Introduction

Before 1989, racism and discrimination were issues, which rarely found their way into the consciousness of most Slovaks. When people thought about these issues, they usually thought about them as occurring in other places far removed from themselves. The idea that the Communist regime successfully froze conflicts rooted in ethnic or sexual identity is an old one, but that does not make it any less true.

Historically, Slovaks have always had to adapt themselves to the rule of others, but they have never had ultimate responsibility for that rule nor have these adaptations traditionally resulted from a display of will from the Slovak people. Now they are trying to adapt themselves to democracy. Like its neighbors, Slovakia is slowly making this painful transition, but with the added challenge of making the transition to a society which is, for the first time, responsible for itself.¹

Despite of the changes to the government in 1998 policy makers and community leaders cannot work together amidst a storm of mutual recrimination. Neither can they move the debate forward in an environment devoid of new ideas and fresh approaches. There are many declarations and agreements the Slovak government has signed and adhered to regarding legislation concerning the human rights of its citizens including minorities. At the present time, the ongoing process of economic reforms, involving many unpopular decisions puts restrictions on the capacity of the Slovak government to implement politically sensitive issues. To advocate necessary changes to legislation dealing with human rights, minority rights, ethnic issues, and other areas of public policy related to building a more tolerant and just civil society.

Even worst if the good policies are build on bad functioning structure: as the EU Regular Report 2001 warned due to gaps between good policy formulation (the Roma Strategies²) and implementation. The EU Report in 2001 called for better cooperation among Ministries, strengthening implementation

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* The author has served as consultant to Pontis Foundation’s Equal Chances Project in 2001. This material is partly has borned on the experience of this project
capacity of the administration (national and local level) involving Roma organization to implementation in earlier stage. In addition the EU call to tackle the pre-school education and teacher training, poor housing conditions and high unemployment as priorities. Also the EU Regular Report states, “the number of well-trained Roma advisors to the local authorities and the number of social workers at each level of public administration should be increased and accompanied by suitable legislative and financial support”.3

I. The Current Slovakia

1. Affirmative Action Policies in Slovakia: Legal Background

The idea of "affirmative action" (as Americans have labeled it), as much as it may be necessary in Slovak society, has done nothing but increase tensions between groups because it is perceived to produce unfavorable conditions for the majority population. To Slovaks who do not believe that discrimination exists in their country, affirmative action seems unfair.4

A form of positive discrimination (affirmative action) was practiced under the Communist regime through the introduction of quotas for minorities, which started in the 1950's. This practice for example helped to strengthen the Hungarian minority's political position in Communist Czechoslovakia. It also helped to bring a handful of Roma political leaders to the forefront. Ordinary citizens perceived this practice as politically unfair.5

The Roma Strategies of the Slovak Government (1999, 2000) emphasizes the necessity for Roma’ positive stimulation as a scheme may lead to affirmative action.6 The proposed set of measures by the Elaborated Strategy planned for 2000 is elaborated in a way that tackles particular problems in a succession of decreasing importance, so that problems viewed as the most critical by Strategy designers come first.

To understand the negative perception of positive discrimination in Slovakia one needs to understand the ironies of positive discrimination in the history of communistic Czechoslovakia. This also helps to understand the recent needs of disadvantaged groups of Slovakia. The perceived misuse of concept of equality by the communist political elite built strong antipathy in the society against these practices. This factor and the post-communist period with no effective control and answers to the new (ethnic) problems have caused misunderstandings toward minorities.7

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4 Markant Survey, January 2001
5 Vašečka, Michal, Vzťah majoritnej populácie k Rómom, In: Gyárfášova, Olga, Krivý, Vladimír, Velšic, Marián, Krajina v pohybe, p. 227
7 More see in Rule of Practices, a comparative study paper on affirmative action policies in USA, EU and former Czechoslovakia by CLA-Kalligram under preparation
Positive discrimination has negative connotation for the generations grow up to see how the Communist society is giving more advantages to their selected people. The Slovak society needs to be shown the new equal opportunities policies has nothing to do with positive discrimination policies during Communism. The Roma minority, which “de iure” has equal position in society, needs equal opportunities de facto as well. Therefore the state needs to initiative such policies according to the newly developed European model and to learn lessons from practices of communist regime. The aim must be to grant equal opportunities to disadvantaged groups and access to employment, services and education “de facto” as well.

