definition, minorities are portrayed as disloyal and minority rights represent a potential threat to the majority. This rather unfortunate provision carries a strong anti-minority symbolism that legitimizes the trend toward securitization.

At this point, it is important to note that very few human rights are absolute. Implementation of human rights often requires mutual balancing of conflicting interests. In some cases, seemingly restricting the majority's rights may be inevitable for the protection of minorities and their capacity of cultural reproduction. For instance, it is legitimate to put limits on the redistribution system of financing minority cultures in order to prevent the majority from abusing

146 Article 34 Paragraph 2 Letter c of the Slovak Constitution, *supra* note 28.

147 Ján Drgonec, *Ústava SR: komentár* [Constitution of the Slovak Republic: A Commentary], (Šamorín: Heuréka, 2007) p. 402.

it. A similarly legitimate restriction might be applied to majority children's access to minority schools.

Kymlicka calls these restrictions "external protections" and in his theory they represent a legitimate means to preserve minorities' dissimilarities. A much more serious issue in the public discourse on minority rights is what he calls "internal restrictions" as they may limit individual rights of minority members. According to Kymlicka, these restrictions are unacceptable. Also, international law relatively unambiguously outlaws such ways of exercising minority rights that curtail fundamental human rights, including (but not limited to) those of minority members.[148] A good example is curtailing the rights of women for the sake of preserving culture.

The issue that has been discussed rather exhaustively is the situation when external protections and internal restrictions are based on identical rules, such as in determining who is or is not a member of the minority. For instance, if fluency in a minority language was considered an objective characteristic of the minority members, it could act as a safeguard against the inflow of majority members. On the other hand, it may curtail individual rights of those members of the minority who have lost command of the language (e.g. due to government's relatively aggressive assimilation policies in the past) but sincerely consider themselves members of the minority. This issue is very likely to resurface in the future as Slovakia will consider ways to improve support of minorities through increasing their participation in deciding on matters that concern their communities. Basically, every dilemma has potential solutions. The inspiration should be sought in countries that are successfully trying to implement projects aimed at improving minority policy. The best way is not to seek abstract solutions but tackle concrete problems together with those involved.

148 Please see Kymlicka 1995, *supra* note 24, pp. 34 – 44.

11. MINORITY POLICY AND EMERGING COMMUNITIES OF MIGRANTS

Slovakia's policy with respect to emerging communities of migrants is not part of the system to protect national minorities and ethnic groups.[149] Unlike members of national minorities, migrants are left to preserve their culture and language at their own costs.

Slovakia does not apply a systemic approach to financing immigrants' cultural activities as it is the case with respect to officially recognized national minorities. In compliance with the freedom of association, immigrants are free to establish cultural societies in order to preserve and develop their cultural identities. Occasionally, they may obtain a rather limited financial contribution from the Culture Ministry's fund designed to support culture of disadvantaged population groups, from the European Integration Fund administered by the Ministry of Interior, from subsidy programs of the Office of Deputy Prime Minister for Human Rights, National Minorities and Gender Equality aimed at supporting human rights or via self-governance organizations (e.g. regional self-governments).

Likewise, Slovakia does not financially support bilingual education or teaching in immigrants' native languages. Some communities of immigrants view the limited possibilities of children receiving education in their mother tongue as a problem. This problem is perhaps the most urgent in the case of the Vietnamese minority whose members are beginning to witness emergence of intergenerational language barriers. The parents who usually work all day communicate in Vietnamese and do not speak Slovak. However, their children are often in the care of Slovak-speaking child minders or attend Slovak schools. As a result, the parents and the children are gradually ceasing to understand each other.[150] Last academic year, one primary school in the Bratislava district of Nové Mesto began to cooperate with the local Vietnamese community and opened an interest group where children are taught Vietnamese. The school provided the classroom while Vietnamese parents provide the money.[151] This example shows

149 Please see definition of national minorities in Chapter 3 above.

150 Elena Gallová-Kriglerová – Jana Kadlečíková, "Kultúrna integrácia migrantov na Slovensku" ['Cultural Integration of Migrants in Slovakia'] in Elena Gallová-Kriglerová – Jana Kadlečíková – Jarmila Lajčáková (eds.): *Migranti: Nový pohľad na staré problémy* [Migrants – A New Look at Old Problems: Multiculturalism and Cultural Integration of Migrants in Slovakia], (Bratislava: CVEK, 2009) pp. 19 – 30.

151 "Malí Vietnamci u nás strácajú materčinu" ['Small Vietnamese Losing Mother Tongue Here'], *Sme* daily, April 14, 2011; available at: http://www.sme.sk/c/5850889/mali-vietnamci-u-nas-stracaju-matercinu.html.

that perhaps the most viable way to effect a change in this area will be the grass root model, while tackling practical problems on the local level.

Although this example indicates that even emerging communities of immigrants are interested in preserving their cultural dissimilarities[152] and they would find achieving that goal significantly easier if their minority rights were recognized, the authorities continue to treat them differently. They apply a model of integration that is based on "mutual adaptation in the integration process in which foreigners contribute to forming common culture and the majority community simultaneously respects and supports diversity".[153] Although the Slovak Government officially disassociates itself from the assimilation model, its integration concept remains misunderstood in many respects since most measures in the field of education are clearly aimed at encouraging foreigners to master Slovak language.[154] According to a report on discharging tasks ensuing from the *Strategy of Foreigners' Integration in the Slovak Republic* in 2011, foreigners' integration remains an unclear concept for public administration. At the same time, the non-governmental sector is required to shoulder a disproportionately heavy burden of integration policies.[155]

Slovakia does not have an integral immigration doctrine or even a policy to accept immigrants. The conditions to obtain Slovak citizenship have been significantly tightened in recent years, including the naturalization model, which indicates that the country strongly resists immigration, especially from the third countries. Compared to members of officially recognized national minorities, those immigrants who eventually make it to Slovakia find it extremely difficult not only to maintain their culture or language but also to exercise the rights that are conditioned by obtaining Slovak citizenship. Since Slovak citizenship forms an inevitable condition to integration of foreigners, this year's case study focused on this issue.[156]

11.1 NEW ALIEN RESIDENCE ACT

A new Alien Residence Act[157] took effect on January 1, 2012, replacing the previous law that was adopted in 2002.[158] The bill had been drafted by the Border Control and Alien Registration Office (UHCP) whose experts decided to merge legal regulation governing the control and protection of Slovakia's borders with that regulating the entry and residence of foreigners on Slovakia's territory.[159] Merging the two legal standards had been criticized by non-governmental organizations whose experts perceived it as an effort to create an impression that foreigners

152 Please see Gallová-Kriglerová – Kadlečíková, *supra* note 152.

153 *Strategy of Foreigners' Integration in the Slovak Republic*, approved as the Slovak Government Resolution No. 338/2009.

154 Jarmila Lajčáková "Právne postavenie a politika k novovznikajúcim etnickým, jazykovým a náboženským menšinám na Slovensku" ['Legal Status of Newly-Emerging Ethnic, Linguistic and Religious Minorities in Slovakia and Policy with Respect to Them'] in Elena Gallová-Kriglerová – Jana Kadlečíková – Jarmila Lajčáková, *Migranti – nový pohľad na staré problémy. Multikulturalizmus a kultúrna integrácia migrantov na Slovensku* [Migrants – A New Look at Old Problems: Multiculturalism and Cultural Integration of Migrants in Slovakia], (Bratislava: CVEK, 2009) p. 85.

155 Please see also Alena Chudžíková, "Strategy of Foreigners' Integration in the Slovak Republic: Unclear Goals, Unclear Results" in *Minority Policy in Slovakia*, 1/2011; available at: http://www.cvek.sk/main.php?p=akclanok&lang=sk&lange=sk&id=199.

156 Please see the case study in Section 12.2, below.

157 Law No. 404/2011 on Residence of Foreigners.

158 Law No. 48/2002 on Residence of Foreigners that Alters and Amends Certain Laws, as amended.

159 The new Alien Residence Act abolished Law No. 477/2003 on Protection of State Borders that Alters and Amends Certain Laws.

pose a threat to the state and its borders.[160] Drafting the bill attracted great attention of many ministerial departments. During the interdepartmental debate procedure, involved players proposed hundreds of comments and amendments, causing the UHCP to review the bill thoroughly and postponing its planned effect by six months.

Slovak politicians generally perceive migration as a negative phenomenon. A direct result of their anti-immigration attitudes as well as gradual tightening of applicable legal regulations is that Slovakia ranks among EU member states with the lowest share of foreigners. During the process of drafting, debating and passing the new law, the then minister of interior Daniel Lipšic (KDH) issued several public statements claiming that uncontrolled migration within the EU was a serious problem, which Slovakia would tackle through stricter regulation and measures designed to prefer immigrants from culturally close countries. He also repeatedly presented his opinion that multiculturalism had failed and that booming migration may pose security risks. Based on his media statements it was logical to expect that the new law would introduce stricter regulation of migration and bring even more repression into already stern legislation.

Reasons for Passing the New Law

While the bill's justification report declares an ambition to create a new tool of migration policy that will be more modern and effective, it also reiterates the need to "guarantee protection of society's interests, especially state security, public order and public health."

Ever since Slovakia joined the EU in 2004, the annual numbers of legal immigrants have increased, although they are still relatively low compared to neighbouring countries. The justification report observes that the Slovak Republic "remains primarily a transit country for various immigration flows of legal as well as illegal migrants on their way to economically more stable and attractive countries of the Schengen Area"[161] but simultaneously points out that it is necessary to establish new institutions and terms that are "inevitable for effective protection of society against increased immigration".[162]

As of the end of 2010, the Slovak Republic registered 22,932 third-country nationals with legal status, which only amounted to approximately 0.4% of Slovakia's total population. Although their total number tends to increase in the long term, the justification report failed to explain and justify the fears of immigrations tides in any way; on the contrary, it repeatedly contradicts itself by stating that foreigners do not find the Slovak Republic a sufficiently attractive country of destination.

For all these reasons we believe that the tendency to constant tightening of immigration legislation that can be observed since 2007 is not properly justified. We would also like to point out that excessively strict legal criteria for immigration may cause some negative effects such as discourage decent people from settling in Slovakia and encourage corrupt behaviour of immigration clerks.

The Ministry of Interior that oversaw the process of drafting the law made a sincere effort to create a transparent legal regulation and was relatively accommodating to incorporate comments made by involved subjects during the debate procedure; however, due to poor com-

160 Specific comments on the bill made by CVEK are available at: http://cvek.sk/uploaded/files/CVEK_pripomienky_zakon_pobyt_cudzincov.pdf

161 Full version of the justification report to Law No. 404/2011 is available at: *www.minv.sk/?pravne-normy-3&subor=134048.*

162 *Ibid.*

munication of the new law to its principal target group[163] as well as to elimination of certain provisions from the Administrative Code[164] we believe the new law represents a step backward despite the advertised intention to modernize Slovakia's migration policy.

Residence Granting Procedure

One of the new law's positive aspects is that it introduces *a legal claim to residence permit upon compliance with all legal requirements. On the other hand, these legal requirements as well as conditions of filing applications for residence permit are relatively strict. For instance, most foreigners travelling to Slovakia are required to apply for temporary residence permit with* applicable diplomatic corps of the Slovak Republic abroad, i.e. before they set foot on Slovakia's soil. The diplomatic corps shall verify the applicant's identity and send a completed application via consular mail to the nearest UHCP department on Slovakia's territory that subsequently decides on the application within 90 days of delivery.

Under the new regime the applicants must file complete applications, i.e. *submit all required documents together* at the moment of filing the application. Previously it was sufficient to submit the filled out form, a passport and documents on the purpose of stay from the country of destination and on impeccability from the home country. In my opinion, this change is likely to cause many practical problems as well as financial and time losses, especially to applicants who must travel a long distance to file their applications and are not properly informed in advance on all requirements to comply with.[165] In order to avoid these losses, all authorities involved must significantly improve the quality of providing information.

Partial Reduction of Bureaucracy

Under the new law, foreigners are not required to submit an extract from police records as the Ministry of Interior may request it directly from the Office of Attorney General. The high level of "checking on applicants' impeccability"[166] will be preserved but the administrative burden on the part of foreigners will be reduced. The law also binds the Ministry of Interior and the Ministry of Foreign Affairs to publish on their official websites basic information on the rights and obligations of foreigners in Slovakia as well as application forms in English.

Blue Cards

Effective July 20, 2011, the Slovak Republic introduced blue cards as part of transposing the applicable EU directive that enacted the strategy of encouraging inflow and settlement of

163 The new law has not been officially translated into foreign languages.

164 For instance the following provision of Article 19 Paragraph 3 of the Law No. 71/1967 (Administrative Code), as amended: "If the application fails to comply with requirements, the administrative organ shall help the applicant to remedy the shortcomings or call on him to eliminate them within the set time limit; at the same time, it shall inform the applicant that the procedure must be suspended in the case of no compliance."

165 At the time of visiting Slovakia's diplomatic corps in person, applicants may lack some of the certificates, their legalized translations or verification stamps.

166 The currently valid law subjects each applicant for residence permit to a four-stage process of impeccability verification. All applicants must document their impeccability by extracts from police records in Slovakia, the country of origin and every country in which they lived for the past three years, as well as a special position by the Slovak Intelligence Service that specifically verifies each applicant.

qualified professionals from countries outside the EU.[167] According to the justification report, blue cards are introduced "in order to attract and keep highly qualified professionals from third countries and tackle the lack of qualified workforce through supporting mobility and employment of highly qualified third-country nationals for a period longer than three months." The blue card is a special type of residence permit issued to highly qualified foreigners for a period of three years that will also apply as a work permit. It remains to be seen whether highly qualified foreigners and employers in Slovakia will find this novelty attractive and useful, respectively.[168]

Foreigners' Employment and Private Enterprise

On a more positive note, the new law also introduced a change in the field of employing foreigners with temporary residence for the purpose of family merging. From now on, migrants who acquire temporary residence permit can apply for a job *immediately and do not have to wait one year as the previously valid law stipulated. This provision may have a motivational effect on families of highly qualified migrants Slovakia aims to attract;*[169] however, practical implementation of this provision may encounter interpretation problems. The bill envisaged simultaneous passing of an amendment to Employment Service Act, which unfortunately failed to address the described situation. As a result, the provision is confusing because the new Alien Residence Act stipulates that these foreigners may work without permanent residence permit but simultaneously refers to Employment Service Act, which refers back to Alien Residence Act. In order to eliminate two possible interpretations in such an important area as foreigners' right to work, it is inevitable to draft as soon as possible an amendment to Employment Service Act that would regulate employment of foreigners with temporary residence permit for the purpose of family merging.

Another shortcoming of the new law is that it failed to introduce a transitional period to seek new employment for those migrant workers who lose their jobs and consequently their temporary residence permit, although the Ministry of Interior originally intended to introduce it. The thing is that temporary residence permit is pegged to its purpose and is automatically revoked as soon as the purpose ceases to exist. Due to an apparent error in cross-referencing particular provisions,[170] the new law failed to enact a one-month transitional period[171] to seek new employment even for those third-country nationals who lose their jobs suddenly and without their fault. As a result, the current state of affairs in which alien police must revoke temporary residence permit of foreigners who have lost their jobs and chase them out of the country will continue after January 1, 2012.

167 Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.

168 The law stipulates the minimum wage limit as one of the criteria for highly qualified employment as follows: "The amount of monthly wage must be agreed to be at least 1.5-multiple of the average monthly wage of employees in applicable industry of Slovak economy as published by the Statistical Office of the Slovak Republic for particular calendar year."

169 This way, migrants' family members will not only be able to contribute to the family budget but will also be able to participate in the system of public health insurance and naturally integrate themselves into society and learn Slovak language.

170 Article 36, Paragraph 3 of the Law No. 404/2011.

171 The time limit to issue a work permit is 30 days; it is obvious that even this time limit may be insufficient to find a new job and simultaneously a new residence permit.

The new law specifically focuses on foreign entrepreneurs who are now required to demonstrate not only financial security of their residence[172] but also of their enterprise[173,] which makes this type of residence even more financially challenging. Another step backward is a newly introduced requirement for entrepreneurs to document their prospectus. The new law entrusts this task to Economy Ministry clerks who will have to assess whether and to what degree do third-country nationals' business activities comply with economic interests of the Slovak Republic; however, there are no criteria for issuing such a certificate. It is very difficult to believe that any government clerk is able to assess future benefits of a business project for Slovakia's economic interests simply by reviewing the initial prospectus. Government's overriding economic interest should be creating conditions for free and honest enterprise, observance of taxation laws and creation of new jobs. It is obvious that the main purpose of this provision was to prevent abusing this type of residence for other purposes than envisaged by the law; previously, certain foreigners found it easier to acquire and maintain this type of residence permit than the one for the purpose of employment.

Slovakia's diplomatic corps will be required to issue an advisory opinion on all temporary residence applicants. While they played a very important role in this area in the past as well, the previously valid law did not give them such powers. According to the new law, their approving or disapproving position on every migrant will be taken into account during the residence granting procedure. Naturally, the opinions will have to be duly justified. The problem is that the clerks at Slovakia's diplomatic corps will be virtually uncontrollable in performing this duty. Also, it remains unclear whether and to what degree will their opinions be binding for the Border Control and Alien Registration Office in Slovakia.

Granting Permanent Residence

The previously valid legislation regulating long-term residence did not comply with the Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. The new law is more comprehensive and transposes the said directive more precisely. From now on, 'permanent residence' shall be divided into subcategories of five-year residence, indefinite residence and long-term residence. At the same time, the new law abolished institutions of 'initial permit' and 'subsequent permit'. Introducing the category of long-term residence addresses the need to grant a higher legal status to those third-country nationals who have legally and permanently resided in Slovakia for more than five years but have not been granted permanent residence. The problem is that the new law continues to ignore some categories of foreigners, which may complicate or prevent their full-fledged inclusion into society.[174]

172 Financial security for the purpose of residence equals a 12-multiple of the subsistence level (€2,278) for one year of stay.

