SLOVAK NATIONAL CENTRE FOR HUMAN RIGHTS

ALTERNATIVE REPORT
on the implementation of the International Covenant on Economic, Social and Cultural Rights

Bratislava, Slovakia, 2011

Contents

Introduction

The Slovak National Centre for Human Rights (hereinafter referred to as the "Centre") as an **independent and non-profit legal entity** is a specialized national institution that **promotes the observance of the principle of equal treatment and develops its activities in combating discrimination**.

The Centre was established by the Act of the Slovak National Council No. 308/1993 Coll. on the Establishment of the Slovak National Centre for Human Rights, which became effective on 1 January 1994 (hereinafter referred to as the "Act"). At that time the Centre performed mainly tasks in the area of research and education, gathered and disseminated information on racism, xenophobia and anti-Semitism in the Slovak Republic, and provided library services. Since the effect of Act No. 136/2003 Coll., which amended the Act, the Centre, among other things, has monitored and evaluated the observance of fundamental rights and freedoms, including the rights of the child, and the Centre is obliged to elaborate and publish, on a yearly basis, for the preceding calendar year, a report on the observance of human rights in the Slovak Republic through the Internet or also through nationwide periodicals.

Act No. 365/2004 Coll. on Equal Treatment in some Areas and on Protection from Discrimination (hereinafter referred to as the "Anti-discrimination Act") extended the responsibilities of the Centre in the area of monitoring of the principle of equal treatment and providing discrimination victims with legal services. The Centre renders legal aid to the victims of discrimination and manifestations of intolerance, issues on demand of natural persons or legal entities or on its own initiative expert opinions regarding the observance of the principle of equal treatment, and is also authorised to represent a participant in the proceedings to deal with the violation of the principle of equal treatment.

The Centre is the **only Slovak institution for equality**, i.e. for evaluating the observance of the principle of equal treatment under the Anti-discrimination Act.

Pursuant to the prov. of Article 1, par. 2 of the Act, the Centre **performs tasks** in the area of human rights and fundamental freedoms including the rights of the child (hereinafter referred to as "human rights"). For such purpose, the Centre **in particular**:

a) monitors and evaluates the observance of human rights and the observance of the principle of equal treatment according to special law,

b) gathers and provides on demand information on racism, xenophobia and anti-Semitism in the Slovak Republic,
c) carries out researches and surveys for the provision of data in the area of human rights, gathers and disseminates information in this area,
d) prepares educational activities and participates in information campaigns aimed at increasing tolerance of society,
e) safeguards legal aid to the victims of discrimination and manifestations of intolerance,
f) issues on demand of natural persons or legal entities or on its own initiative expert opinions regarding the observance of the principle of equal treatment according to a special regulation
g) performs independent inspections relating to discrimination,
h) elaborates and publishes reports and recommendations on the issues related to discrimination,
i) provides library services, and
j) provides services in the area of human rights.

It is necessary to add that the role of the Slovak National Centre for Human Rights is not to judge the constitutionality or lawfulness of adopted laws affecting unfavourably the position of individuals, although such laws regulate the area of relations, to which the Anti-discrimination Act applies, however, the Centre can call attention to such defects, predominantly in the report on the observance of human rights in the Slovak Republic for the respective calendar year

Article 2

According to **Article 2, par. 2 of the International Covenant on Economic, Social and Cultural Rights** (hereinafter referred to as the "Covenant") the States Parties to the Covenant undertake to guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind as to **race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status**.

According to **Article 12, par. 1 and par. 2 of the Constitution of the Slovak Republic,** all human beings are free and equal in dignity and in rights. Their fundamental rights and freedoms are sanctioned, inalienable, imprescriptible and irreversible. Fundamental rights and freedoms shall be guaranteed in the Slovak Republic to everyone regardless of **sex, race, colour, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, descent or any other status**. No one shall be aggrieved, discriminated against or favoured on any of these grounds.