Another argument against the usage of such policies is the wording of the Slovak Constitution. Several lawyers emphasize that positive discrimination is in contradiction with the article 12 section 2 of the Constitution, which states: „Basic rights and freedoms on the territory of the Slovak Republic are guaranteed to everyone regardless of sex, race, color of skin, language, creed and religion, political or other beliefs, national or social origin, affiliation to a nation or ethnic group, property, descent, or any other status. No one shall be harmed, preferred, or discriminated against on these grounds.”8 Similarly article 34 sect. 3 of the Constitution states that “the exercise of the rights of the citizens belonging to national minorities and ethnic groups (...) must not result (...) in discrimination of the other inhabitants.”9 Moreover, it can be argued, that international documents, which enable positive discrimination, have priority only over (regular) statutes, and not over the Constitution (see Articles 154c and 7 sect. 5 of the Constitution).

On the other hand, many articles of the Constitution derogate from the above-mentioned prohibitions - for example article 38 of the Constitution guarantees special working conditions for women, disabled people and young workers. On the basis of these derogations several “regular” statutes entitle special groups to special treatment (Labor Code, Act on Employment, etc.). It seems that any employment of positive discrimination policies is currently dependent on the reading and interpretation of the constitutional principle of anti-discrimination. More formal reading of the relevant constitutional articles would lead to prohibition of positive discrimination (with exception to explicitly stated constitutional derogations such as in Article 38). More substantive reading of the anti-discrimination principle would enable positive discrimination under certain circumstances theoretically in all areas. But given the fact, that there is no any relevant case law of the Constitutional Court, these questions remain open.10 As the closest example let us mention the new policy of the Czech government not just

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8 Slovak Constitution, www.cla.sk
9 Ibid
allowing different form of affirmative action, but using the first time the term of affirmative action in governmental measures in Central Europe.

2. The Reform of the Public Administration

The reform of public administration is a long process, which has practically started in our country right after the fall of the communist regime and is still going on. Its beginning dates back to 1990, when in September – after a previous governmental decision according to which all the national committees were ceased and the new model of public administration was processed - the parliament passed a law on the functioning of local authorities (nr. of law 369/1990).

After the elections in 1998, the government committed themselves to continue and finish the reform of public administration and to evaluate the necessity of the new regional division. As Jaroslav Pilát from MESA 10 describes, the reform had four major components:

- **The change of Slovakia’s regional division.**

  The necessary change of the country’s regional organization was included in the governmental programme too. The current regional division wasn’t brought about in a natural way, which means that it didn’t have regard for those basic demands, which could have been the basis for a country’s regional division. It doesn’t take the features of certain areas into consideration, doesn’t observe the natural regions, which have come into existence through the past centuries and have developed natural, communicational, economic, personal and transport relations and which should have been the basis for a new regional division. After the political failure of the 16-county model, a compromise of 12 higher administrative units was reached, which included the principles of the previous regional division. The model was ratified by the government (motion nr. 491/2000) in June 2000. During the ratification of the law on high-degree municipal units in spring 2001, the left wing of the governing coalition voted against the bill. The representatives of the Party of Democratic Left (SDL) and some representatives of the Party of Civic Understanding (SOP) turned against the bill in the parliament and voted together with the opposition, which was spectacular violation of the coalition agreement. So as a result, there is no new regional division in Slovakia, the second level of self-administration is starting its activity in inadequate regional districts and it’s going to be harder and harder to change this bad regional organization in the future.

- **Institutional reform.**

  It should have been implemented through the change of bodies and institutions of public administration but only the second level of municipal bodies was realized. According to the original idea, district offices should have been ceased and a network of specialized offices of state
administration established based on rationality and efficiency and not on some senseless administrative division. And in the same way, the current county offices should have been changed into some kind of office of the county supervisor, which would be much more 'slim' than the present county offices, which practically copy the structure of district offices. These changes were not brought about, which assumes a more expensive and less effective public administration in the future.

• **Modernization of public administration.**
In this field changes were to be implemented in harmony with reforms of certain sectors, which were supposed to bring about these changes. This should have been about further training in public administration, informatization, legal limits and management.