173 Financial security for the purpose of enterprise equals a 20-multiple of the subsistence level (€3,797) in the case of natural persons (e.g. tradesmen) or a 100-multiple of the subsistence level (€18,983) in the case of legal persons (e.g. legal representatives of a trading company or cooperative).

174 Permanent residence for the period of five years cannot be granted to long-term residents' children without means (i.e. between 18 and 26) that study in Slovakia, only to children that are unable to take care of themselves due to long-term illness. Also, this type of permanent residence cannot be granted to foreigners who have been granted some form of international protection or the status of tolerated residence in Slovakia.

Tolerated Residence

A specific problem within Slovakia's alien legislation is the institution of tolerated residence. The new law interprets this institution as a "delayed decision on deportation". We oppose this interpretation because the law qualifies it as one of the three types of lawful residence in Slovakia that is issued for the period of 180 days based on specific and/or extraordinary reasons. Tolerated residence permit can be granted in seven different situations, for instance if there are administrative obstacles to deportation or if the person's right to private and family life applies in compliance with the Convention on the Protection of Human Rights and Fundamental Freedoms. But legal status of these foreigners is weak and practical support of their integration is virtually non-existent; on the contrary, government does not intend to make the situation of tolerated foreigners any easier. Some foreigners with tolerated residence status are not allowed to work nor do business in Slovakia and their income may be limited to material need benefits; some of them depend on financial support from their relatives abroad. This basic constraint is the source of other limitations in all areas of life, especially in the field of health insurance, social assistance and housing.

Vulnerable Categories of Foreigners

While debating the bill, non-governmental organization League for Human Rights argued that the new law inadequately took into account the situation of vulnerable categories of foreigners such as unaccompanied minors and some of its provisions insufficiently respected foreigners' right to private and family life that is protected by the Convention on the Protection of Human Rights and Fundamental Freedoms.

Generally speaking, new Alien Residence Act as well as its justification report uses a restrictive language and makes an impression that its principal purpose is to protect Slovakia's population against dangers of migration. After the upcoming parliamentary elections, the Ministry of Interior ought to give good thought to Slovakia's interests and priorities in the field of foreign migration. Government should strive to adapt its legal regulation to new strategic documents and the country's needs so that it is able to benefit as much as possible from the positive effects of migration while simultaneously eliminating its concomitant negative phenomena. We believe that through practical cooperation with all involved and concerned parties, the recently passed law might become a truly modern piece of legislation.

11.2 ACQUIRING SLOVAK CITIZENSHIP BY NATURALIZATION: A CASE STUDY

The following case study examines the issue of granting citizenship by Slovak authorities. The current policy in the field of granting Slovak citizenship is the result of gradually tightening applicable legislation over recent years. It seems that the changes enacted in this area were not related merely to the improved status of foreigners who reside in Slovakia in the long term but were rather motivated by efforts to protect the country against the threat of increased migration from abroad. The fears of increasing migration are unsubstantiated. Although the overall number of foreigners in Slovakia gradually increases, in relative terms it remains one of the lowest within the entire EU. In our study we shall discuss in detail the gradual process of introducing stricter conditions to grant Slovak citizenship and its effects on the situation of people who apply for it.

The present study highlights legislative loopholes as well as weak spots of the practical policy to grant Slovak citizenship, indicating areas that need improvement in order to increase the chance of foreigners living in Slovakia to become full-fledged members of society if they themselves wish so. We proceed from the assumption that migration has become a normal part of everyday life. In the course of their lives, people often change the country of residence in search for jobs and a better standard of living. Not all immigrants plan to remain in their new country forever. On the other hand, those who decide to stay should have a chance to obtain citizenship of the country in which they wish to settle down permanently.

Importance of citizenship to foreigners

According to the Slovak Constitution, citizenship of the Slovak Republic is irrevocable. Revoking the citizenship and restoring the original *status quo* before it was granted is practically unimaginable for someone who already enjoys this level of protection by the state. Since most citizens tend to take their civil rights for granted, it is almost impossible for them to imagine the great variety of problems facing persons who dwell on the territory of any state without this protection.

Citizenship is a legal bond between the state and its inhabitants; it is 'the right to exercise rights' that allow them to lead full-fledged personal and social life in the country. Once foreigners obtain the status of citizens, their scope of rights that previously comprised 'only' fundamental human and social rights suddenly include also civil rights that are viewed as the highest possible form of protection by the state. The civil rights include especially the right to state's diplomatic protection including consular services, the right to enter the state's territory, the ban on deportation and universal suffrage (i.e. the right to vote and be elected in parliamentary elections, take part in a referendum, etc.).

Status of Foreigners in Slovakia

Without Slovak citizenship the legal status of foreigners, especially third country nationals (i.e. citizens of countries outside the EU and EEA), is in a word uncertain. Some foreigners dwell on Slovakia's territory based on the so-called temporary residence permit. The very definition of that word implies temporariness, briefness and in practice it means fewer rights and more obligations compared to foreigners with a permanent residence status or full-fledged Slovak citizens. The main source of uncertainty is not only the valid legislation but also the unclear and often unambiguous practice of granting residence permits. Foreigners with a temporary residence status (especially citizens of countries outside the EU and EEA) may easily get a feeling that they live under 'permanent threat'. Changing a seeming detail in their private or professional life may have them repeatedly convince applicable authorities to let them remain on Slovakia's territory, otherwise they must leave. Any situation that is relatively easy to solve for full-fledged citizens (e.g. losing a job, changing a domicile or getting sick) may seriously complicate the situation of foreigners with a temporary residence status or even render their stay in Slovakia impossible. Last but not least, most foreigners find permanent checks by applicable authorities and repeatedly documenting legitimacy of their residence in Slovakia administratively, time-wise and financially very challenging.

While obtaining a permanent residence status does not set foreigners free of legal uncertainty and administrative hassle, it represents a qualitative change as it provides them with a signifi-

cantly safer legal status. For instance, foreigners with a permanent residence status are free to work without having to apply for a work permit or a trade licence. Compared to foreigners with a temporary residence status, their contacts with alien police are less frequent. Nevertheless, there is still a risk that their permanent residence permit may get revoked, for instance if it has been issued for family purposes but the spouses do not live together anymore or if third country nationals find themselves in a social situation that forces them to apply for material need benefits.[175] In certain situations, foreigners may view revocation of the permanent residence permit as a punishment for changes in their lives they had little or no control over. While the law grants these foreigners the right to find a different solution to their residence status,[176] it always involves reducing the standard of rights they have enjoyed previously.

Legal Security and Civil Freedoms

The essential difference between the status of a permanent or temporary resident and that of a citizen is that citizenship cannot be revoked as easily as a residence permit.[177] The Slovak Constitution grants Slovak citizens "the right to a free entry to the territory of the Slovak Republic; they shall not be forced to leave their homeland or exiled".[178] That is why foreigners view obtaining the status of a citizen as increasing legal peace in their lives. Citizenship also means freedom from permanent checks by applicable authorities and the necessity to document legitimacy of one's residence in the country over and over again.

The status of a citizen may help foreigners succeed in such practical tasks as receiving a loan from the bank or getting a job position that is only open for Slovak citizens. Ignorance of the rules of employing foreigners often makes employers refrain from hiring anybody without a proper ID; this also applies to jobs where hiring foreigners is not a problem. Many foreigners say that becoming Slovak citizens has made them freer to travel, especially since they are no longer required to report every absence in excess of 180 days in writing to the alien police. For foreigners, obtaining the status of a citizen not only opens many doors that were previously shut but increases their feeling of certainty, freedom and security.[179]

Citizenship and Identity

Obtaining citizenship does not merely provide people with the certainty of leading a legitimate life in the country. If we view citizenship as another step on the path toward foreigners' cultural integration, then obtaining it is an expression of their allegiance to the country that has become their new home. On the other hand, granting citizenship is a declaration by the state that it views this particular person a full-fledged member of society. Formal as well as informal

175 Please see Article 50 Paragraph 1 of the Law No. 404/2011.

176 Law No. 404/2011 on Residence of Foreigners that Alters and Amends Certain Laws stipulates three types of residence: permanent, temporary and tolerated.

177 Citizenship may only be revoked in exceptional situations specified in the law. One such situation is when citizenship has been obtained through foul play, for instance when it turns out that the applicant has forged some of the submitted documents. Another such situation is when a Slovak citizen voluntarily obtains citizenship of another country.

178 Please see Article 23 Paragraph 4 of the Slovak Constitution, *supr*a note 28.

179 According to Peter Brnula – Michal Cenker – Elena Gallová-Kriglerová "Skúsenosti migrantov s integráciou na Slovensku" ['Migrants' Experience with Integration in Slovakia'] in Ctibor Košťál – Michal Vašečka (eds.) *Integrácia migrantov – vieme, čo chceme?* [Integration of Migrants: Do We Know What We Want?], (Bratislava: Univerzita Komenského, 2009), pp. 51 – 60.

acceptance by the host country is undoubtedly an important aspect of obtaining citizenship for most foreigners. One should note that becoming a citizen does not erase one's origin as these citizens continue to draw from the social and cultural background they grew up in and came from. Obtaining citizenship should not mean *getting rid* of one's past. Even though foreigners obtain citizenship of the host country, they should still be able to preserve their cultural identities to whatever degree they see fit. In other words, obtaining citizenship should not complete foreigners' integration process but represent an important landmark connected to their formal recognition and acceptance by the host country.

Chance to be Included in the Political Community

Another important aspect of obtaining citizenship is the chance to exercise one's political rights. Temporary residents have virtually no opportunity to participate in decision-making on future development of the community they live in. If they become permanent residents, the limits of their political participation expand as they become eligible to vote in municipal and regional elections. In other words, foreigners with a permanent resident status are free to participate in decision-making processes in their immediate surroundings but not on the national level. Only Slovak citizens have the right to vote in elections to the National Council of the Slovak Republic or in presidential elections. This is yet another division line that separates foreigners from citizens and illustrates the fact that unless they become Slovak citizens, foreigners are not recognized as equal and accepted members of the political community who are able to participate in its life through active or passive suffrage. So, obtaining citizenship allows one not only to partake in society's economic, social and cultural life but actively shape it through exercising one's political rights.

Opportunities to Obtain Citizenship

Despite their utmost effort, some foreigners will never be able to comply with all the criteria for becoming full-fledged Slovak citizens. Many foreigners admit that obtaining citizenship is beyond the horizon of their normal lives. Complicated legal conditions, required length of uninterrupted residence in the country and a variety of control mechanisms make the process of applying for Slovak citizenship an almost insurmountable task for many foreigners. According to most foreigners, the process of obtaining citizenship is much more complicated and bureaucratically demanding than the procedure of applying for a permanent residence permit. Some immigrants are also afraid of Slovak language tests because they do not know what might be expected of them.[180]

The conditions for obtaining Slovak citizenship are generally perceived as discouraging rather than motivating. A number of political documents that provide the framework for the country's migration policy tend to view migration rather as a threat and set the conditions for granting Slovak citizenship in such a complicated way that it is almost impossible to obtain it. To all migrants who arrive in Slovakia or have already settled here, this sends a relatively clear message that their chances to become recognized as full-fledged members of Slovak society are infinitely slim.

The relatively lengthy and complicated process of granting Slovak citizenship discourages most foreigners from even thinking about applying for it until the chance to obtain it becomes more

180 Brnula et al., *supra* note 182, p. 55.

realistic. As we have said at the beginning, some foreigners will never be able to comply with all the conditions for obtaining Slovak citizenship, particularly those who for one reason or another have been unable to obtain a permanent residence permit.

Basic Conditions for Obtaining Slovak citizenship through Naturalization

According to currently valid legislation, Slovak citizenship may be granted to applicants who are not citizens of the Slovak Republic and have uninterruptedly resided on the territory of the Slovak Republic for at least eight years immediately before filing the application to obtain Slovak citizenship. Since 1993, parliament has passed eight amendments to the Citizenship Act, gradually tightening all conditions that apply to obtaining Slovak citizenship; especially amendments passed since 2005 introduced tough criteria for naturalization.

While between 1993 and 2005 applicants for Slovak citizenship were basically required to reside on Slovakia's territory **uninterruptedly for five years**, have a **spotless criminal record** and **knowledge of Slovak language**, the amendments passed since 2005 tightened the existing conditions, introduced new ones and altered the application practice, which has led to a substantial decline in the overall number of applicants who were granted Slovak citizenship.

Based on the law of 1993, exemption from compliance with the three basic conditions specified above was possible for those foreigners who entered into matrimony with a Slovak citizen or out of special considerations, particularly if these foreigners have brought a significant contribution to the Slovak Republic in economic, scientific, cultural or technical field.

Law No. 265/2005 that took effect on September 1, 2005, was the first amendment to introduce substantial restrictions of naturalization conditions, mostly because the previously valid legislation had ceased to serve the purpose following the country's accession to the European Union. According to a high official of the Ministry of Interior, "the previous legislation was too benevolent and provided for granting citizenship virtually to anyone".[181] Before 2005, Citizenship Act only stipulated that foreigners who apply for Slovak citizenship had to have knowledge of Slovak language without specifying the scope of this knowledge; the amendment of 2005 required applicants to have a basic command of Slovak language.

Effective September 1, 2005, applicants for Slovak citizenship were required to reside on Slovakia's territory **permanently and uninterruptedly for at least five years** immediately before filing the application to obtain Slovak citizenship, have a **spotless criminal record** (this included **sanction of deportation issued by court**, **launched procedure on administrative deportation**, **criminal prosecution**, **extradition procedure**, **procedure to issue a European arrest warrant** and **procedure to revoke asylum**) and have a **basic command of Slovak language**, which encompassed ability to understand a question and give a comprehensive answer.

The law of 2005 enacted exceptions for certain categories of foreigners. Exemption from compliance with the three basic conditions was still possible for those foreigners who had entered into matrimony with a Slovak citizen, provided that this matrimony had been consumed in a household on Slovakia's territory for at least three years immediately before filing the application to obtain Slovak citizenship, foreigners who have brought a significant contribution to the Slovak Republic, foreigners whose permanent residence on Slovakia's territory had begun at least three years before they turned 18, etc.

181 Authors' interview with P. Drábek, Head of the Citizenship Department at the Ministry of Interior on January 10, 2012.

Even tighter restrictions that further complicated the process of obtaining Slovak citizenship were introduced by another amendment that took effect on October 1, 2007. Following this date, applicants for Slovak citizenship were required to reside on Slovakia's territory **permanently and uninterruptedly for at least eight years** immediately before filing the application to obtain Slovak citizenship.

The law also introduced a new, tighter and more specific negative definition of impeccability. The applicant's criminal record must still be free of the sanction of deportation issued by court, launched criminal prosecution, extradition procedure, procedure to issue a European arrest warrant and procedure on administrative deportation or revoking the status of asylum seeker.

Since 2007, applicants for Slovak citizenship must demonstrate **a good command of Slovak language, both spoken and written, as well as general knowledge about the Slovak Republic**. The amendment introduced a new obligation for foreigners to comply with provisions of legal rules that regulate residence of foreigners on the territory of the Slovak Republic as well as those that govern public health insurance, social security system, old age pension scheme, taxes, contributions, fees, employing foreigners and other obligations for foreigners ensuing from the legal order of the Slovak Republic.

Exempt from criteria of language proficiency and 8-year permanent residence remain spouses of Slovak citizens, provided that their matrimony had been consumed in a joint household on Slovakia's territory for at least **five years** immediately before filing the application to obtain Slovak citizenship. Exempt may be also foreigners who have brought a significant contribution to the Slovak Republic in the "social" field as well as foreigners whose Slovak citizenship is in the special interest of the Slovak Republic.

On the other hand, the most recent amendment tightened conditions for **granting citizenship to asylum seekers**. According to the currently valid law, asylum seekers who wish to apply for Slovak citizenship must have permanently resided on Slovakia's territory for at least **four** years immediately before filing the application to obtain Slovak citizenship.

A positive change introduced by the most recent amendment of 2007 was specifying the way of backing up the citizenship application. The currently valid law stipulates the exact list of documents to be produced to demonstrate criminal impeccability as well as other facts the administrative organ needs to make the decision. On the other hand, the overall scope of required document along with administrative difficulty of producing them is so complicated that it represents a serious obstacle to completing and filing the citizenship application.

We believe that the principle of safeguarding security of the Slovak Republic should not be in significant imbalance with other principles of democratic society, rule of law and coexistence in the common European space such as the principles of justice and equality. The provisions of the currently valid law that require citizenship applicants to demonstrate their impeccability are so thorough and meticulous that a deeper preventive security check would perhaps have to be performed by the Slovak Intelligence Service. The evidence of impeccability (which must not be older than six months) is a copy of the criminal record from every country of which Slovak citizenship applicants are or have been citizens in the past, a copy of the criminal record from every country where Slovak citizenship applicants resided over the past 15 years before filing the application to obtain Slovak citizenship or another document of impeccability issued by applicable organs of these countries.

Foreigners who apply for Slovak citizenship do not have the legal title to obtain it even if they do comply with all law-stipulated criteria, conditions and requirements. Slovak citizenship must never be granted to applicants who have not previously obtained the permanent resident status, which in advance disqualifies applicants who are not eligible to obtain a permanent residence permit (e.g. foreigners with subsidiary protection).