Pursuant to the prov. of Article 2, par. 1 of Anti-discrimination Act, the observance of the principle of equal treatment is based around the ban on discrimination on grounds of **sex, religion or belief, race, membership in a nationality or ethnic group, health disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social background, property, gender or other status**.

With respect to the above stated provisions of the Covenant and the Constitution of the SR, the Slovak Anti-discrimination Act, in addition to the above stated guarantees, prohibits beyond the scope of the Covenant discrimination also on the grounds of **● membership in a nationality or ethnic group, ● health disability, ● age, ● sexual orientation ● marital status and family status**.

From the statutory definition of the principle of equal treatment, from the content of European anti-discrimination directives – the Council Directive 2000/43/EC of 29.06.2000, the Council Directive 2000/78/EC of 27.11.2000, the Directive 2006/54/EC, the Council Directive 2004/113/EC of 13.12.2004[1]. It results from the existing judicial decisions of European courts that the purpose of the relevant legal regulations should be the **protection of**

[1] (Transposed into our system of law in particular through the Anti-discrimination Act; Provisions containing a ban on discrimination are, however, also part of other laws, **such as** Act No. 311/2001 Coll. Labour Code, Act No. 245/2008 Coll. School Act, or Act No. 448/2008 Coll. on Social Services)

persons against unequal treatment on certain grounds, which is prohibited by legal regulations as the ground of unequal treatment (e.g., age, sex, health disability, membership in a nationality, etc.), the so-called "**protected grounds**". Therefore, not each unequal treatment, whether objectively or subjectively, can be deemed to constitute discrimination or the violation of the principle of equal treatment according to Anti-discrimination Act, albeit it can also mean the violation of other rights or legitimate interests of persons regulated by other legal regulations.

According to the Anti-discrimination Act, differences of treatment **shall not constitute discrimination in certain conditions**, where they are on grounds of age or disability in the provision of insurance services, if certain conditions as provided by law are met, or if they are objectively justified differences of treatment where, by reason of the nature of employment or occupational activities, access to such employment or occupational activities is made conditional on meeting the health requirements.

Objectively justified differences of treatment on grounds of sex shall also not be deemed to constitute discrimination where they consist in the fixing of different retirement age for men and women, or where their purpose is the protection of pregnant women or mothers.

In Article 8 the Anti-discrimination Act lays down admissible differences of treatment in the exercise of the right, the so-called **positive discrimination**. The Constitution of the SR also admits positive discrimination in its articles for a certain circle of persons. Its articles specify explicitly some of their special rights. Art. 38 regulates, for instance, the rights of the minors, women and disabled persons in this manner.

As is made clear from the name of the Anti-discrimination Act itself, this Act does not regulate the principle of equal treatment in general, in all areas of social life, but it focuses only on areas directly enshrined in the Act. Pursuant to Article 5 of the Anti-discrimination Act, this principle applies to ● social security, ● healthcare, ● provision of goods and services, ● education, and pursuant to Article 6 of this Act to ● employment and similar legal relations, which are specifically regulated in special legal regulations.

Criticism

Some special regulations governing social relations in particular areas which were amended by the Anti-discrimination Act do not contain any provision regulating discrimination

explicitly. For instance, Act on Consumer Protection regulating the provision of goods and services does not regulate the ban on discrimination of disabled persons, but referring to the Anti-discrimination Act, it limits the ban on discrimination only to grounds of sex, racial or ethnic background, as is made clear in Article 5 governing the observance of the principle of equal treatment in this area. If, however, the principle of equal treatment was violated, e.g., by the refusal of hotel accommodation for a wheelchair-bound person with reference, though indirect, to his/her handicap, he/she could not, in his/her action for the protection of his/her rights, rely on the Anti-discrimination Act, but on the provision of Article 12 of the Constitution. At the same time, he/she would be obliged to prove the reason of refused accommodation before the court.

Special laws do not regulate explicitly the ban on discrimination with respect to sexual orientation either. At present such a person concerned may seek the observance of the principle of equal treatment on the basis of their "different status" listed among the grounds of discrimination according to Act on Universities, School Act or Act on Health Care.