• **Decentralization**
Decentralization of competence, finance and political power is taking place. These three components of decentralization should have been implemented together because elected bodies without job description (competences) are needless, but at the same time elected bodies with competences, which they don’t know how to realize, are perplexed and inoperative. Not complete decentralization of political power has taken place, as the new centers of ‘power’ aren’t yet strong enough in the political sense of the word, which is due to the fact that decentralization of competences was implemented inadequately and with mistakes. For the time being, we can’t talk about fiscal decentralization, or the decentralization of finance because it doesn’t exist yet. Municipalities and local authorities are subsidized from the budget without being able to exert any systematic influence over it. The project of fiscal decentralization is due to be ready in 2004 but there is no guarantee for it to be realized by then. The question is whether this partial decentralization will be continuing after the 2002 elections. So this is the starting situation of decentralization in Slovakia in 2002. The parliament has passed laws which enable the start of decentralization, and the analysis of which (and warnings concerning the reality) can be found in the following texts.\(^\text{11}\)

II. International Context

1. **Affirmative Action in EU: Legal Background**
There are three major European documents recommending positive action for the relevant states dealing with different problems of, among others, Roma minority: the EU Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin No. 2000/43/EC (EU Race Directive), the EU Directive Establishing a general framework for equal treatment in employment and occupation No. 2000/78/EC, (EU Employment Directive) and the Council of Europe

\(^{11}\) More see Pilát, Jaroslav, Evaluation of Reform of the Public Administration, www.cla.sk
Protocol to the European Convention on Human Rights and Basic Liberties No.12. These documents represent the most important stage in the recent development of international (supranational) law in the field of combating discrimination. They are of profound importance to Slovakia, a member state of the Council of Europe and an associated country with the EU, currently in the process accession negotiations.

The stated purpose of the EU Race Directive is to “lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment. Both the Race and Employment Directives suggest the possibility of the adoption of positive action measures by countries in order to ensure “full equality in practice.” This might include the maintenance or adoption of “specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin.” The directive does not elaborate any further, nor does it require such measures to be taken. However, in the spirit of promoting the equality principle, Member and candidate countries have many options available to them in implementing effective positive discrimination or affirmative action programs.

Since the above-mentioned documents have recommendatory character, there are no obligatory measures in the international documents states need to develop. Therefore it depends on the minority (and social) situation as well as on (political) will of the states to adopt policies of positive action.\(^\text{12}\) Minority policy formulation and legislative experiences from Slovakia showed without foreign (EU) initiatives there is less chance to change policies. The best example is probably the role of international documents and organization on the preparation of the newly proposed anti-discrimination legislation of Slovakia, where beside numerous arguments from the state of the domestic legislation mainly the EU Race and Employment Directive are the leading argumentation toward the state administration why to adopt such legislation.

2. Mainstreaming Equality: Practice from Northern Ireland

In 1996, the European Union adopted “gender mainstreaming” as a strategy designed to ensure the attainment of equality of opportunity between men and women. Mainstreaming involves applying equal opportunities horizontally. Gender mainstreaming is commonly understood as: "the systematic integration of all the respective situations, priorities and needs of women and men in all policies and with a view to promoting equality between women and men and mobilizing all general policies and measures, specifically for the purpose of achieving equality by actively and openly taking into account, at the planning stage, their effects on the respective situations of women and men in

implementation, monitoring and evaluation.\textsuperscript{13}

It has been noted that there is a need to extend the scope of mainstreaming from gender to other groups, such as ethnic minorities. There are a number of ways of conceptualizing what mainstreaming means for the policy process (in terms of design, implementation and review phases). Two of the most graphic are:
- Government and public bodies should attempt to weave policies of equality of opportunity and non-discrimination into the fabric of decision-making across all spheres of government).
- Mainstreaming is not a strategy to be put into action once, it should be a constant thread throughout the whole policy process.

In Northern Ireland the implications of Section 75 of the Northern Ireland Act 1998 basically means that public authorities must firstly identify any differential impact of policies on nine specific groups and further identify and implement measures to promote equality of opportunity. The impact of policies on a range of groups, rather than the traditional focus on gender, poses particular challenges, given the dearth of data on specific groups.\textsuperscript{14}

As Christopher McCrudden emphasizes the question remains how to make a mainstreaming strategy operative. According to him there are three key elements:
- Collection and collation of quantitative and qualitative data on the circumstances of each of the designated groups;
- Analysis of data with reference to a selected equality objective and with reference to established indicators, that is, impact assessment;
- Proposals for affirmative action to promote the opportunity, participation or outcomes for each of the target groups, with targets and timescales.\textsuperscript{15}

The challenge for the public service is not confined to the establishment of data systems or the identification of affirmative action measures, nor is it simply about considerations of equality issues across the public sector; rather it is about changing practice in respect of enabling and resourcing the participation of representatives (and perhaps individuals) in the policy formulation and review process.