The currently valid law's provision that stipulates the time limit to process citizenship applications apparently contradicts the European Convention on Nationality of 1997, which in Article 10 obliges member states to make sure that all applications regarding obtaining, preserving, losing, renewing or verifying nationality are processed within adequate time limits. The amendment of 2007 extended the time limit from nine to **24** months. In situations stipulated by the law, the time limit may even be suspended, which may extend the procedure indefinitely. The Ministry of Interior argued it was necessary to extend the time limit as it was very difficult to obtain and verify all necessary information about applicants.[182] The time limit of 24 months puts Slovakia among EU member states with the longest process of granting citizenship.

A comparative survey carried out in 2009 examined time limits in which select countries normally process citizenship applications. The Hungarian Immigration and Naturalization Authority normally processed applications for Hungarian citizenship within 12 months of the day of filing. The Ministry of Interior of the Czech Republic normally examined such applications within 90 days of the day of filing. The time limit to decide on applications for Austrian citizenship was six months. The Dutch Immigration and Naturalization Authority reserved a maximum of 12 months to decide on citizenship applications.[183]

Further Conditions for Obtaining Slovak Citizenship through Naturalization

Administrative Fees

Administrative charges pertaining to the process of granting Slovak citizenship are stipulated by Article 20 of Law No. 145/1995 on Administrative Charges, as amended. According to the law, exempt from the charges are foreigners who have been granted asylum in Slovakia and evacuees from the Chernobyl area in Ukraine. The fee is payable upon the administrative act, i.e. once citizenship has been granted.

While the administrative fee for granting Slovak citizenship to foreigners older than 18 was 5,000 Sk (€166) in 1995, by 2004 it quadrupled to 20,000 Sk (€664). Currently it is €663.50, which again puts Slovakia among EU member states with the highest administrative charges for granting citizenship; needless to say, few applicants can afford to pay that amount.

At the time of carrying out the already mentioned comparative survey of 2009, Hungary did not have any administrative charges for granting Hungarian citizenship through natu-

182 While scrutinizing citizenship applications, the Ministry of Interior takes into account interests of the Slovak Republic, especially from the viewpoint of state security, internal legal order, foreign policy interests, and Slovakia's commitments with respect to third countries, applicants' socio-economic situation as well as positions of involved government organs and the Slovak Police Force.

183 Zuzana Bargerová "Právna analýza" ['Legal Analysis'] in Ctibor Košťál – Michal Vašečka (eds.) *Integrácia migrantov – vieme, čo chceme*? [Integration of Migrants: Do We Know What We Want?], (Bratislava: Univerzita Komenského, 2009).

ralization.[184] In the Czech Republic the administrative charges totalled 10,000 Czech crowns (approximately €400) and were payable only in the case of positive decision. In Austria, the administrative charges for granting citizenship to individuals totalled €1,050 (€900 federal charge and €150 regional charge). Unlike the rest of examined countries, administrative charges for granting citizenship in the Netherlands were payable at the moment of filing the application and their amount depended on applicants' income, ranging from approximately €252 to €482.

Policy of Granting Slovak Citizenship

Slovakia's policy in the field of granting citizenship is relatively strict in international comparison. This conclusion is repeatedly corroborated by the results of Migrant Integration Policy Index (MIPEX), a regular international comparison of integration policies that assesses countries' approach to migrants from a number of aspects, including migrants' access to obtaining citizenship of the host country.

As far as conditions for obtaining Slovak citizenship are concerned, MIPEX observes that due to the most recent amendment to Citizenship Act of 2007, applicants for Slovak citizenship must wait three years longer before they can file their applications. Also, the applicants do not know about the required proficiency in Slovak language, both spoken and written, since they do not have access to language tests or available language training courses. The language tests are performed by state administration organs that are not sufficiently specialized for this purpose. All in all, the entire procedure is relatively onerous and lengthy (up to 24 months) as well as relatively costly (administrative charges alone exceed €600).[185]

In terms of the length of residence required for the purpose of granting citizenship, Slovakia ranks among stricter countries. The main difference may be identified primarily between traditionally liberal countries that require a relatively short period of residence (e.g. the Netherlands or the United Kingdom) and traditionally restrictive countries (e.g. Germany, Austria or Denmark) that along with countries that are traditional sources of emigrants (e.g. Greece or Spain) require a relatively long period of residence before they grant citizenship.[186]

Post-communist countries have enacted different length of permanent residence that is required for obtaining their citizenship. The Czech Republic, Poland or Bulgaria require applicants for citizenship to reside in the country permanently for five years; in Hungary and Slovakia it is eight years but in Latvia it is as long as ten years. Of course, the Slovak law stipulated more favourable conditions for certain categories of foreigners, for instance those who have entered into matrimony with Slovak citizens or have obtained asylum. The applicants who fail to comply with this condition must wait a few more years before they are allowed to apply for Slovak citizenship.

The basic idea of Slovakia's policy in the field of granting citizenship is to prefer those applicants who have become sufficiently integrated into society or dispose of special skills in which Slovakia is particularly interested (e.g. athletes, scientists, artists, etc.).

184 *Ibid.*

185 MIPEX – Access to Nationality; available at: http://www.mipex.eu/slovakia

186 Wallace Goodman, *Naturalisation Policies in Europe: Exploring Patterns of Inclusion and Exclusion* (EUDO Citizen Observatory, 2010).

This approach to granting citizenship was explained in greater detail by the justification report that accompanied the amendment to Citizenship Act of 2007. According to the report, it is necessary to amend conditions for granting Slovak citizenship because applicants for Slovak citizenship must be screened more thoroughly. Besides advocating the proposal to expand the sum of facts that must be verified in the process of granting Slovak citizenship, the justification report argued it was necessary "to extend the length of required permanent residence on the territory of the Slovak Republic, which is the prerequisite to applicants' sufficient integration into society, elimination of possible doubts regarding their impeccability and demonstration of their potential contribution to the Slovak Republic in concrete areas".[187] The justification report also argued it was important to establish the level of applicants' integration into society and their self-identification with Slovakia's legal order, which is why it was necessary to gather information on their social status, employment, business or other gainful employment as well as fulfilment of their obligations vis-à-vis the state.

Nevertheless, the analysis of stipulated conditions and arguments presented in the report justify a conclusion that "sufficient integration into society" is a mere euphemism for establishing that applicants are impeccable and do not pose any kind of threat, especially a security threat, to the Slovak Republic. For the amendment's initiators, integration into society does not stand for establishing social ties, developing a positive relation to the country and overall accommodation of applicants but primarily for their adaptation to values and standards professed by the Slovak society. In other words, foreigners must invalidate the presumption that they pose a 'threat' to the country; in order to do that the state 'grants' them a relatively long period of required permanent residence.

Data on the Number of Foreigners Granted Slovak Citizenship

Slovakia has generally insufficient statistical data on foreigners living in the country; this goes even more for those foreigners who have obtained Slovak citizenship. One may say that the moment these people become Slovak citizens they are almost completely lost for the purpose of statistical surveying as most Slovak statistics prefer the criterion of nationality to that of the country of origin.

Slovakia began to grant citizenship to foreigners in 1993, the first year of its independent existence. The overall number of foreigners who obtained Slovak citizenship since then nears 120,000. Approximately 100,000 of them were originally citizens of the Czech Republic; most of them became Slovak citizens in initial years of Slovakia's independent existence. It was a specific situation in which Czech citizens were also allowed to opt for Slovak citizenship out of practical reasons such as ownership of real estate property, etc.[188]

The statistics on applicants who obtained Slovak citizenship in particular years reveal that their annual number dropped significantly in 2008 and has steadily declined since along with the number of rejected applications for Slovak citizenship (please see Graph 1). The main reason is undoubtedly tightening of conditions for obtaining Slovak citizenship. It is very unlikely that

187 Justification report to the proposed amendment of 2007 to the Law No. 40/1993 on Citizenship of the Slovak Republic, as amended.

188 *International Migration and Foreigners in the Slovak Republic in 2007*, pp. 38 – 39; available at: http://portal.statistics.sk/files/Sekcie/sek_600/Demografia/Migracia/publikacie/zahranicne_stahov_a_cudzinci_v_sr_2007.pdf

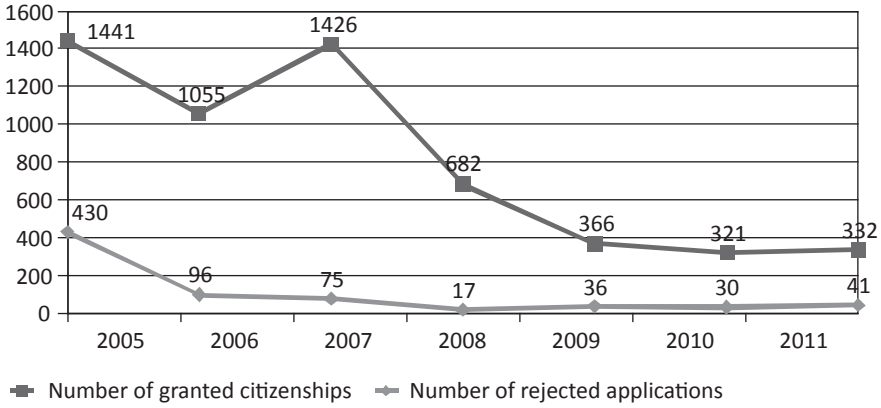
foreigners are growing gradually uninterested in obtaining Slovak citizenship, especially because their number in the country steadily increases; by the end of 2010 the overall number of foreigners with a permanent or temporary resident status dwelling on Slovakia's territory reached 67,976.[189]

Unfortunately, the Ministry of Interior does not keep statistics on rejected citizenship applications broken down by the reason for rejection. As Graph 1 shows, the higher number of citizenship applications rejected in 2005 could have been related to the higher overall number of applications filed as well as to tightening of criteria by the amendment to Citizenship Act of 2005, which introduced testing of proficiency in Slovak language and knowledge of Slovak life and institutions.

Statistical data clearly show that the annual number of foreigners who obtained Slovak citizenship declined as a direct result of every tightening of applicable legislation, this despite the fact that the overall number of foreigners in Slovakia steadily increased. At the same time, they show that the share of those foreigners who become Slovak citizens on the total number of foreigners living in Slovakia continues to decline.

Graph 1

Applications for Slovak citizenship between 2005 and 2011



Source: Data supplied at request by the Interior Ministry's Department of Administration, Citizenship and Registry.

Equally interesting is the structure of foreigners who managed to obtain Slovak citizenship. As Graph 2 shows, third country nationals strongly prevail with the sole exception of 2006; in 2007, for instance, over three in four foreigners to obtain Slovak citizenship were third country nationals. While their share has slightly declined since, in 2010 they still made up over 65% of all foreigners who successfully applied for Slovak citizenship.

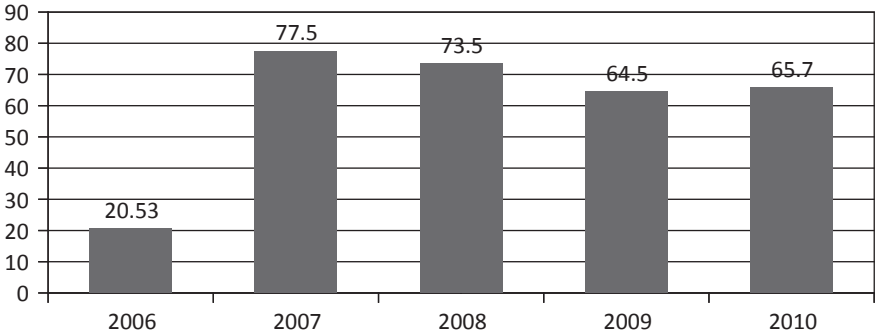
189 Statistical Office of the Slovak Republic, *International Migration*; available at: http://portal.statistics.sk/showdoc.do?docid=31412

It is important to note that a majority of all foreigners living on Slovakia's territory hail from other countries of the European Union (EU) and the European Economic Area (EEA). In 2010, Slovakia registered a total of 67,976 foreigners; 41,882 of them hailed from other EU/EEA member states.[190]

These data illustrate that third country nationals show greater interest in obtaining Slovak citizenship, apparently because their status of foreigners with permanent or temporary residence is less secure compared to that of foreigners hailing from EU or EEA member states. To third country nationals, becoming Slovak citizens means not only a chance to full-fledged participation but a general improvement of their status; therefore, obtaining Slovak citizenship plays a more important role in the process of their integration than in the case of foreigners from EU or EEA countries.

Graph 2

Share of third country nationals on all foreigners who obtained Slovak citizenship between 2006 and 2010 (%)



Source: Authors' own calculations based on data from the Slovstat database; www.statistics.sk

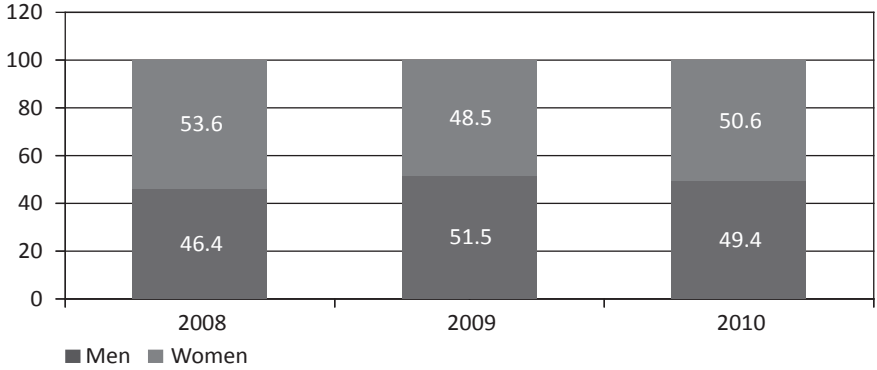
As far as the gender structure of successful applicants for Slovak citizenship is concerned, it is plain to see from Graph 3 that the share of men and women is more or less balanced and that no major year-on-year fluctuations have been recorded in recent years. Again, there is a relatively significant difference between this category of foreigners and the set of all foreigners living in Slovakia, which is relatively strongly dominated by men; in 2010, for instance, men made up 64.4% of all foreigners with permanent and temporary residence on Slovakia's territory.[191]

190 Statistical Office of the Slovak Republic, *International Migration*; available at: http://portal.statistics.sk/showdoc.do?docid=95.

191 Statistical Office of the Slovak Republic, *International Migration*; available at: http://portal.statistics.sk/showdoc.do?docid=95

Graph 3

Gender structure of successful applicants for Slovak citizenship between 2008 and 2010 (%)

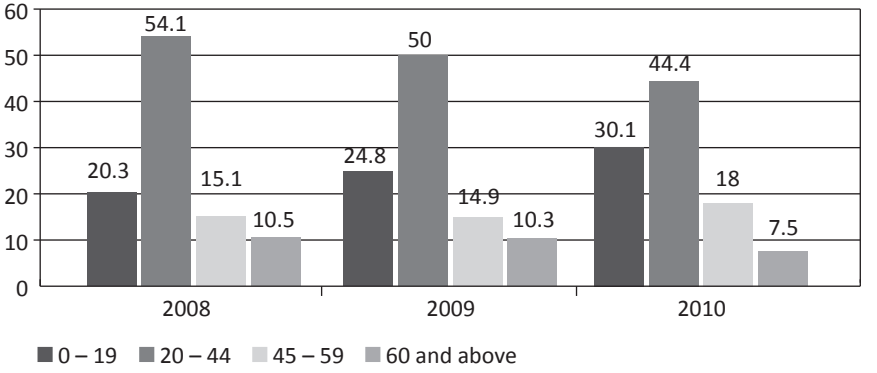


Source: Authors' own calculations based on data from the Slovstat database; www.statistics.sk

The age structure of foreigners who obtained Slovak citizenship reveals that this category is relatively strongly dominated by the age group of 0 to 44 (please see Graph 4). Between 2008 and 2010, foreigners from this age group made up approximately three quarters of all successful applicants for Slovak citizenship. A year-on-year comparison also shows that the share of the age group of 0 to 19 tends to increase moderately at the expense of the age group of 20 to 44. A possible explanation is that the share of foreigners who live in Slovakia together with their children increases among successful applicants for Slovak citizenship; however, it would be premature to speak of a development trend just yet as we need to examine these statistics for a longer time period to be able to make conclusions regarding the age structure of foreigners who obtained Slovak citizenship.

Graph 4

Age structure of successful applicants for Slovak citizenship between 2008 and 2010 (%)



Source: Authors' own calculations based on data from the Slovstat database; www.statistics.sk

As we have already pointed out, we know almost nothing about other aspects of lives led by Slovak citizens of foreign origin; we don't even know how many of them still live in Slovakia and what is their socio-economic status, education status, etc.

Procedure of Granting Slovak Citizenship

Testing Slovak language proficiency and knowledge of Slovak life and institutions

In a number of countries, testing language proficiency is also relatively common part of the procedure of granting citizenship. Unlike objective conditions such as the length of residence or financial security, demonstrating language proficiency, knowledge of the host country's life and institutions and loyalty to the host country requires applicants' pro-active approach and a certain level of preparation.[192]

Various European countries approach this issue differently. All EU member states except Belgium, Cyprus, Poland, Ireland and Sweden require applicants to demonstrate proficiency in the language of the host country. This proficiency is normally demonstrated through language tests that are largely standardized. Some countries require applicants to produce a language certificate while others prefer an interview with the clerk who evaluates the application. There are exceptions too, for instance if applicants received education in the host country or if they are unable to undertake the test because they are older than 65 or handicapped. What most western European countries have in common, though, is that conditions for the testing are usually clearly stipulated; most countries have even elaborated manuals designed to prepare applicants for the tests as a display of state's institutional support in the process of integration. Most countries clearly state what level of language proficiency is required of applicants for citizenship; usually, it is the second degree on a three-degree scale (i.e. basic, independent, and proficient).

In Slovakia, the situation is quite different. Although a good command of Slovak language is among the conditions for obtaining Slovak citizenship, no law or by-law explicitly defines the required level of proficiency and, most importantly, the state does not provide any support in the process of acquiring it.