The Concept of Temporary Special Measures According to Anti-discrimination Act

The concept of temporary special measures is closely related to the principle of non-discrimination, which is the opposite to the principle of equality constituting part of fundamental rights and freedoms. The term "equality" can be perceived in two plains. On one hand, it is formal equality of all persons before the law, when every person must be treated equally regardless of, e.g., sex, race or ethnicity. However, sometimes the formal approach to equality is not sufficient to safeguard real (material) equality in practice. Due to the need to remove factual obstacles, which make the exercise of rights and freedoms of certain persons or groups of persons more difficult, material equality is enforced in practice. The means for reaching it is in particular special measures, which are to eliminate adverse effects of discrimination, to which the persons or groups of persons concerned were exposed in the past, as well as to prevent continued and on-going discrimination. Temporary special measures include a set of different approaches and tools through which the legislation, public policies and other aspects of social life attempt to remove or reduce the social and economic differences, which result from historically conditioned discrimination of the members of certain social groups and are related to their characteristics (e.g., ethnicity, sex, disability, age). Various aims are pursued by temporary special measures. It can be, for instance, the adoption of measures aimed at the compensation of historically persistent discrimination, at

the increase of the members of discriminated groups in certain aspects of public life, and also at reaching diversity in society.

Current status of temporary special measures

a) Judgment of the Constitutional Court of the Slovak Republic PL. ÚS 8/04-202 of 18.10.2005

The Judgment of the Constitutional Court of the Slovak Republic PL. ÚS 8/04-202 z 18.10.2005 (hereinafter referred to as the "Constitutional Court") declared the original provision of Article 8 par. 8 of the Anti-discrimination Act unconstitutional. In the grounds of their Judgment the Constitutional Court stated that the adoption of positive measures including special measures, constitutes preferential treatment (positive discrimination) of persons, which is associated with racial or ethnic background. The Constitutional Court criticised the contested provision of Anti-discrimination Act that it did not specify, even generally, the object, content and criteria for the adoption of special measures, and the emphasis on temporariness of such measures as the key factor to prevent the discrimination of other population groups was completely absent. This Judgment was not adopted unanimously; several constitutional judges added their different opinions on it, in which they argued in favour of the special measures. These should, in the opinion of some judges, ensure equal opportunities at the beginning for those who cannot get, for certain reasons, the same starting position as most people of the population. By the special measures the state should get over the existing disadvantages of a certain group so that they can fully and equally exercise their rights belonging to all. In the context of preferential treatment the judges also stated in another opinion that more favourable treatment is enshrined in a definition of direct discrimination, but it only applies to the cases of comparable situation. According to their opinion, it is difficult to talk about a comparable situation when it is necessary to use a special measure just for the person to get into a comparable situation with another person.

b) Provision of Article 8a of Anti-discrimination Act

A response to the above cited Judgment of the Constitutional Court of the SR was the adoption of a new legal form of temporary special measures so as to correspond to the requirements resulting from international covenants of the Slovak Republic and to requirements imposed by the Constitutional Court of the SR. Modification of the relevant legislation was effected by Act No. 85/2008 Coll., with effect from 01.04.2008, which modified and amended the Anti-discrimination Act. At present, temporary special measures

are regulated by **Article 8a** of Anti-discrimination Act. This provision is based on the concept of equal opportunities, the purpose of which is to safeguard equal opportunities in practice. For the adoption of temporary special measures pursuant to Article 8a of the cited Act it is necessary to satisfy also the following conditions:
temporary special measures may be adopted only in the areas that are referred to in the Anti-discrimination Act,
temporary special measure/measures is/are aimed at removing forms of social and economic disadvantage and disadvantage following from the grounds of age and disability,
the aim is to safeguard equal opportunities in practice,
they are adopted by state administration authorities,
they can be in particular in the form of measures that consist in promoting the interest of the members of discriminated groups in employment, education, culture, health care and services and that are aimed at the creation of equality in access to employment and education,
they can be adopted, if there is demonstrable inequality, the aim of such measures is to reduce or eliminated inequality, and they are adequate and necessary to attain the pursued objective,
they must be temporary, i.e. they may be applied only for the time that is necessary to eliminate the inequality that led to their adoption,
and are monitored and evaluated continuously.