\textsuperscript{13} Ryan, Lorna, Mainstreaming Equality – Weaving a Constant Thread, In: Equal Chances Handbok, Pontis Foundation, Bratislava, 2001,

\textsuperscript{14} Ryan, Lorna, Ibid, In: Equal Chances Handbook, Pontis Foundation

III. Challenges in Slovakia

1. Participation of Minorities in Political Process
   a) Roma political parties

   The Roma political parties sector remains hopelessly divided mainly because of the lack of integrated and legitimate leadership. Since the establishment of the first political party in 1990 after the change of the regime, there are 15 registered Roma political parties and numerous NGOs are become involved into political life of Roma as well.

   There is no representation of Roma at a parliamentary level at the moment. Among political parties that are most sensitive about the rights of Roma and who promote Roma interests belong left-wing oriented Party of Democratic Left (recently 5% of a popular support) and a liberal oriented Democratic Party (recently 2% of a popular support). More importantly, some of Slovak political parties build their popularity also on criticism of Roma style of life (e.g. Slovak National Party, recently with 10% of popularity) and on populist suggestions how to "solve" the Roma issues (e.g. SMER with 17% of popularity at the moment).\(^{16}\)

   Since the Roma seems not able to form an effective political representation there are several attempts have Roma candidates on the list of mainstream political parties. Some positive examples are from the CEE countries\(^{17}\) which show elected Roma MPs are able to generate a more issue focused policymaking on the Roma question. In March 2002 the Slovak media reported about the offer of HZDS to Ladislav Fizik, the Head of the Roma Parliament to be the candidate No.9 on HZDS list. The US-based National Democratic Institute is training - particularly young - Roma candidates to the local governmental elections and advocating the idea of Roma candidates on the political parties list. Many other NGOs are also preparing training program of Roma candidates for elections in 2002 and Freedom House Slovakia survey shows generally that NGOs are planning to focus on three major sub-sectors of the electorate: youth (first- and second-time voters), women, and ethnic minorities (specifically Roma).\(^{18}\)

   b) Roma in the state administration

   The Slovak Government since 1998 has established several offices for strengthen protection of minorities and address more effectively the minority – mainly Roma issue. The Government created the post of Deputy Prime Minister for Human Rights, Minorities and Regional Development, who chairs the Council for National Minorities and Ethnic Groups. Other important institutions include the

\(^{16}\) Vaščka, Michal, CPS Report, 2001, unpublished

\(^{17}\) in Czech Republic and Hungary there are Roma MPs due to the wish of mainstream political parties


Since the Law on Protection of Data does not allows collecting data on ethnic base there is no information about the number of Roma in the state administration. However there is constant criticism of some Roma leaders toward the state administration about lack of Roma in the Ministries and regional state administration position dealing with Roma minority, even at the Secretariat of the Governmental Plenipotentiary for Roma Communities.19

The Government secured conditions for social workers working on site that have in their job description solving the problems of Roma ethnic minority in the relevant region. The abovementioned resolution has created position of advisor of the head of regional and district state administration responsible for tackling the problems of the Roma minority.20 Within the regions there have been committees set up for solution of the problems of the Roman ethnic minority. These committees work as advisory bodies for the heads of the municipalities. The on-site workers provide consultation services for the Roma families in social sphere, education, issues of employment or housing problems and health education.