Applicants' proficiency in Slovak language and knowledge of Slovak life and institutions is tested at the regional state administration authority by a three-member examining commission comprising its employees. The language proficiency test consists of interviewing the applicant about familiar subjects, reading a press article and writing a summary of its content. The course of the test is not recorded in any way; there is only a written protocol with attached text that has been read by the applicant and its written summary.

All applicants for citizenship older than 14 must undertake the test as the state does not make any exceptions. In 2011 the Ministry of Interior drafted an amendment to Citizenship Act that seeks to lower the age of applicants who must undertake language proficiency test to 10 years. Although the amendment has not been passed into law yet, it indicates further tightening of conditions for granting Slovak citizenship.

Testing language proficiency is viewed positively by ethnic Slovaks from abroad who usually do not have problems undertaking the test. The most recent amendment to Citizenship Act introduced a provision that encourages members of the examining commission to take into account

192 *Ibid.*

applicants' individual specifics such as age, health condition or education status; however, the amendment failed to stipulate clearly and left it up to commission members' subjective judgment whether and to what extent they would take applicants' specific situation into account.

For the time being, the language test has not been standardized according to *Common European Framework of Reference* and the required level of Slovak language proficiency has not been established. No study materials that would be specifically designed for this language test have been elaborated. According to Interior Ministry officials, the language test must take into account applicants' health condition and social status. The ministry has issued instructions to all regional state administration authorities on how to organize the language test. The ministry views the existing method of testing Slovak language proficiency and knowledge of Slovak life and institutions as sufficient, especially from the viewpoint of state budget financial requirements.[193] If testing was organized by a private institution, the costs would most probably be higher. On the other hand, it is concentration of decision-making powers in the hands of state administration.[194]

The ambiguously set conditions of testing language proficiency may lead to two completely opposite situations. According to an interview with one regional state administration authority official who is a member of the examining commission, the test should examine applicants' basic language skills, their ability to communicate and their basic knowledge of the country's life and institutions such as the date of emergence of the Slovak Republic and so on. That is why in her opinion it is not necessary that language tests be standardized and objectivised in any way as it would only lead to burdening citizenship applicants by requiring them to prepare systematically for the test. At the same time, it would excessively burden state administration that would have to allocate much greater financial and human resources to the testing.[195]

On the other hand, such a high level of subjectivism may significantly increase uncertainty of citizenship applicants. Since there are no objective criteria in place for language proficiency testing, the examining commission may feel free to take virtually anything for proficiency and conduct the interview completely at its own discretion. The interview on the country's life and institutions may get so complicated that even regular Slovak citizens who were born in Slovakia would have problems passing it. Also, there is no standardized record of the test except for a protocol elaborated by the examining commission and an attached summary of the read article, which again creates a relatively great space for commission members' discretion and their subjective evaluation of applicants' language skills.

So far, the practice of testing language proficiency shows that applicants' insufficient language skills are very rarely the reason for turning down the application for citizenship. In recent years there have been only few foreigners whose application was rejected due to inadequate language proficiency. Most applicants for Slovak citizenship comply with this condition; the only applicants to experience occasional problems are housewives who spend most time at home and do not come as much in touch with the language.[196] The greatest problem seems to be

193 Authors' interview with P. Drábek, Head of the Citizenship Department at the Ministry of Interior on January 10, 2012.

194 Brnula et al, *supra* note 182.

195 Authors' interview with an official at the regional state administration authority in Bratislava.

196 Authors' interview with P. Drábek, Head of the Citizenship Department at the Ministry of Interior on January 10, 2012.

that unclear conditions of language proficiency tests may discourage foreigners from filing the application for Slovak citizenship in the first place.

According to representatives of regional state administration authorities responsible for granting citizenship, applicants' language proficiency has improved naturally due to tightening of objective conditions for granting citizenship. Having spent the required time in the country as permanent residents before filing their citizenship applications, having successfully completed all documents, which often takes great social and communication skills since most clerks at various authorities speak only Slovak to foreigners, and having complied with all kinds of other conditions, most applicants develop such language skills that the language proficiency test is a mere formality. The interviewed regional state administration authority official also said that citizenship applicants often inform each other about the content of testing and what is usually expected of them, which helps them prepare adequately for the examination.[197]

Just like there are no precisely set rules pertaining to organization of language proficiency tests, there are no formal mechanisms that would allow citizenship applicants to prepare for the tests. On the one hand, the state requires citizenship applicants to demonstrate a sufficient command of Slovak language; on the other hand, it fails to create any conditions that would help them successfully pass the language proficiency test.

For the time being, language training of foreigners is not systematically financed from public funds. Currently there is a relatively broad supply of Slovak language courses for foreigners, almost exclusively offered by private language schools. An alternative option is to use the services of private language teachers. Needless to say, both of these options are hardly affordable for most foreigners.

Private language schools offer Slovak language courses to foreigners who need them for the purpose of employment, education or other reasons; however, they do not offer special language courses that would specifically prepare foreigners for Slovak language proficiency tests that form part of the citizenship application process. While researching the present case study, we approached 20 language schools; about half of them responded to our questions, confirming that they did not prepare foreigners to succeed in Slovak language proficiency tests. The main reason is that there are no precisely set rules pertaining to organization of language proficiency tests and language schools do not have even the basic background information that would allow them to prepare citizenship applicants for these tests. After all, their clients rarely ask them for such specific training. At this point, it is a chicken and egg situation: on the one hand, language schools do not see demand for such specific training courses, which is why they do not promote them; on the other hand, since they do not have them in their portfolio, there is no knowing for them whether there would be demand for them.

Part of language proficiency tests is examining citizenship applicants' knowledge of the host country's life and institutions. A number of European countries disagree over this point. Despite the general tendency to tighten criteria for obtaining citizenship, most of them do not list knowledge of the host country's life and institutions among official requirements.[198] Again, Slovakia comes out of this comparison as a country with very strict conditions for granting

197 Authors' interview with an official at the regional state administration authority in Bratislava.

198 This category includes countries that do not require language proficiency testing such as Belgium, Cyprus, Ireland, Italy, Poland or Sweden as well as those that require it such as Bulgaria, Croatia, Czech Republic, Finland, Iceland, Malta, Portugal, Slovenia or Spain.

citizenship. The subjectivism of testing knowledge of Slovak life and institutions is perhaps even more serious than that of testing language proficiency. The ideas of what 'model citizens' should know about their country may differ greatly, which gives excessive discretion power to state administration clerks who decide on citizenship applications. Although we have observed that testing applicants' language proficiency and knowledge of the host country's life and institutions is not a weighty reason to turn down citizenship applications in Slovakia for the time being, this vagueness may in the future tempt government clerks to select future Slovak citizens based on how good Slovaks they seem.

As we have pointed out before, the language proficiency test is only one of many conditions for granting Slovak citizenship. Even if applicants for citizenship demonstrate a sufficient command of Slovak language and comply with all remaining law-stipulated conditions, their application may still be rejected because Citizenship Act includes a provision that even applicants who comply with all the criteria do not have the legal title to become Slovak citizens.

We view this particular provision of Citizenship Act as the most controversial of all because it makes it unclear what exactly is the final criterion to determine whether an application for Slovak citizenship is granted or rejected. Besides creating space for various interpretations on the part of decision-making institutions and encouraging corrupt practices, it may discourage foreigners from applying for Slovak citizenship as they do not have any guarantee that after completing the entire procedure and complying with all the conditions their application will be granted.

Evaluation of Practice of Awarding Slovak Citizenship

The current development trend in the field of granting Slovak citizenship, especially since Slovakia's accession to the European Union, clearly indicate a decline in the annual number of foreigners who successfully apply for Slovak citizenship. Not only does Slovakia resist the generally increasing migration wave but it specifically makes sure to prevent great numbers of foreigners from becoming Slovak citizens. As a result, most foreigners are forced to live in Slovakia under a much less safe regime of permanent or even temporary residence, which does not entitle them to exercise rights ensuing from the status of full-fledged citizens and effectively excludes them from full participation on the life of society. This applies particularly to third country nationals whose legal status in Slovakia differs from that of EU and EEA member states' citizens.

In recent years, the conditions that apply to obtaining Slovak citizenship have been gradually tightened and today they rank among the strictest in virtually any international comparison. For instance, the overall time applicants for Slovak citizenship are required to spend in the country is almost the highest among all EU member states, that is, if we take into account the total number of years during which foreigners must reside in Slovakia in order to become eligible to apply for citizenship. This condition prevents foreigners from free travelling and dwelling in other countries for an extended period of time (e.g. in order to improve their qualifications or gain professional experience), which is a serious limitation in the time of increasing spatial mobility. Many foreigners with the permanent resident status have lost the chance to apply for Slovak citizenship only because they went to another country to study for several years.

Many other administrative conditions for granting Slovak citizenship are equally complicated, which discourages migrants from applying. Certain essential facts and circumstances may

change during the relatively long time limit during which applications for citizenship are scrutinized, which is why the Ministry of Interior may request applicants to supply additional documents in the course of the process.

The way of establishing the degree of foreigners' integration during the process of granting Slovak citizenship grants relatively great discretion to those who evaluate it. Citizenship applicants are screened by various governmental institutions and agencies, including the police and intelligence service, which generally presume that foreigners pose a threat to the country and the basic purpose of such screening is to corroborate or invalidate such presumption; however, this does not apply exclusively to Slovakia as many other countries are increasingly tightening the security screening of citizenship applicants. This practice insensitively interferes with privacy of citizenship applicants and complicates their social relations, especially if the police check with their neighbours or friends to verify their true and honest interest in obtaining Slovak citizenship.

A good command of the host country's language is undoubtedly a very important prerequisite to foreigners' integration into society. It facilitates establishing social ties and gives foreigners the opportunity to make the most of the host country's resources, not only financial but also cultural and social ones. For this reason, most foreigners in Slovakia strive to master Slovak language but government does not make it any easier for them. Slovakia lacks even the basic institutional mechanisms designed to support foreigners' integration including language integration. Most foreigners are consequently forced to rely on their own capacities and resources (including financial) as the only chance to learn Slovak is currently provided by private language schools for relatively high prices.

Another problem is the lack of clarity concerning language proficiency tests that are compulsory for all foreigners who apply for Slovak citizenship. Government fails to stipulate the particulars of such tests as well as the recommended way of preparing for them or the required level of language proficiency. Citizenship applicants cannot turn to any manuals or rely on any criteria that must be complied with in the course of testing. This puts them in relatively great uncertainty and grants state administration authorities a significant discretion power with respect to citizenship applicants. The same goes for testing knowledge of Slovak life and institutions. The basic purpose of such testing is to establish whether citizenship applicants are sufficiently 'good (potential) citizens' i.e. whether their knowledge of Slovakia's history, culture and politics makes them suitable candidates for Slovak citizenship. Again, there are no formal requirements regarding sufficient knowledge of the country's life and institutions.

But the greatest problem in our opinion is the critical lack of legal peace in the process of obtaining Slovak citizenship. Throughout the process, the currently valid law grants a relatively high discretion power to state administration organs that evaluate citizenship applications. Perhaps the greatest source of uncertainty is the provision of Citizenship Act stipulating that foreigners do not earn the legal title to become Slovak citizens even after they have complied with all the criteria. In other words, even if foreigners have gone through the bureaucratic odyssey, i.e. submitted all the documents, passed the test of language proficiency and knowledge of Slovak life and institutions, sufficiently proved their impeccability etc., they do not become legally entitled to obtain Slovak citizenship. If at the end of the day government decides that a particular applicant does not represent a sufficient "contribution" to the country or even poses a threat to it, it may simply turn down his or her application.

12. PROTECTION OF RELIGIOUS MINORITIES

A typical feature of government policies with respect to religious minorities in Slovakia is ignorance of the fact that under certain circumstances a small religious minority may be at a significantly disadvantaged position with respect to larger denominations, especially the largest Roman Catholic Church. Religious minorities enjoy the same level of constitutional and legal protection as the religious majority. According to Article 24 of the Slovak Constitution, the freedom of worship is absolutely guaranteed. The freedom of professing religious faith or belief is guaranteed either privately or together with others, via participating in divine services, religious acts, rites or teaching. In a democratic society, manifestations of religious freedom may be restricted if it is necessary to protect public order, health and morality or the rights and freedoms of others.[199]

The main problem in Slovakia is that besides recognizing the fundamental human freedom of worship, Slovakia hides behind Article 1 Paragraph 1 of the Slovak Constitution, which states that the Slovak Republic is not tied to any religion. So, Slovakia is in theory a secular state but in practice it is not so. Most importantly, the religion to which a majority of the Slovak society subscribes is reflected in organization of the work calendar, in public holidays (e.g. Easter, Christmas, Feast of Our Lady of Sorrows) or even in laws that are far from neutral; for instance, Family Act is based on the ideal of Christian family and the matrimony as a bond between one man and one woman.

An example of such approach in the last year was rejection of proposal to amend the Law on Funeral Services (hereinafter referred to as Burial Act) to accommodate demands of the Jewish minority.[200] One of the suggested provisions sought to abolish the currently valid time limit of 48 hours during which it is legally prohibited to bury mortal remains of the deceased. The justification report accompanying the proposed amendment reads: "In the case of the Jewish religious community, the said prohibition infringed on their constitution-guaranteed freedom of worship since their religious customs require burial within 24 hours of death."

When drafting the most recent amendment, the legislators revised fundamental comments that had not been incorporated into the currently valid law passed in 2010. Among them was an amendment proposed by the Central Union of Jewish Communities in the Slovak Republic. "In

199 Article 24 Paragraphs 1, 2, 3 of the Slovak Constitution, *supra* note 88.

200 Related documents are available at: http://www.rokovania.sk/Rokovanie.aspx/NezaradenyMaterialDetail?idMaterial=19669

our opinion, the said bill is anti-constitutional and disturbs the traditionally good relations between our church and the state," the official comment reads. "Article 3, Paragraph 3 of Burial Act stipulates that 'mortal remains … must be buried no later than 96 hours but no earlier than 48 hours after death'. This directly contradicts the Jewish religious code, Halakha, which requires that burial service be held within 24 hours of death. Since the Constitution of the Slovak Republic guarantees the freedom of worship that also includes religious acts and ceremonies (Article 24), we hereby consider Article 3, Paragraph 3 unconstitutional and propose its abolition, amendment or granting an exception from it." The Central Union of Jewish Communities tried to enact an amendment to Burial Act or at least an exception for members of the Jewish religious community for more than a year; during that time, its representatives held talks with a number of high government officials including Parliament Chairman Richard Sulík (SaS).

There were two basic arguments in favour of enacting the 48-hour time limit. According to the first, the time limit is supposed to prevent complications in case the deceased comes to life; however, having consulted experts from the Ministry of Health Care and the Bureau for Health Care Supervision, the amendment proposers came to a conclusion that there was no medical reason to stipulate the minimum time limit for burying mortal remains. The second argument had to do with the possibility to order autopsy in case of "suspicion that death of the deceased had been caused by a criminal act (…) In such case, burying mortal remains requires consent by district attorney."[201] The abolition of the 48-hour time limit would not have directly interfered with the Criminal Statute; however, such cases would require prompt action on the part of the police and timely communication with applicable authorities.

In the first reading, the proposed amendment failed to muster the required support in parliament. A large number of present deputies abstained from voting, particularly MPs for Smer-SD and Slovak National Party (SNS). On the other hand, passing the amendment into the second reading was supported by all present deputies for Most-Híd and SaS and almost all members of the Slovak Democratic and Christian Union (SDKÚ-DS) caucus.[202]

Slovakia's legal order is rather peculiar in this respect as it features one such specific exception; it is the right to conscientious objection that was quite paradoxically enacted to suit the religious majority. On the other hand, when initiators of the rejected amendment considered an exception for members of Jewish religious communities, they turned it down on grounds that it "contradicts the valid antidiscrimination legislation". In other words, Antidiscrimination Act whose basic purpose is to protect minority members' rights has been used in Slovakia to prevent a debate on whether certain population groups are eligible for a legal exception on grounds of cultural dissimilarity.

Equality does not mean that all people should be treated equally. Identical treatment of persons with or without handicaps apparently leads to inequality. For immobile students, a staircase to a school building may constitute an insurmountable barrier in access to education. The principle of equality requires government to take into account every individual's different situation and strive to create conditions for everyone to lead a dignified life. If a time limit of 48 hours indirectly discriminates against a particular religious group and thus violates its members' freedom of worship, government should seek ways to put the said religious group on an

201 Article 156 of the Law No. 301/2005 (Code of Criminal Procedures).

202 Session No. 18 on May 19, 2011, vote No. 72 on Print No. 336; available at: http://www.nrsr.sk/Default.aspx?sid=schodze/hlasovanie/hlasklub&ID=28484

equal footing. That could be achieved either by shortening the currently valid time limit or by granting an exception from the general rule for members of the Jewish community.

12.1 REGISTRATION OF CHURCHES AND RELIGIOUS ASSOCIATIONS

The currently valid legislation that regulates registration of churches may lead to practical discrimination against certain smaller religions, particularly those that are imported to Slovakia by immigrants. The basic purpose of the legislation is to regulate practicing of religion and govern registration of religious associations by the state. Regardless of whether they are registered or not, the law grants members of religious associations the right to profess their religion including the right to take part in divine services, religious acts and rites.[203] Also, the churches and religious associations have the right to administer their communities, establish their spiritual and monastic organizations, determine their rites, etc.[204]

In recent years, though, said law saw a significant tightening of provisions that stipulate conditions for registration. While in 1991 a religious association had to demonstrate it had 20,000 sympathizers in order to be registered, the currently valid law requires churches and religious associations to demonstrate that they have "at least 20,000 adult members who permanently reside on the territory of the Slovak Republic and are citizens of the Slovak Republic."[205]

Registration is crucial from the viewpoint of religious communities' reproduction. The law "recognizes" only those "churches and religious associations that have been duly registered".[206] Through registration, "a religious subject gains significant benefits such as eligibility to apply for state budget contributions to salaries of their clergymen and operation of church head offices (e.g. episcopates), operation of church schools and religious education at state schools".[207]

Although Law No. 308/1991 declares that "all churches and religious associations have equal status before the law",[208] it is obvious that registered churches have significant privileges, which was admitted by the Ministry of Culture that drafted the most recent amendment to the law in 2007. In the bill's justification report, the ministry stated that "fundamental human rights and freedoms are equally guaranteed to members of registered as well as unregistered churches and religious associations".[209] Churches and religious associations "are *de iure* as well as *de facto* free, regardless of whether they are registered or not … the only limit to their activities is respecting the country's legal order".[210] True, unregistered churches may freely pursue their activities but under essentially worse conditions. They are not legally entitled to receive government's financial support for their activities, including education, that are essential to reproducing any religious community's identity.

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203 Article 5 of the Law No. 308/1991 on Freedom of Worship and the Status of Churches and Religious Associations, as amended (hereinafter referred to as "Freedom of Worship Act").
204 Articles 5 a 6, *ibid.*
205 Article 11, *ibid.*
206 Article 4(2), *ibid.*
207 Justification report to amendment to the Law No. 308/1991 on Freedom of Worship and the Status of Churches and Religious Associations, as amended (hereinafter referred to as "justification report"), p. 2. rticle 5 of Freedom of Worship Act, *supra* note 210
208 Article 4(2), *ibid.*
209 Justification report, *supra* note 214, p. 1.
210 *Ibid.*

For the sake of illustration, government in 2011 allocated a total of €37,461,769 from the state budget to salaries of clergymen and operation of head offices of churches and religious associations. Of that, €21,424,100 went to the Roman Catholic Church. Other churches received substantially less, for instance the Greek Catholic Orthodox Church (€3,791,598), the Protestant Church of the Augsburg Denomination (€3,700,032), the Reformed Christian Church (€1,995,407), or the Orthodox Church (€1,707,807). [211] Unregistered churches received no such financial support from the state budget.

The importance of registered status of churches and religious associations is also reflected in several other legal rules. For instance, Family Act stipulates that matrimony may only be concluded before the clergyman of registered church or religion.[212] Only registered churches and religious associations may receive broadcasting time in public broadcast media; they may also propose candidates to be appointed to the Council of Slovak Radio and Television.[213] According to the currently valid Burial Act, funeral service operators may only invite representatives of registered churches and religious associations to burial services.[214]

The amendment of 2007 that introduced stricter conditions for registration of churches and religious associations was examined from the viewpoint of constitutional conformity by the Constitutional Court in 2008. The motion was filed by the attorney general who maintained that the amendment violated the freedom of worship and religious belief guaranteed by Article 24 Paragraphs 1 and 3 of the Slovak Constitution as well as by Article 9 Paragraph 1 of the European Convention for the Protection of Fundamental Rights and Freedoms. In his motion, the attorney general argued: "By stipulating the high quorum, which is too high even for European standards and practically unattainable in the Slovak Republic, the valid legislation prevents small churches and religious associations from earning legal subjectivity. In doing so, the state obviously fails to fulfil its obligation to create legal conditions for exercising the right to the freedom of worship and religious belief according to individuals' own free choice."[215]

The attorney general said that with respect to churches, the state should perform the role of neutral arbiter and should not prescribe or outlaw any religion. As part of its neutrality, it should preserve equal conditions for operation of all churches and religious associations. Any government intervention with religious freedoms should comply with the principle of proportionality. According to the attorney general, the set conditions "contradict the principles of proportionality and legitimacy … By stipulating the high quorum for registration of churches and religious associations, the state discriminates against persons that subscribe to minority religions or beliefs as it curtails the very essence of their right to the freedom of worship in terms of practicing it due to the small number of members of the community they feel part of".

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211 For further details on state budget funds allocated to churches and religious associations between 2000 and 2011, please see an overview on the official website of the Ministry of Culture available at: http://www.culture.gov.sk/cirkev-nabozenske-spolocnosti/dokumenty/financovanie_nab_vsr/financie-zo-r .

212 Law No. 36/2005 on Family that Alters and Amends Certain Laws, as amended.

213 Article 5 Paragraph 1 on the main activity of Radio and Television of Slovakia and Article 9 of the Law No. 532/2010 on Radio and Television of Slovakia, as amended.

214 Article 8 Paragraph 4 (Operation of Funeral Services) of the Law No. 131/2010 on Funeral Services, as amended.

215 Ruling of the Constitutional Court No. sp. Zn. PL. ÚS 10/08 of February 3, 2010 (hereinafter referred to as "ruling 10/08").

In his motion, the general attorney cited examples of registration criteria in select European countries. In the Czech Republic, churches and religious associations are required by law to submit signatures of 300 citizens who subscribe to them in order to get registered; in the Russian Federation, motions to register churches or religious associations must be signed by at least 10 founding members; in Poland, the law requires signatures of 100 persons with legal capacity; finally, in Hungary, motions to register churches and religious associations require 10 signatures.

The Constitutional Court first requested an official position of the National Council of the Slovak Republic that passed the amendment. In a truly brief communiqué, parliament expressed its conviction that the amendment was constitutional. The Constitutional Court also asked for a position of the cabinet that had drafted the amendment and submitted it to parliament. According to the cabinet, registration by the state is not required to profess a religion. Unlike the attorney general, the cabinet argued that churches and religious associations "are *de iure* as well as *de facto* free, regardless of whether they are registered or not. This may be documented by growing activities of many untraditional religious groupings whose number is estimated by experts at approximately 50. Since in relatively conservative Slovakia it is quite difficult to comply with the requirement of 20,000 members, these religious groupings opt for registration with the Ministry of Interior as civic associations in compliance with Citizen Assembly Act, even though this law did not originally apply to assembly of citizens in churches and religious associations. Subsequently, these religious societies strive to draw attention to themselves through highly regarded *pro bono* activities (e.g. various educational, cultural, peace and ecological events)."[216]

The cabinet tried to justify different treatment of registered and unregistered churches in a particularly peculiar way. According to its official position, the question is not whether the state discriminates against smaller churches in their right to practice religious beliefs but whether it is economic discrimination or not. "By setting the quorum for registration of churches and religious associations, the state responds to the fact that churches and religious associations are not officially separated from state in Slovakia and they are partly financed from public funds. According to the cabinet, economic discrimination against unregistered churches has been sufficiently explained in the bill's justification report, which argued that it was necessary to take into account the country's cultural and historical specifics".[217]

The Constitutional Court adopted the cabinet's argumentation and concluded that "the fact that a concrete church or religious association is not registered does not mean or imply that members of such groupings are limited in the essence of their right to the freedom of worship, which is why it cannot contradict Article 12 Paragraphs 1 and 2 of the Constitution and Article 14 of the Convention".[218]

The ruling was publicly questioned by Constitutional Court judge Lajos Mészáros who issued a dissenting opinion on the matter. Mészáros pointed out that the majority decision of the Constitutional Court failed to distinguish between the so-called basic legal standard, which provides the foundation to acquire a legal form, and higher legal standard, which is related to religious registration. According to him, Slovakia does not have registration of basic legal stan-

216 *Ibid.*
217 *Ibid.*
218 *Ibid.*

dard but only that of higher legal standard, which is connected to certain privileges, particularly financial ones. Mészáros argued that legal subjectivity of churches, which is not guaranteed by the legal form of civic association, was crucial to preserving their autonomy.

At the same time, Mészáros emphasized the relation between individual and collective freedom to practice religion. Individual freedom to practice religion is closely related to collective one, which allows for action in the field of one's own interests. According to Mészáros, "it is therefore unacceptable to refuse to deal with constitutional conformity of the quorum as an intervention with the freedom to practice religion just because individuals may enjoy religious freedom even without a registered church or may potentially assemble in an 'unqualified' form based on Citizen Assembly Act".[219]

Unlike most Constitutional Court justices, Mészáros argued that acquiring legal subjectivity through registration may come to contradiction with the constitution-guaranteed right to practice religion or faith and that the requirement of the 20,000-member quorum must be subjected to the scrutiny of proportionality. At the same time, he ruled out that the 20,000-member requirement could be legitimized by the goal of protecting public resources as it was not among possible limitation clauses, i.e. acceptable reasons for limiting the practice of religion. Mészáros observed that an acceptable goal could be protection of public order against obscure and illegible churches or religious associations supported by a handful of sympathizers. Based on the test of necessity, he argued that such a high quorum was not necessary. "The same result could be achieved by a quorum that is lower than the currently valid one, along with other means. I would view acceptable a reasonably low quorum that reflects the minimum social representativeness of a church or a religious association."[220] According to Mészáros, the contentious provision discriminated against a group of persons or a community in terms of the freedom to practice their religion compared to already recognized churches. Mészáros viewed the currently valid quorum unconstitutional "both in terms of the freedom to practice one's religion and in terms of the ban on discrimination".[221]

Like in the case of examining constitutional conformity of affirmative action on the ethnic basis, judge Mészáros offered a more convincing argumentation than the majority ruling of the Constitutional Court, which endorsed the state's dominant position of ignoring the disadvantageous situation of religious minorities. The Constitutional Court identified itself with the cabinet's argumentation that defended stricter registration criteria and – like in the case of immigrants – betrayed fear of the strange and unfamiliar, which is shared by a substantial part of Slovakia's political elite. It is rather likely that the existing model of financing churches will in time be adjusted, although it will hardly be politically popular given the influence of dominant denominations.

219 A dissenting opinion attached to the ruling, *ibid.*
220 *Ibid.*
221 *Ibid.*

13. CONCLUSION AND RECOMMENDATIONS

Last year we recorded a significant progress in the field of implementing minorities' participative rights through setting up the Committee for National Minorities and Ethnic Groups as well as their language rights through passing an amendment to Minority Language Use Act. Despite efforts by the Office of the Deputy Prime Minister for Human Rights, National Minorities and Gender Equality to pursue minority policy based on the principle of respecting human dignity and equality, a strong hallmark of government minority policy in 2011 was securitization of minorities, particularly ethnic Hungarians, the Roma and immigrants.

As we have pointed out in the chapter that discussed perception of minority rights through the prism of security, this approach fails to provide foundation for policies that would be able to secure dignified life of national, ethnic, language or religious minorities living in Slovakia, quite the contrary. The deplorable trends of suppressing minority rights aimed particularly against members of the Romani minority continued throughout 2011. They included segregation practices within education system and in the field of housing (e.g. building segregation barriers), criminalization of the Roma and demolition of illegal shacks or tantalizingly inadequate efforts to incorporate the Roma to society. Also, Slovakia has been unable to remedy the most notorious legacies of the first Robert Fico administration such as outlawing multiple citizenships or tightening criteria for obtaining Slovak citizenship and conditions for registration of churches and religious associations.

In the following section, we shall outline basic recommendations that should help set Slovakia's minority policy to the desirable course of respecting human dignity and equality. Before the country is able to set its mind on more ambitious projects in the field of minority policy, it must immediately adopt measures aimed at eliminating practices that should be viewed as the most serious violations of human and minority rights.

13.1 SHORT-TERM MEASURES

Outlawing and Eliminating Segregation Practices

Division of people along the ethnic lines, either in schools or in territorial planning, forced eviction of the Roma from towns and villages and their relocation to remote segregated localities or construction of various segregation barriers flies right in the face of respecting human dignity. The Slovak Republic must adopt a desegregation program as soon as possible. It would

be very desirable to enact a general ban on segregation, for instance through amending Anti-discrimination Act. We are not completely convinced that this kind of progress can be achieved through implementing the revised *Action Plan for the Decade of Roma Inclusion*, which was the foundation for the *Strategy of the Slovak Republic for Roma Integration until 2020* adopted in January 2012. The desegregation program requires changes in majority institutions' *modus operandi* so that it creates space for inclusion and simultaneously adopts a complex approach to development of marginalized communities.

Our ambition is not to suggest a list of concrete measures; if it was, a general legal ban on segregation would have to be on top of it. We shall rather confine our suggestions to defining the essential approach that should be at the heart of particular policy tools. We believe that the key to adoption of effective measures in all crucial areas of public life is to stop perceiving the Roma as a 'problem' that must be 'solved'. Our research of tools aimed at helping Romani children within education system revealed that such perspective in practice 'locks' the Roma in semantic boxes that have been built for centuries and today they associate this population group either with romanticizing ideas of untamed nomads or with deeply rooted negative stereotypes about primitivism, laziness and filthiness.

During their respective quests for equality, feminists, Indigenous Peoples and African Americans all argued that reproducing the image of primitivism, inability and backwardness leads individual members of these stigmatized population groups to believe they are inferior to others and have less faith in their own capacities. Conviction of their own inferiority and lack of faith subsequently becomes the most potent source of oppression and inability to break out from the vicious circle of exclusion. That is why it is crucial for government and its agencies to treat the Roma as equal partners as opposed to objects for intervention. We urge government to adopt solutions that will help the Roma extricate themselves from the shackles of poverty and eliminate segregationist practices in close cooperation with Romani communities and experts as opposed to using them as a mere tool of legitimizing solutions designed by non-Romani government clerks and experts.

Adopting Affirmative Action Measures

We would particularly like to direct government's attention at so-called temporary equalization measures on the ethnic basis that have not been adopted in Slovakia so far and that might prove extremely helpful in overcoming deprivation of marginalized population groups. Other countries' past practical experience with affirmative action measures (e.g. admission of students from historically disadvantaged population groups to prestigious schools) clearly show that they have helped build a strong middle class within these communities.[222] Government could also ponder adopting these measures to reduce unemployment of the Roma through state orders by binding contracting subjects to reserve a certain percentage of jobs for Romani applicants.[223] As we have pointed out earlier, despite the problematic Constitutional Court ruling we believe that if lawmakers earnestly wanted to, they would be able to formulate and enact a provision that allows

222 Bowen, William G. & Bok, Derek, *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions* (Princeton, New Jersey: Princeton University Press, 1998).

223 For further details on types of equalization measures, please see Jarmila Lajčáková, *Dočasné vyrovnávacie opatrenia: Medzinárodný a ústavný rámec s návrhom legislatívnej úpravy* [Temporary Equalization Measures: International and Constitutional Context with a Proposal of Legislative Regulation], (Bratislava: Nadácia Milana Šimečku, 2007).

for adoption of affirmative action measures while complying with the principle of legal peace and clearly disassociating these measures from permanent affirmative action.

Increasing Emphasis on Symbolic Policies

Another measure that might prove very helpful in overcoming exclusion of the Roma and creating conditions for dignified life of the Roma as well as other minorities is symbolic policy. We believe it is extremely important for government and the majority to send out a signal that they view minorities as equal constituents of the community. Political leaders and high public officials should issue public statements that unambiguously condemn segregation, demolition of shacks or construction of segregation barriers as opposed to justifying such practices. In our opinion it is also very important to publicly apologize to minority members and indemnify them for historical wrongs or human rights violations such as taking away Romani children and placing them in children's homes during the communist regime, forcible sterilizations of Romani women during and after the communist era or confiscation of ethnic Hungarians' property following World War II.

Amending Citizenship Act

As he have repeatedly pointed out, Citizenship Act is problematic from many aspects, especially with respect to existing (i.e. ethnic Hungarians) as well as future (i.e. immigrants) members of Slovakia's political community. Therefore, we recommend amending it as soon as possible so that it does not make ethnic Hungarians hostages to Slovak-Hungarian mutual relations, i.e. allow them to opt for dual citizenship. We also recommend simplifying and loosening the extremely strict conditions for obtaining Slovak citizenship through naturalization.

Adopting Changes to Language Policy

Minority policy pertaining to language rights should in our opinion be thoroughly revised, which will probably take a long time; in a shorter time horizon, we view it necessary to amend conditions that apply to using minority languages in line with the original concept proposed in fall 2010 by the deputy prime minister for human rights, national minorities and gender equality. According to his original proposal, the law should legalize using languages of national minorities in municipalities where their share exceeds 10 percent. At the same time, the law should provide equal legal protection to language rights of ethnic Russians, which means that Russian language should be listed among languages protected by Minority Language Use Act. It would also be highly desirable to amend State Language Act in order to narrow down the scope of public domain where the use of Slovak is enforced at the expense of using minority languages; needless to say, the amendment should also eliminate sanctions for violating the law.

Increasing Minorities' Participation in Decision-Making Processes

It is self-explanatory that preserving the existing organs responsible for minority policy, particularly the post of deputy prime minister for human rights, national minorities and gender equality and the Government Council for Human Rights, National Minorities and Gender Equality including the Committee for National Minorities and Ethnic Groups is the minimum standard of national minorities' participation in decision-making processes. At the time of putting the present report together, the new administration announced changes in this area that

indicated designs to abolish these minimum guarantees of minority protection. We believe it is important to establish minority consultative organs on the level of the National Council of the Slovak Republic as well as that of regional self-governments.

Changing Conditions for Registering Churches and Religious Associations

Here, we would recommend gradually altering the currently existing relation between the state and churches, which will lead to acknowledging the disadvantageous position of religious minorities and again is likely to take some time. An amendment that would adumbrate this change and may be enacted in a shorter time horizon should focus on changing conditions for registration of churches and religious associations and restoring the *status quo* in this area before the amendment of 2007.

13.2 MEDIUM-TERM AND LONG-TERM MEASURES

Contextualization of Minority Protection

The fundamental flaw of minority policy in Slovakia, which comes as a result of securitizing the minority discourse, is its lack of sensitivity to dissimilarities between particular minorities, regardless of whether officially recognized or not. Rising up to this challenge will not be easy but is in the long term essential to shaping a solid and sustainable minority policy that is based on principles of human dignity and material equality.