There is visible contradiction between the resolution of the government and implementation of it (the number of positions created). There is only one position created in district level (Spišská Nová Ves) and three at regional (kraj) level. The Resolution did not say explicitly that Roma should be hired for that position, however Roma occupies all four positions.21 Moreover in Spišská Nová Ves different (Roma) organizations made a permanent (6 months) pressure on the district state administration proving the capacity of Roma local organization, while the head of the administration decided to fulfill the resolution of the Government and create the position of Roma advisor.22 As the OSI Minority Report 2001 stated, some Roma experts maintain the Strategy was elaborated without the effective participation of Roma community and feel that the Strategy is exclusively the result of the work of the administration.23

According to NGOs the solution to in raise Roma participation can be found on the local level. There are several programs to increase the number of Roma at the local/regional level. The Sándor Márai

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19 Interview with Tibor Loran, Executive Vice-President of Roma, March 20, 2002
21 Interview with Peter Pollák, Advisor for Roma Issues, Spišská Nová Ves, Okresný Úrad, March 22, 2002
22 Ibid
Foundation is currently implementing a program of training of in order to prepare so-called Roma assistants for different fieldwork in Roma settlements. The program consists of a 300 hours long intensive training making eligible a Roma specialist to work as assistants in different fields. The program gives a diploma on the basis of which the Roma assistants might have (state funded) jobs in Roma communities. However the diploma would be eligible for state funded positions only in the case that the Roma assistants will work in their communities, which is special and limited form of affirmative action. Despite of lack of long-term legal solution of the diploma, the Foundation as pilot project has trained 46 assistants, the National Work Office has offered temporary positions for all graduates.

2. Equal Opportunities Policies and Implementation at the Local Level

Despite of the strong – mainly financial - influence of the state on local and regional governments the reform of public administration has opened the way of policy formulation at the local and regional level. Since the media and international institutions will focus more merely on the regional administration there is a chance to introduce new policy toward minorities in some of them. However first of all the citizens of Slovakia need to understand, there are new ways to address the needs of disadvantaged groups. New formulations of the problems need to introduce for better understanding the necessity steps toward such groups. The members of the groups – either Roma or handicapped – for some reasons have no equal access to education, jobs. Usually they are live harder life because of lack of access. The new European trend is trying to attack the difference between the accesses. In the EU positive action (discrimination) policies are based on the training offering to the disadvantaged groups to diminish the difference of the access. Therefore the bottom line is the question of the equal access and build up equal opportunities policies at the local level. The bottom-up approach can be presented for the state administration as positive example.

According to the World Bank Poverty Report there is necessary to create stimulations for Roma at the local (regional level) in employment policies and education. There is not enough to provide restrictions by cutting the social provision for those, who are unemployment for more than 2 years, but raise conditions for employment. As the experience of the implementation of the Roma program

25 Interview with Péter Hunčík, Director of Sándor Márai Foundation, March 25, 2002
26 Case Study of the Pilot Project of the Sándor Márai Foundation, www.marai.sk
27 Chudoba Rómov a sociálna starostlivosť o nich v Slovenskej republike (World Bank Report), p. 44
28 See Chudoba Rómov a sociálna starostlivosť o nich v Slovenskej republike (World Bank Report), 2002p.44-45
29 Amendment of the Law on Social Help, June 2001
30 Chudoba Rómov a sociálna starostlivosť o nich v Slovenskej republike (World Bank Report), p. 45
of the government showed these policies could be more effective to be coordinated at the local level, since in many cases possibilities has been not use due to lack of coordination.31

IV. Summary

Introducing affirmative action policies seems necessary to address the lack of social cohesion of different disadvantaged groups in Slovakia. Both the US and the currently more advanced European experiences show affirmative action as possible and limited answer on those problems, the Roma minority faced with in CEE. Since there is no compulsory international document or treaty to address affirmative action, therefore the recommendations on different level should be emphasized for the Slovak administration by their European counterparts.

However due to the bad experience in the past with such policies both the public and decision makers seem undecided or negative toward the introducing. Therefore it will necessary to bring more positive experience with this kind of policies as well as to emphasize the main conditions for affirmative action: the political will.

The Roma issue became priority of the Slovak Government since the change of the regime in 1998. In addition there were numerous efforts of the recent government and NGOs to raise awareness and build know-how on affirmative action policies (equal opportunities). Despite of the efforts of the state administration, there are less effective changes of attitude toward minorities. Therefore seems crucial to strengthen the good policy formulation and their implementation in the local level, which consider the needs of specific regions as well. The stage of the reform of the public administration, the growing competences of the local governments and the creation of the 8 high level units as regions in Slovakia could create new condition toward creation of good policy formulations on the local (regional) level and to strengthen the implementation in those regions.

31 More see Minority Report Slovakia 2002, OSI EUMAP (Under preparation)