An integral part of contextualization should be incorporation of emerging minorities into the existing framework of minority policy. If we accept the argument that emerging communities of immigrants should be recognized as 'minorities', it inevitably leads us to a question whether there are differences between normative demands of so-called new minorities (i.e. immigrants) and established minorities (i.e. recognized or traditional ones).

Will Kymlicka is perhaps the only theoretician of multiculturalism who has come up with his own classification of minorities. He distinguishes between national minorities (those could be compared to traditional or established minorities) and ethnic groups (i.e. immigrants). He refers to minorities that do not fit either category (e.g. African Americans or Roma) as *sui generis* groups.[224]

National minorities are potentially self-governing communities that have been voluntarily or forcibly incorporated into a larger entity such as a state.[225] Most national minorities are therefore "historical communities that inhabit a certain territory or motherland, have their own language and mass culture."[226] The category of national minorities includes stateless nations and indigenous populations. On the other hand, ethnic groups comprise migrants who have "abandoned their national communities to become part of another society".[227]

The difference between national minorities and ethnic groups is determined by several criteria. The most important of them is the way of incorporating them into the state they currently

224 Will Kymlicka & Wayne Norman, "Citizenship in Culturally Diverse Societies: Issues, Contexts, Concepts" in Will Kymlicka & Wayne Norman (eds.), *Citizenship in Diverse Societies* (Oxford: Oxford University Press, 2000) p. 19.

225 Kymlicka 1995, *supra* note 24, pp. 10 – 11.

226 Kymlicka & Norman, *supra* note 231, p. 19.

227 Kymlicka 1995, *supra* note 24, p. 20 (Kymlicka distinguishes between migrants who are eligible to become citizens and migrants who are not eligible and refugees.).

inhabit. National minorities have always been incorporated collectively and their incorporation may have been voluntary or forcible. On the other hand, ethnic groups have usually been incorporated individually and always voluntarily.[228]

The way of incorporation predetermines demands presented by these two types of minorities.[229] National minorities prefer maintaining specific societal cultures that provide their members with "meaningful opportunities of leading life in social, educational, religious, recreational, and sports areas that include the public as well as the private sphere".[230] These types of societal cultures are typically "territorially concentrated, based on the common language (...) and share not only collective memory and values but also common institutions and practices".[231]

These cultures have not existed since time immemorial but are rather product of the modernization process that "includes diffusion of common culture, including the standardized language, into society."[232] A societal culture is inherent in economic, political and social institutions. National minorities should be allowed the same cultural reproduction as the majority nation but without the existence of their own state, i.e. through parallel cultural, social and economic institutions.[233]

Unlike national minorities, communities of immigrants do not typically strive to preserve their specific societal cultures. After all, the very status of immigrants prevents them from maintaining close ties to the source of their societal cultures that remained in countries from which they have emigrated.[234] This is not to say that ethnic groups would strive for assimilation as immigrants usually prefer integration into societal cultures of majority societies. This is why Kymlicka argues that fair protection of immigrants does not include reproduction of their societal culture but rather integration into the dominant culture. At the same time, the integration process includes their commitment with respect to majority institutions.[235] Also, integration must allow for expression of their specific identities so that they do not shoulder a disproportionate burden of integration.[236]

However, Kymlicka does not completely rule out a possibility that migrants may in time evolve into national minorities that will strive to preserve their specific cultures.[237] After all, that was the case of English-speaking colonizers in the British Empire or the French in Québec;[238] however, their principal goal was to conquer and colonize new lands and reproduce their own societal culture, not to become integrated into existing cultures of indigenous populations.[239]

Kymlicka's theory includes many so-called grey zones and minorities such as African Americans or Roma that cannot be qualified either as national minorities or as ethnic groups.[240] Existence

228 Sujit Choudhry, "National Minorities and Ethnic Immigrants: Liberalism's Political Sociology" (2002) 10 *The Journal of Political Philosophy* 54, pp. 57 – 58.
229 Kymlicka 1995, *supra* note 24, p. 10.
230 Ibid, p. 76.
231 Ibid.
232 Ibid.
233 Please see his argument; *ibid.* pp. 125 – 127.
234 *Ibid*, p. 77.
235 *Ibid*., p. 178.
236 *Ibid.*, pp. 30 – 32.
237 *Ibid*., p. 15.
238 *Ibid.*
239 *Ibid.*
240 Except the Roma, these complicated examples of minorities in the context of Central and Eastern Europe also include Russians in Baltic countries as well as Crimean Tartars and Cossacks. Kymlicka 2001*, supra* note 14, p. 73 and following.

of these groups that cannot be ignored in terms of size, inflicted historical wrongs and lingering marginalization seems to question Kymlicka's categorization.[241] In defence of his theory, Kymlicka cites empirical data according to which most minorities fall into these two categories. Besides, he argues that such anomalies are the result of past injustices. The theoretical framework that is supposed to stand the test of time as well as its practical implementation should not allow for existence of such examples. Nevertheless, Kymlicka believes that his dichotomy of national minorities and ethnic groups will stand in most cases[242] although he admits that certain types of minorities do not fit into his classification.[243]

Minority rights theoreticians who prefer the terms of new and old minorities, particularly in the European context, have also come up with similar categorizations as Kymlicka. Roberta Medda refers to communities whose members have preserved their specific language, culture and/or religion as old, historical, national, traditional or autochthonous minorities. The old minorities emerged as the result of redrawing international borders and subsequent change in their nationality. These minorities may also include ethnic groups that for various reasons were unable to gain independent statehood and eventually became part of another, larger state or several states. The new minorities emerged as the result of individual decision by migrants and their families to leave their country of origin. This decision may have been motivated by economic and sometimes by political reasons. These communities comprise migrants as well as refugees and their descendants who remain in their host country for longer than just temporarily.[244] Medda's classification is based on identical criteria as Kymlicka's as the decisive criterion is the method of incorporation.

In his analysis of minority rights guaranteed by the *UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, Asbjørn Eide introduced the following categorization. According to him, old minorities comprise "persons who had – or their ancestors had – lived in the country or its part before it became independent or before its borders were staked out as they are today. On the other hand, new minorities comprise persons who arrived after the country became independent. Whether old or new, a minority must be smaller than the majority and must share common ethnic, religious or linguistic characteristics it aims to preserve.[245]

The decisive criterion for dividing minorities into old and new is their presence on a certain territory at the time when the country they currently inhabit emerged. The reason is existence of some sort of social contract at the point of its emergence regarding preservation of cultural and ethnic elements.[246] "When building a nation, all groups that have already lived there

241 Kymlicka 1995, *supra* note 24, p. 25.

242 *Ibid*., p. 72.

243 Will Kymlicka, "Western Political Theory and Ethnic Relations in Eastern Europe" in Will Kymlicka & Magda Opalski, eds., *Can Liberal Pluralism be Exported? Western Political Theory and Ethnic Relations in Eastern Europe* (Oxford: Oxford University Press, 2001) p. 74.

244 Roberta Medda, "Historical Minorities and Migrants: Foes or Allies?" in Eumap.org Journal, Feature Freedom of Movement: Migration Issues in Europe, Part I: Migration Trends and Challenges, July 2004; available at: www.eumap.org/journal/features/2004/migration/pt1/minmigrants. Please see also Roberta Medda, *Old and New Minorities: Reconciling Diversity and Cohesion*. *A Human Rights Model for Minority Integration* (Nomos: Baden-Baden, 2009).

245 Asbjørn Eide, "The Rights of 'Old' versus 'New' Minorities", *European Yearbook of Minority Issues*, Volume 2, 2002/3 (Leiden: Martinus Nijhoff Publishers, 2004) pp. 365 – 366.

246 *Ibid.,* p. 366.

should be respected and their cultural practices and languages be taken into account."[247] The dissimilarity of immigrant groups (i.e. the so-called new minorities) "ensues from the assumption that their immigration was based on free will, which is why they should accept the existing cultural and language make-up of the country they aim to settle in".[248]

In the theory subscribed to by Kymlicka, Medda and Eide, the main criterion for division is the way of minorities' incorporation. The immigrants who belong to a different category should be guaranteed a different (i.e. narrower) scope of minority rights. Unlike members of national minorities, they should not be able to reproduce their societal cultures but 'merely' to integrate. In Slovakia, practical application of this approach would cause significant problems since most national minorities that have already been officially recognized would not pass for national minorities. Not only the Roma but also ethnic Bulgarians, ethnic Germans or ethnic Russians could not be recognized as national minorities as their communities in Slovakia are the result of individual migration.[249]

Reclassifying some national minorities in Slovakia as ethnic groups would be very unpopular, particularly due to the symbolic dimension of being recognized as a national minority. During the communist regime, for instance, the Roma strove to earn the official status of national minority as it provided better protection from the program of state assimilation. When they finally acquired it, most representatives of the Romani minority viewed it as a confirmation that Romani culture was considered as valuable and developed as cultures of other population groups in Slovakia.[250]

It also remains unclear whether reclassification of already recognized national minorities into ethnic groups in combination with emerging communities of immigrants would amount to a practical change in terms of differentiated approach to national minorities and ethnic groups. The existing system of minority rights does not provide national minorities with the degree of protection that would allow them to reproduce their culture through territorial autonomy as Kymlicka's theory assumes. While constitution-guaranteed rights of national minorities provide for existence of certain parallel institutions such as minority schools or cultural societies, in general they are poly-ethnic rights whose main objective is integration into majority institutions. Therefore, reclassification of national minorities would not necessarily bring a practical change in the scope of protection except symbolizing that ethnic groups are inferior in some way.[251]

Besides practical and political problems with reclassification, the division based on the criterion of incorporation method is problematic even on the theoretical level. The argument

247 *Ibid.*

248 *Ibid.*

249 For further details on the Bulgarian minority and its immigration waves to Czechoslovakia, please see Eva Krekovičová – Vladimír Penčev (eds.), *Bulhari na Slovensku, Etnokultúrne charakteristiky a súvislosti* [Bulgarians in Slovakia: Ethno-Cultural Characteristics and Context], (Bratislava: Veda, Vydavateľstvo SAV, 2005) pp. 25 – 63; for further details on the Russian minority, please see SAV position, *supra* note 31, p. 1.

250 Lajčáková 2007, *supra* note 2, section 2.1.

251 Such an approach was applied by Poland. The Polish minority law distinguishes between national minorities and ethnic groups; the only difference is the existence of a kin state. As a result, the Roma and the Ruthenians are ethnic groups while Jews are a national minority; however, the scope of minority rights is identical for both groups. 141 Ustawa z dnia 6 stycznia 2005 r. o mniejszościach narodowych i etnicznych oraz o języku regionalnym.

that immigrants have abandoned their societal cultures voluntarily – i.e. unlike members of national minorities – will not stand.[252] As Sujit Choudry correctly points out, most immigrants decide to abandon their country of origin in search of better economic opportunities. Making a decision under the pressure of existential poverty is not a free choice in egalitarian liberalism to which Kymlicka openly subscribes.[253] Also, his argument fails to take into account following generations of immigrants who did not choose to be born with the immigrant status.[254] The argument of 'consent' simply cannot justify the moral distinction between demands made by national minorities and ethnic groups.

The difference between national minorities and ethnic groups is rather unconvincing also in the light of the role Kymlicka attaches to societal culture. According to Kymlicka's theory, access to one's own societal culture constitutes primary good that is crucial to human freedom. But Carens argues that "since immigrants have access to existing societal cultures and have given up the right to enjoy their original societal cultures, it is unclear why they should enjoy any special rights to preserve their cultural dissimilarities at all".[255]

Courtney Jung pushes Carens's argument even further, arguing that if Kymlicka assumes that culture plays such an important role in constituting human identity, then all cultural groups should have identical moral foundation for their minority demands, regardless of whether they have been historically disadvantaged or privileged, whether they were the oppressed or the oppressors or even whether or not they participated in genocide.[256]

The reclassification into several categories seems problematic. Besides practical problems, the categories introduced by Kymlicka and others are not morally justifiable based on the criterion of incorporation. The criticism of the argumentation that immigrants freely chose to abandon their culture would imply that they should be entitled to identical scope of minority rights as national minorities. If we elaborated on Jung's theory, cultural dissimilarity by itself should not be the foundation for acknowledging minority rights; what should matter is rather the relative disadvantage as the result of historical injustices.

According to Jung, cultural dissimilarity as such may not automatically and always imply acknowledgment of minority rights. Based on the criterion of respecting human dignity, minority policy should take into account also historical injustices that have contributed to present disadvantage. Besides, the principle of respecting human dignity urges us to perceive individuals in their contextual situations and strive to pursue policies that simultaneously eliminate various forms of disadvantage such as socio-economic, cultural and gender. Every minority is in a different situation: it has a different history or a different relation to the dominant nation; one is territorially concentrated while the other is scattered. Besides, the leaders as well as

252 Choudhry 2002, *supra* note 308, p .61.

253 Ibid, p. 63; please see also criticism of the argument of the free will to emigrate in Patrick Macklem, *Indigenous Difference and the Constitution of Canada* (Toronto: University of Toronto Press, 2001, reprint in 2002) p. 73; please see also Shachar in the context of religious immigrant groups, *supra* note 76, p. 26.

254 Joseph H. Carens & Melissa S. Williams, "Muslim Minorities in Liberal Democracies: The Politics of Misrecognition" in Rainer Bauböck, Agnes Heller & Aristide R. Zolberg (eds.), *The Challenge of Diversity: Integration and Pluralism in Societies of Immigration* (Aldershot: Avebury, 1996) 157, p. 175.

255 Joseph H. Carens, "Liberalism and Culture" in *Symposium on Multicultural Citizenship by Will Kymlicka* (1997) 4(1) Constellations 35 p. 44.

256 Courtney Jung, *The Moral Force of Indigenous Politics and the Zapatistas* (Cambridge: Cambridge University Press: 2008), 15.

regular members of particular communities have different expectations regarding their ethnic, language or religious identities. Some of them want to become integrated, others are willing to get assimilated and yet others strive to preserve their specific 'societal culture'. The public debate on emerging minority communities is also likely to reveal significant differences between particular groups and their expectations; some of them will prefer assimilation while others will wish to create parallel communities.

How should government cope with these challenges and design as fair a minority policy as possible? We believe there are two basic ways of legislatively responding to these challenges. One is to create **several minority categories** in a similar way that was applied by Kymlicka; however, as we have previously argued, it is crucial to be convincing in justifying differences in normative power of demands presented by particular minorities.

The other way is to **preserve a single minority category** while its designation (i.e. national or ethnic) is irrelevant; however, the single category would not imply a uniform approach to all minorities; on the contrary, the ideal policy should reflect cultural, demographic, geographic, political, social and economic differences between individual minorities. Such a differentiating approach could be further developed along the principle of human dignity and equality and allow for designing and pursing minority policy that will reflect differences between as well as within individual groups. This alternative (i.e. a single minority category) seems legally, practically and politically more acceptable.

There may be multiple problems with applying this approach. Incorporation of all the minorities in different situations into a single category may in practice lead to reducing the standard of minority protection to the minimum guarantee that will near a ban on discrimination. Placing newly-emerging minorities of immigrants next to established national minorities may be politically abused to reduce the standard of protection with respect to already recognized minorities, particularly ethnic Hungarians. The most serious problems may arise in the field of financing minority cultures as the existing amount of funds earmarked to financing minority cultures will not increase but will get merely divided among more communities. The strategy of mixing newly-emerging minorities of immigrants with already recognized minorities may serve an excuse to steer the public debate from administration of minority communities' affairs by themselves toward integration of minorities (including the recognized ones), which seems a suitable approach to newly-emerging minority communities. Another important drawback of this approach is government's notorious inability to react to different problems in combination with different political, social and cultural ambitions of various communities within the 'single minority category'.

Both alternatives have their pros and cons. At this point, it is difficult to say which approach would be more appropriate, given their normative and practical dimensions. If newly-emerging communities of immigrants strive to exercise minority rights, they should be able to succeed; however, this requires changing the way of perception and subsequently the scope and content of minority rights so that they sufficiently sensitively reflect dissimilarities between particular groups as well as between individual members within them. That means, for instance, taking into account historical injustices in the process of financial redistribution, which is already being partially accomplished through applying the principle of affirmative action. Reflecting dissimilarities would also imply creating space for self-identification within various categories of nationality. At the same time, it would be desirable to change the way of language

rights' implementation from the primarily territorial approach to at least its combination with the non-territorial one. The best way of protecting minorities should take into account socio-economic disadvantage and combine minority policy with social policy.

Minority Self-Governments

Securitization of minorities directly leads to tabooing the issues of minority self-governance and autonomy, respectively. Autonomy is a standard demand of minorities around the world that is motivated by their desire to decide on matters concerning their own communities instead of being the object of policies and decisions made by the majority. As we have already pointed out, the existing system of minority protection based on the concept of individual minority rights does not give minorities a real power to decide on matters that concern their own communities. Their participation is left up to good will of the majority that decides on the scope of minority rights, for instance how much funds shall be allocated to minority cultures, who shall represent the voice of minorities or what will be the content of textbooks used at minority schools.

If the country's political elite is at least partially favourably inclined to the concept of minority participation as it was in 2011, there is a chance that minorities will have a say in deciding on issues that concern them; however, even under optimum political conditions, the legitimacy of minority representatives appointed to the Committee for National Minorities and Ethnic Groups will always be debated as these representatives are not elected.

The alternative to individual minority rights is collective rights and minority self-governance, which guarantees that decision-making on affairs concerning minority communities, particularly on issues related to culture and education, belongs to particular minorities. There are many models of territorial, personal or functional autonomy whose mutual combination might lead to a suitable institutional model for minority protection in Slovakia.

For instance, the model of personal cultural autonomy seems to be suitable for non-territorial minorities such as the Ruthenians. It is based on the concept of recognizing minority members as legal subjects whose membership is the result of their individual will to belong to the minority, as opposed to residence, which is the case of territorial autonomy. In democratic self-governance elections, they elect their representatives who subsequently manage educational and cultural affairs from a certain percentage of tax revenues. The minority's elected representatives usually have reserved seats in the national parliament.

In the case of the Roma, this model might lead to certain undesirable effects such as deepening the existing disparities, which is why its variant based on the concept of participation in decision-making seems to be more suitable.[257] On the other hand, the best model for territorially concentrated ethnic Hungarians seems to be territorial autonomy combined with personal autonomy for members of the minority as well as the majority who live on this territory.

A notorious problem in Slovakia is involved actors' reluctance to launch a public debate on the issue and evaluate various models that may also bring certain risks, for instance in the form of restricting individual rights; however, these risks may be eliminated by institutional solutions that have been successfully tested abroad. Unfortunately, political representatives of minori-

257 For further details, please see Jarmila Lajčáková, "Advancing Empowerment of the Roma in Slovakia through Non-territorial National Autonomy" (2010) 9 (2) *Ethnopolitics*, p. 171.

ties, especially ethnic Hungarian leaders, seem to be afraid to utter the word autonomy due to the continuous securitization of minorities. The issue of autonomy is generally marginalized in Slovakia, even in the academic discourse. We believe that the academic debate on minority rights should not avoid this otherwise standard issue as it may produce ways to improve the existing model of minority protection. We would therefore like to call on other academic organizations and think-tanks to openly and critically discuss the issue in the foreseeable future.

Protection of Religious Minorities

The standard of religious minorities' protection in Slovakia directly depends on acknowledging the fact that certain churches and religious associations are in a disadvantageous position due to their non-dominant character and small size. Such acknowledgment should in our opinion pave the way to amending registration conditions so that they not only cease to privilege the largest religious communities but simultaneously equalize disadvantages of the smallest ones. Remedying some religious communities' disadvantageous position should not only be financial but could also take other forms of furthering religious minority rights such as already mentioned exceptions from laws and other forms of accommodation that will allow members of religious minorities to lead dignified and respectable life in Slovakia.

14. ANNEX: MINORITY POLICY IN THE POLITICAL DISCOURSE

14.1 MINORITIES IN THE POLITICAL DISCOURSE

In the following text we will try to examine various methods of legitimizing and rationalizing the specific shape of minority policy in Slovakia and its ramifications. The principal actors of the political discourse are public officials (i.e. president, prime minister, members of parliament) who act on different levels ranging from local to national and international. The present analysis focuses exclusively on politicians and their activities in the political process. We proceeded from the premise that political actions (i.e. adoption of legislation, decision-making, campaigning, parliamentary debate, political advertising, media interviews, political programs, etc.) are part of the public debate that reveals public officials' basic political positions on specific issues of lawmaking and decision-making.

In this particular case, we focused primarily on issues related to ethnic and national minorities and Slovakia's ethnic heterogeneity.[258] Political representatives are members of the so-called elite that is in the position to influence and control the political discourse, i.e. the place, time and circumstances in which the sharing of views (i.e. communication) takes place and even influence the presence and the role of other participants. Less influential groups have active access to everyday conversations with their relatives and friends while their access to the institutional communication (e.g. with clerks, doctors, teachers, etc.) is less active and their access to the public discourse (e.g. political or media debates) is more or less passive.[259] This is why we believe that politicians play the key role in shaping the image of minorities. Due to their power and authority, members of the political elite are able to communicate their views to the public; subsequently, these views take on less distinguished forms as they are not subject to certain formal rules of communication on the political level.[260]

258 Teun Adrianus Van Dijk, "What Is Political Discourse Analysis?" Key-note address Congress of Political Linguistics in Antwerpen, December 7-9, 1995 in Jan Blommaert & Chris Bulcaen (eds.), *Political Linguistics* (Amsterdam: Benjamins) p. 11-52.

259 Teun Adrianus Van Dijk "Social Cognition and Discourse" in Howard Giles & Peter Robinson (eds.), *Handbook of Social Psychology and Language* (Chichester: Wiley, 1989) p 163-183.

260 Teun Adrianus Van Dijk "Text, Talk, Elites and Racism" (1992) 4 (1/2) Discours Social/Social Discourse, 37.

Analysis

An analysis of the political discourse helps deconstruct not only the way politicians speak of minorities but also their attitudes to "the others" as well as political discourse's potential effects on public perception.[261] The analysis was based primarily on parliamentary debates, wording of proposed bills and justification reports and media debates on select issues and events that directly affect minorities, i.e. amending State Symbols Act (parliamentary debates of November 3-4, 2010), amending Citizenship Act (parliamentary debate of May 25, 2010, November 4-5, 2010, February 2, 2011, February 9-10 2011 and March 23, 2011), appointing the interior minister's advisor for Romani criminality (primarily media statements and the advisor's blog), discussing the proposal to record ethnic affiliation of apprehended criminals (media statements) and amending Municipal Election Act (bill's final draft along with its justification report, media statements of the bill's authors). While examining the political discourse, we focused on the semantic content of parliamentary debates as well as on stylistic, rhetorical and organizational forms of communicating the categories of "us" and "them".

Minorities as a Threat

The basic principle that is traceable in the political discourse on minorities and may be characterized as the overriding political cognition is the notion of minorities as a threat. The public discourse almost exclusively focuses on two minorities, namely ethnic Hungarians and the Roma. Besides the notion of threat, we identified several other issues that – just like the notion of threat – corroborate the thesis that minority policy in Slovakia is based on principles of peace and security as opposed to that of human dignity.

Especially the parties then (in 2011) in opposition (but not only them) view ethnic plurality in Slovakia as the risk of undermining the state's political and legal authority. To them, homogenization of society is the means that guarantees the easiest possible organization of private and public life.[262] It represents an ideological standard some political representatives strive to achieve, which is why they inevitably view minorities with their specifics as an obstacle to achieving this standard. Securitization of minority policy became obvious especially during the debate on amending Citizenship Act in which ethnic Hungarians were portrayed as the source of security risk and the vehicle that might help Hungary pursue its 'revisionist' policies. The degree of this security risk also affects the scope of rights the majority nation is willing to grant to the minority. Consequently, minority rights in Slovakia are the issue of protecting the majority rather than minorities. The threat posed by the minorities rests primarily in disloyalty to Slovakia that is *a priori* attributed to them (not only) by the then opposition representatives. For many political leaders double citizenship implies insufficient loyalty to the Slovak Republic, which is why those who apply for another country's citizenship should be punished by the means of revoking their Slovak citizenship.

261 Teun Adrianus Van Dijk "On the Analysis of Parliamentary Debates on Immigration" in Martin Reisigl & Ruth Wodak (eds.), *The Semiotics of Racism. Approaches to Critical Discourse Analysis* (Vienna: Passagen Verlag, 2000) p. 85-103.

262 Bikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (London: Palgrave Macmillan, 2006); James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995)

"It was our legitimate right to make a countermeasure to prevent such legislative stealing of citizens. That is why we chose the path of exclusive citizenship." (Rafael Rafaj, Slovak National Party - SNS, February 2, 2011)

This way of construing minorities is supported by making up catastrophic scenarios that target people's emotions, cause the majority population to feel anxious and insecure and thus create favourable conditions to promote and adopt any (especially discriminatory) measures that may prevent such a threat. For instance, the so-called 'Romani criminality' is frequently presented as a fact that needs no further corroboration. The danger of such simplification is that it implies collective guilt that applies to all members of the minority. It almost seems that criminality is perceived as the essential trace of the Roma, which further strengthens the anti-Romani stereotypes:

"You and I know all too well what the Roma's lifestyle is. They live in a different culture than the majority population, although many of them have managed to extricate themselves from it, thank God." (Vladimír Palko, Conservative Democrats of Slovakia - KDS)[263]

"I believe that this type of criminality ensues from the way of life. And this way of life is not pegged to poverty." (Milan Krajniak, interior minister's advisor for Romani criminality)[264]

By presenting widespread stereotypes as objective arguments from the position of authority, members of the political elite add to their value and contribute to their reproduction. The negative image of minorities is further strengthened by using hyperboles in describing their negative qualities and actions while the majority's negative qualities and actions are disparaged, as it was the case of segregationist practices:

"I had heard about the wall scandal before I visited Ostrovany. But there is no wall in Ostrovany. The local settlement is not surrounded by any wall (...) It is more like a backyard wall. When I read about it in the papers, I thought it must be some 'big deal'. But when I saw it with my own eyes, I had to smile." (Milan Krajniak, interior minister's advisor for Romani criminality)[265]

"I wouldn't call it anti-Romani sentiment. It is complaints by people who suffer from concrete criminality." (Vladimír Palko, Conservative Democrats of Slovakia - KDS)[266]

263 "Vladimír Palko: Odhoďme stereotypy a bavme sa o konkrétnych číslach" ['Vladimír Palko: Let's Toss Stereotypes and Talk Concrete Figures'], an interview with Roman Čonka for *Romano nevo ľil* published September 14, 2009; available at: http://2009.rnlweb.org/modules.php?name=News&file=article&sid=16734

264 "Milan Krajniak: Farba pleti páchateľa ma nezaujíma" ['Milan Krajniak: The Perpetrator's Complexion Does Not Interest Me'], an interview with Sergej Danilov for Rádio Expres aired November 16, 2010; available at: http://www.expres.sk/clanok/443/milan-krajniak-farba-pleti-pachatela-ma-nezaujima.html

265 Ibid.

266 *Supra* note 263.

This is the way to create polarization between 'us' and 'them' where the former stands for morally superior and the latter for morally inferior. As far as the Roma are concerned, the discourse suggests a contrast between the moral Caucasians and the immoral Roma. This kind of dominance that is widely presented as natural allows the majority Slovak nation subordinate minorities and make them a mere subject of its decision-making. The social hegemony created in this way requires 'ethnic ideology' that includes measures aimed at perpetuating the *status quo* through legitimizing the superior culture (e.g. the amendment to State Symbols Act), introducing exclusivity of citizenship (e.g. amendment to Citizenship Act) or construing criminality as an essential quality of the Roma and decency as an essential quality of the Caucasians (e.g. the myth of Romani criminality).

Illiberal policies are justified by the need to protect the majority nation as well as minorities themselves. For instance, interior minister's advisor for Romani criminality tried to justify repressive measures against the Roma by arguing that their purpose is not only to protect the majority from the Roma but also the Roma against extremists. During the dispute over double citizenship, ethnic Hungarians in Slovakia were portrayed as weak, helpless, submissive and apparently susceptible to influence of the Hungarian government, which is why they needed protection from the Slovak government. In order to save ethnic Hungarians from the pressure mounted by the Hungarian government, they must be presented a clear choice: either they keep their Slovak citizenship or they exchange it for the Hungarian one. Protecting a state's citizens by threatening them to revoke their citizenship (i.e. *de facto* exclude them from the political community) upon acquiring another state's citizenship is somewhat ironic because protected are only the loyal (i.e. exclusively Slovak) citizens who do not show any interest in acquiring Hungarian citizenship. This illustrates the majority nation's paternalistic attitude vis-à-vis subordinate minorities: the majority nation shall take care of them and protect them but under these specific conditions; at the same time, it shall decide on the scope of their rights and privileges.

The concept of minority rights as the way of providing care for minorities is a mere extension of the mentioned paternalism. Members of minorities are not perceived as equal and dignified partners but as someone who needs the majority's care, which again reproduces dominance of the so-called statehood nation. At the same time, numerous statements presented by opposition MPs indicate that they consider this care to be adequate and even above-standard:

> *"The Slovak Republic belongs to those European countries that do not deny national minorities' rights but develop these rights and strive to create the best possible conditions for national minorities."* (Ján Senko, Smer-SD, February 2, 2011)

Concept of Individualism and of Personal Merits

The element that appeared solely in the discourse on the Romani minority was the notion of individualism and personal merits, which is also known as modern or symbolic racism. On the first glance it may appear that it is not racism at all but in fact it has racist consequences because it is clearly aimed against one specific, ethnically different population group. Modern or symbolic racism has replaced the traditional racism that openly inculcated biological superiority of the white race and promulgated formal segregation and discrimination.

Symbolic racism in the Slovak context is based on four fundamental convictions:

(1) the Roma are not subjected to systemic discrimination;

(2) their failure is a direct result of their own reluctance to work hard to achieve success;

(3) they require too much and too fast; and

(4) they have already gotten more than they deserve anyway.

The word 'symbolic' indicates that racist attitudes are not aimed against concrete individuals but against an abstract collective entity; also, it refers to abstract moral values as opposed to concrete individuals' personal interests. Symbolic racism combines old-fashioned racism with traditional conservative values of the so-called protestant ethic (e.g. individualism, diligence, strenuousness, obedience and discipline). From the political viewpoint, some authors view symbolic racism in public policies as a regular political process in which the elite strives to control society and influence its moral values while avoiding overtly racist rhetoric.[267] In Slovakia, modern racism appears increasingly often with respect to the Roma, not only in the laymen discourse but also on the highest level of the country's political life (e.g. proposals by Christian Democratic Union - SDKÚ-DS to reduce family allowance and material need benefits or to amend Construction Act). According to this concept, unemployment is an individual failure, which is why government's social assistance should be based on individuals' merits.

Alternative Discourse and Absent Elements

The political discourse on minorities and minority rights is not homogeneous as there are alternatives to the mainstream. Alternative discourse participants who refused to construe minorities as a threat comprised exclusively government representatives, primarily MPs for Most-Híd and OKS (Civic Conservative Party), partly also for SDKÚ-DS (Christian Democratic Union) and Ordinary People. Since most members of the Most-Híd caucus are of Hungarian origin, it is natural that they strove to undermine the ideology of the majority nation's supremacy and dominance. They criticized the placement of state symbols as it was enacted by the previous administration, calling it a hyper-compensation for initiators' low national self-confidence. Also, they correctly questioned the widespread assumption that Slovakia's ethnic Hungarians would massively apply for Hungarian citizenship. Although the alternative discourse remains rather marginal, it may be considered a progress.

Unfortunately, the political discourse about the Roma completely lacked the dimension of human dignity that would construe them as human beings as opposed to threatening and depersonalized subject, an abstract and dangerous collective entity.

Consequences of the Political Discourse

The 'ethnic agenda' is largely managed by the government and its bureaucratic machinery that prepares, drafts, and implements basic decisions in various areas of minority rights. Public policies, executive measures, legislative initiatives and policy documents affect the public discourse as they are discussed on different levels, both formally and informally, influencing participants from the ranks of the majority population as well as minorities. Of course, this

267 For further details, please see David O. Sears & P.J. Henry, "The Origins of Symbolic Racism" (2003) 85(2) Journal of Personality and Social Psychology, 259.

relation is not a one-way street in the sense that political discourse affects the public one and never vice versa.[268] It is rather a complex process of mutual interaction; however, the key in this relation is the authority of those participants who influence the political discourse. Power is not performed through force but through persuasion. The elite may indirectly control citizens' actions through influencing their mental models, which subsequently affects their motives, cognition and social behaviour.[269]

The political discourse that promulgates the myth of ethnic Slovaks' superiority simultaneously encourages minority members' feeling of inferiority (as it has been the case of the Romani minority), which of course negatively affects their self-esteem, their quality of life and eventually their chances to win recognition within majority society, for instance on the labour market or in education system. **Most disparities within society are socially determined; consequently, public discourse is the basic tool in the process of their ideological production and reproduction. Construing minorities as a threat or a security risk – of course, we shall assume that this threat does not objectively exist and that it is a mere social construct – may inspire minorities to accept this strategy and present their demands through conflict because they will see this is the only construct members of the majority understand and pay attention to.**

This kind of political discourse helps maintain social hegemony of the Slovaks, which requires everyday reproduction on the level of actions, interactions and social cognitions; the reproduction process is catalyzed by discourse and communication. Sharing attitudes to minorities allows even those who are not in everyday contact with their members to form their own opinions, convictions and interpretations that derive from what circulates in the public debate. The political discourse becomes part of the public debate and earns its legitimacy primarily through the media, which often inform about it rather uncritically. Besides the media, though, the political discourse is also reflected through the institutional setting (i.e. institutional and legislative framework of citizens' everyday lives) or even school curricula (e.g. textbooks, teaching plans and overall organization of the teaching process based on the premise of ethnic Slovaks' dominance over minorities).

We firmly believe that polarization of society along ethnic lines and rejection of minority members as equal partners who have their human dignity and value may only be eliminated if members of the elite fundamentally change their ethnic ideologies and practices (or get replaced by more progressive ones). Just like the elite may produce, reproduce and preserve the image of minorities as a threat, it may equally effectively shape a fair minority policy that is based on respecting all individuals as equals.

14.2 MINORITY LANGUAGES IN THE POLITICAL DISCOURSE

Language Policies and Language Rights

There are different ways of looking at minority rights. One of them is the already classic liberal approach. According to this approach, the best way of securing citizens' cultural equality is to separate the state from any manifestations of culture. A good example of such an attitude is secularization of state and its separation from church and religion. This concept of "culturally

268 Teun Adrianus Van Dijk, "Elite Discourse and Reproduction of Racism" in Rita Kirk Whillock & David Slayden (eds.), *Hate Speech* (Thousands Oaks, London & New Delhi: Sage Publications, 1995) p.1-27.
269 Van Dijk, *supra* note 259.

neutral state" is problematic in all respects but particularly from the viewpoint of language. Canadian philosopher Will Kymlicka called the language "Achilles' heel" of such a liberal approach to minority rights.[270] The reason is that language as the basic means of human communication is impossible to separate from state and public administration.

At the same time, one should note that language is more than a mere means of communication. "Issues related to language are of course supremely political in the sense that they have to do with power relations."[271] Similar understanding of language's power charge was presented by respected French sociologist Pierre Bourdieu[272] who argued that the language, the vocabulary and the accent we use in different life situations help create hierarchic relations within social interactions.

We tend to attribute different values to particular languages. In the words of May, majority language is often presented as the "tool of modernity" and is attributed an "instrumental value" as the means of communication. On the other hand, minority languages are often perceived as having merely "sentimental value". Consequently, command of majority language is considered a display of rational and pragmatic choice whereas command of minority languages is viewed merely as part of minority members' cultural identity and usefulness of their command is often ignored. In other words, society appreciates minorities' intense adapting to majority language rather than preserving the use of their languages.[273]

Along the same lines, a traditional argument against supporting minority languages is that they are an obstacle to modernization and social mobility and a vehicle to particular minorities' ghettoization. Advocates of this argument tend to forget that minority languages may contribute to minorities' ghettoization only if society creates generally favourable conditions for it. This happens when political and social discourse is set in a way that either one or another language is accepted and used, i.e. when there is not sufficient support for equal use of both. In the present analysis, I call this concept the "sink or swim" approach.

Methodology

The present article examines political discourse with respect to the state language and minority languages through analyzing debates in the National Council of the Slovak Republic regarding amendments to Minority Language Use Act and State Language Act since inauguration of the Iveta Radičová administration until the end of 2011. The bills' final drafts, justification reports and changes proposed by deputies served as an additional source of information. First, I shall briefly describe the process of passing both bills during the Iveta Radičová administration's tenure; subsequently, I will discuss the main issues that surfaced during the parliamentary debates and concern language policies in the field of minority rights.

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270 Will Kymlicka & Francois Grin "Assessing the Politics of Diversity in Transition Countries" in Farimah Daftary z Francois Grin (eds.), *Nation-building, ethnicity and language politics in transition countries* (Budapest: ECMI, 2003) p. 9.

271 Francois Grin, "Language policy" in Francois Grin, *Language Policy Evaluation and the European Charter for Regional or Minority Languages* (Basingstoke: Palgrave Macmillan, 2003) p. 19-52, translation by the author.

272 Pierre Bourdieu, *Language & Symbolic Power* (Cambridge: Cambridge Polity Press, 1991)

273 Stephen May, "Language Policy" in Michael James Grenfell et al (eds.), *Bourdieu, Language and Linguistics* (London: Continuum, 2011) p. 147-169.

State Language Act

The law was first passed by the Vladimír Mečiar administration in 1995, shortly after the Slovak Republic had become an independent country;[274] it has been amended several times since then. The incumbent administration of Iveta Radičová that came to power in summer 2010 made a commitment in its program manifesto to adopt changes in the field of language policies: "*Besides amending State Language Act in order to eliminate its unnecessarily restrictive provisions, passing a new law on the protection, preservation and development of national minorities' cultures and amending Schooling Act, the Slovak Government shall fulfil the principle of all Slovak citizens' effective equality through amending Minority Language Use Act, Geodesy and Cartography Act, Municipality Designation Act and other related legal enactments*."[275] The cabinet submitted to parliament a bill that sought to amend State Language Act as early as in October 2010. Although the president referred the law back to parliament's deliberation, the assembly broke his veto and repeatedly passed the law in early 2011.[276]

Minority Language Act

Slovakia first passed the law in 1999 through expedited legislative procedure as its adoption was among hard and fast conditions for Slovakia's accession to the European Union. The law defined its purpose as follows: "*… based on international agreements the Slovak Republic is bound by as well as specific laws, set the rules pertaining to the use of minority languages in official contact and in areas defined by this law*".[277] Ten years later the law was amended by the Robert Fico administration. The most recent amendment initiated by the Iveta Radičová administration, just like in the case of amendment to State Language Act, was anchored in its program manifesto. The amendment's final draft was submitted to parliament in March 2011 by Deputy Prime Minister for Human Rights, National Minorities and Gender Equality Rudolf Chmel (Most-Híd).

The bill was first passed in May 2011 but the president refused to sign it into law and referred it back to parliament along with a recommendation that the bill be rejected as a whole; parliament broke the president's veto by a thin majority of 77 out of 150 votes and re-passed the law in late June 2011.[278]

Political Discourse and Political Parties

Neither the examined laws nor the issue of language rights in general rank among the 'hottest' issues on Slovakia's political scene. The debates on both bills clearly exposed parties and politicians that spend most time contemplating this issue as well as those that show little or no interest in it. As one would expect, MPs for Most-Híd were among the most active supporters of both amendments. Participation of other ruling parties' deputies in the debates was rather

274 Law No. 270/1995 on State Language of the Slovak Republic, as amended.

275 *Občianska zodpovednosť a spolupráca. Programové vyhlásenie vlády Slovenskej republiky na obdobie rokov 2010 – 2014* [Civic Responsibility and Cooperation: Program Manifesto of the Government of the Slovak Republic for the Period of 2010 – 2014].

276 Law No. 35/2011 of 2 February 2011 that Alters and Amends Law No. 270/1995 on State Language of the Slovak Republic, as amended.

277 Law No. 184/1999 on the Use of Languages of National Minorities.

278 Law No. 204/2011 that Alters and Amends Law No. 184/1999 on the Use of Languages of National Minorities as amended by Law No. 318/2009.

marginal, perhaps except MP Dubovcová (Christian Democratic Union - SDKÚ-DS). The most active among SaS (Freedom and Solidarity) deputies was MP Matovič (Ordinary People movement) whose contributions were rather ambivalent; eventually, Matovič proposed his own amendment that tried to seek a compromise between interests of the ruling coalition and the opposition.[279] The remaining ruling party, namely the Christian Democratic Movement - KDH, was almost silent throughout both debates.

On the other hand, the list of both amendments' fiercest critics included deputies for opposition parties of Slovak National Party - SNS and Smer-SD. The most active among the former was MP Rafaj, followed by the party chairman Slota, among the latter it was especially MPs Čaplovič and Maďarič.

Relation between State Language and Minority Languages

In Slovakia's political discourse, exercising the right to use minority languages and enforcing the obligation to use the state language is often juxtaposed as if one automatically excluded another and both had to compete with each other.

> "*This Magyarization amendment goes clearly at the expense of the state language because* ***once it is passed no one will ever need to study or use Slovak*** *as the state language.*" (J. Slota, Slovak National Party - SNS, June 30, 2011; highlighted by author)

> "*This bill that was today submitted to deliberations of the National Council* ***encroaches on the status of Slovak language as the state language*** *used on the territory of the Slovak Republic, completely debilitating it.*" (J. Senko, Smer-SD, June 30, 2011; highlighted by author)

Given this "sink or swim" approach, it is important to analyze in greater detail how political discourse views the ability to speak the state language and minority languages in order to establish what in fact competes against what.

Command of State Language as Citizens' Right vs. Obligation

Article 2 Paragraph 2 of State Language Act reads as follows: "*State shall create such conditions in education, scientific and information system that allow every citizen of the Slovak Republic to learn and use the state language orally as well as in writing.*" This paragraph seems to guarantee the right of citizens to acquire a sufficient command of the Slovak language. It would certainly be interesting to discuss whether and to what degree Slovakia does everything in its power to guarantee this right for everybody, but that is not the focus of the present analysis. What is truly interesting is that the country's political discourse views command of the state language as an obligation rather than right, which may be illustrated by the following statement:

279 An amendment proposed by members of the National Council of the Slovak Republic, parliamentary print No. 284.

"*You renew the infamous irredentist slogan of* From Carpathians to the Adriatic *by a new mutation of* From Birth to Death in Hungarian*. A member of the Hungarian minority who lives in Slovakia is self-sufficient in using Hungarian from birth to death.* ***He does not have to, does not need to even learn to understand Slovak.***" (R. Rafaj, Slovak National Party - SNS, December 9, 2010; highlighted by author)

Other deputies, especially MPs for Smer-SD, argued that a sufficient command of Slovak was inevitable to social inclusion of national minorities' members. On the first glance, this argument suggests that its advocates are concerned with well-being of national minorities' members. True, a good command of the state language is certainly an important prerequisite for full-fledged inclusion of members of national minorities into Slovakia's political community and civil society. But once again, political discourse perceives a sufficient command of the state language as citizens' obligation as opposed to their right and juxtaposes the state language against minority languages.

"*It is our true interest not to harm* ***our citizens of ethnic origin****, be they members of the Hungarian, German, Croatian, Ruthenian, Ukrainian and other national minorities, or a Romani minority,* ***to prevent closing them into close language ghettos*** *but to create all the necessary conditions for them to win recognition, and for the Slovaks who live on the 'language-mixed territory of Southern Slovakia' – allow me to touch upon this concrete area – to be able to communicate in the official language at government and self-governance authorities and anywhere else on this territory, to be able to receive equal information as members of local national minorities.*" (D. Čaplovič, Smer-SD, March 30, 2011; highlighted by author)

Command of Minority Languages as the Means of Communication

As we have said, minority languages are very often considered as nothing more than a manifestation of minority members' identity. In Slovakia, minority languages are usually attributed sentimental rather than practical value; also, effectiveness of minority languages in education is relatively underrated. The current prestige of minority languages may be illustrated by the following quote betraying concerns over the possibility that some employees of self-governance bodies in certain municipalities might be required to have a sufficient command of minority languages.

"*This bill will* ***discriminate against Slovaks without sufficient command of a minority language*** *(...) It is logical that when hiring employees, authorities in Southern Slovakia will prefer those who speak Hungarian while others will be discriminated against because they don't speak Hungarian. Or, if they don't*

want to lose their jobs, they will have to learn Hungarian. I think that the great Magyarizer, Count Apponyi, must be turning in his grave, but out of sheer satisfaction." (M. Maďarič, Smer-SD, March 30, 2011; highlighted by author)

But is it truly discriminatory, in areas where a relevant proportion of the population uses the minority language at home, to prefer public administration employees who speak both languages? I believe that this quote also illustrates a complete absence of discussion on whether members of the majority nation should learn minority languages. In the country's political discourse, this possibility always appears in a negative context, especially when certain politicians present it as a threat posed by national minorities.

Whose Rights Should be Protected?

The public debate over the need to 'protect' languages is a direct result of the fact that the state language and minority languages are juxtaposed to and eliminate one another.

"*This is another proof that you cannot speak of any equality because **Slovak as the state language is much worse off** than languages to which Minority Language Use Act applies.*" (R. Rafaj, Slovak National Party - SNS, December 9, 2010; highlighted by author)

On the other hand, the parliamentary debate also featured voices that pointed out potential dangers of the approach that sets one language against another along with interests of the majority and minority.

"*From previous addresses presented by politicians – not only regarding this bill but in previous debates as well – I noticed that Slovak politicians most often present this issue in such a way **as if we detracted from the majority nation's rights by granting certain rights to minorities.** They often create an impression that granting a certain right to the minority or extending it would threaten stability and security of our country. Some of them even view it so dangerous that they mention, say, autonomy in this context. **They try to present the rights granted to national minorities as inversely proportional to those of the majority nation, as if the two inevitably had to collide**. I hereby reject this approach. And **I believe** it is erroneous; **that this attitude is wrong.***" (J. Dubovcová, Christian Democratic Union - SDKÚ-DS, June 30, 2011; highlighted by author)

Who Should Assess the Level of Minorities' Protection?

Part of the parliamentary debate revolved around the question whether the previously existing regulation of the right to use minority languages was adequate. Both sides argued by citing

international conventions and official recommendations to Slovakia by international institutions; of course, each side interpreted Slovakia's international commitments so that they fitted their own position. A significant part of the debate focused on who should assess adequateness of the existing scope of rights. On the one hand, there was an approach that satisfaction with the level of minority rights must be expressed by minority members themselves:

> "*The fact is that* ***it is not important at all what the majority nation thinks about it. For security and stability of the state and its internal situation it is decisive****, always decisive,* ***what the weaker thinks about it****, how does the weaker feel there and how the weaker perceives his own status.*" (J. Dubovcová, Christian Democratic Union - SDKÚ-DS, June 30, 2011; highlighted by author)

On the other hand, MPs for Slovak National Party - SNS and Smer-SD tried to delegitimize the effort to strengthen minority rights and called proposed changes unnecessary:

> "*What is the true reason for adopting such a law; who benefits from this law; why are we even discussing this legislative bill at all;* ***who needs it?*** *(...) I consider it as absolutely pointless because the things this law aims to tackle through some directives will be tackled naturally as life goes by. Again, my question is: Who is it for and why?* ***And I don't know anybody that would be interested in such a bill at all.***" (D. Jarjabek, Smer-SD, June 30, 2011; highlighted by author)

This argument was seconded by the Slovak National Party - SNS chairman, only in a much harsher language:

> "*We are discussing here an* ***issue that is in itself as pointless and nonsensical as some deputies in parliament for the Hungarian party****, the Híd party, who are soliciting with other ruling parties, for instance about Magyarization of parts of Slovakia that have never been touched by any Hungarian interests.*" (J. Slota, Slovak National Party - SNS, June 30, 2011; highlighted by author)

Efforts to Delegitimize Political Representation of Ethnic Hungarians

Besides claiming alleged pointlessness of efforts to strengthen minority rights, their opponents attempt to delegitimize political representation of ethnic Hungarians in Slovakia. This strategy is in the long term pursued by certain politicians, particularly SNS leaders. There are two principal ways of applying it.

First, the fact that ethnic Hungarians may rely on a relatively strong political representation compared to other minorities is used as an argument against them as they are labelled as "the only dissatisfied minority". This argument is very unfair because it abuses the absence of other minorities' representatives in parliament, allowing opponents of minority rights to fill this vacuum with their own voice. This is perfectly illustrated by the following quote:

"*Said **law has never seems inadequate to any minority** or ethnic group **except one – the Hungarian one –** more precisely, its political representation.*" (M. Maďarič, Smer-SD, June 30, 2011; highlighted by author)

Secondly, political representatives of ethnic Hungarians in Slovakia are branded as puppets in the hands of Budapest. This strategy of accusation implies that ethnic Hungarian deputies are portrayed not as an inherent part of Slovakia's political system but as an alien element and the vehicle for another government to interfere with our country's sovereignty.

"*Even worse, **[the bill] falls within strategic revisionist plans of Budapest**, which is why it eventually poses a **risk to integrity and sovereignty of the Slovak Republic.***" (M. Maďarič, Smer-SD, June 28, 2011; highlighted by author)

The Roma and Language rights

It is interesting to look briefly at political discourse with respect to language rights of the Romani minority. The public debate on minority languages focuses almost exclusively on the Hungarian minority while language rights of the Roma are completely sidetracked despite the fact that the total number of Roma is comparable to that of ethnic Hungarians and according to expert estimates approximately half of them speak the Romani language.[280] At the same time, numerous surveys have revealed that most Romani children do not attend kindergartens and consequently they must overcome a significant language barrier upon enrolling in primary schools.[281] But even when discussing minority language rights, some politicians are simply not willing to acknowledge the issue of Romani language because political discourse with respect to the Roma focuses on totally different issues (for further details on political discourse regarding the Romani minority, please see the section 14.1.).

"*Another very interesting idea was the one when you began to speak of **Gypsies**. You know, I think that even if we all started to speak Gypsy here, the situation of this ethnic group would not change. **They need totally different measures, give them work so that they could not say that they have no source of income.***" (D. Švantner, Slovak National Party - SNS, March 30, 2011, in reaction to Dubovcová; highlighted by author)

This way of completely changing the subject of discussion could also be seen as another method of delegitimizing language demands of national minorities.

280 Please see Jarmila Filadelfiová, Daniel Gerbery & Daniel Škobla, D., *Správa o životných podmienkach rómskych domácností na Slovensku* [Report on Living Conditions of Romani Households in Slovakia] (Bratislava: UNDP, 2006)

281 Please compare, for instance, to Miroslava Hapalová & Stano Daniel, *Rovný prístup rómskych detí ku kvalitnému vzdelávaniu. Aktualizácia 2008* [Equal Access of Romani Children to Quality Education: Update for 2008] (Bratislava: Človek v tísni – pobočka Slovensko, 2008).

Conclusion

In Slovakia's political discourse, exercising the right to use minority languages and enforcing the obligation to use the state language is often juxtaposed as if one automatically excluded another and both had to compete with each other. At the same time, command of particular languages is perceived very differently. Command of the state language is perceived as an obligation rather than right. On the other hand, command of minority languages is viewed merely as manifestation of minority members' identity as opposed to a practical tool of communication between citizens.

A specific issue is the question of who should assess adequateness of the existing scope of minority rights. On the one hand, there is an approach that the level of minority rights must always be evaluated by minority members themselves; on the other hand, opponents of efforts to extend the existing scope of minority rights openly try to delegitimize political representatives of national minorities.

With respect to ethnic Hungarians, they use two principal strategies. Most importantly, the fact that ethnic Hungarians may rely on a relatively strong political representation compared to other minorities is used as an argument against them as they are labelled as "the only dissatisfied minority". At the same time, the absence of other minorities' representatives in parliament creates a vacuum that is abused by some politicians to claim pointlessness of extending minority rights. Secondly, political representatives of ethnic Hungarians in Slovakia are branded as puppets in the hands of Budapest, i.e. portrayed not as an inherent part of Slovakia's political system but as an alien element and the vehicle for another government to interfere with Slovakia's sovereignty.

The Roma are extremely marginal in Slovakia's political discourse on minority rights. In this particular case, any demands regarding language rights of the Romani minority are automatically rejected because political discourse with respect to the Roma focuses almost exclusively on socio-economic issues.