As it has been stated, the present concept of temporary special measures in the Slovak Republic is based on the theory of equal opportunities, the basis of which is knowing that it is not possible to talk about attainment of complete equality, if the members of a group concerned have worse conditions than the others as early as in the starting position. Thus ensuring equal opportunities consists mainly in developing assistance programmes, providing education and consultancy in relation to an individual, not a group. Unlike the concept of equal opportunities, the concept of equality of results is based on efforts to eliminate unequal participation of discriminated groups in a certain sphere of social life, in particular in the form of preferred treatment on the basis of group characteristics, such as quotas, which are considered to be a more radical tool to enforce equality. The equality of results is aimed at attaining equality in relation to an individual only indirectly.

Criticism of the legal form of special measures in force

The current legal form of temporary special measures is applied in practice to a limited extent, which reflects its inappropriate wording and inadequacy with respect to the current social needs. The provision of Article 8a of the Anti-discrimination Act is criticised due to its restrictive form, which results in its inefficiency in practice.

a) Powers to adopt temporary special measures only by state administration authorities

One of the most criticised features of the current legal regulation is the fact that pursuant to Article 8a par. 1, only state administration authorities are empowered to adopt temporary special measures. Delegation of powers to adopt temporary special measures only to state administration authorities appears to be very limiting from the point of view of practical safeguarding of equal opportunities in practice. The Centre also holds this opinion in its Report on the Observance of Human Rights including the Observance of the Principle of Equal Treatment in the Slovak Republic for the Years 2009 and 2010.

These outcomes are based mainly on the fact that with respect to the decentralization of public administration, many legal relations have been shifted to self-administration authorities within the conduct of state administration. It is not clear from the wording of Article 8a par. 1 whether municipalities and higher territorial unit are empowered to adopt temporary special measures in cases where they execute delegated powers of the state administration. If certain public authorities adopt temporary special measures, generally they will not be able and authorized to implement such measures, whereas the authorities which should implement such measures do not have the statutory powers.

b) Issues of the application of measures to where the need is and of demonstrable inequality

With respect to that the state administration authorities do not know in detail the issues of prospective recipients of temporary special measures, interact with these entities only rarely, according to the current legal regulation, the question of efficiency and application of temporary special measures to where the need is, remains open. Inequality in practice is demonstrated as a rule on the basis of statistical figures and other empirical findings. A positive measure consisting in preferred treatment of a certain group of persons is to be provided on the basis of objectively existing discrimination of the members of such group.

With respect to the requirement of the presence of demonstrable inequality pursuant to Article 8a par. 2 a) and b) of the Anti-discrimination Act, we can state that as a result of the interpretation of the cited provision it is possible to come to the conclusion that it does not result from its wording that the required inequality must be fully demonstrated. According to the opinions of experts, for the existence of "demonstrable inequality", the indicators of such inequality should be sufficient (e.g., a statement of municipality of the living conditions of its inhabitants belonging to the group of recipients of temporary special measures, generally available results of research and surveys, etc.).

c) Restrictive scope of grounds

The original draft of the Anti-discrimination Act of the Government permitted the adoption of temporary special measures also on grounds of racial or ethnic background, nationality and sex. At the next stage of the legislative process, however, these grounds changed to "forms of social and economic disadvantage", just like Article 8a par. 1 of the Anti-discrimination Act in force regulates them. Thus even though the temporary special measures have a potential to help groups which are socially and/or economically disadvantaged, the causes of such disadvantages primarily do not consist in the social and/or economic status of these groups, but in the reasons for which the individuals belonging to these groups are discriminated, and which often predetermine or co-develop their social status. Thus the social status is not the initial cause of discrimination, but it is the result of disadvantages resulting, e.g., from the membership in an ethnic group or sex. The question of the recipients of temporary special measures on grounds of their membership in an ethnic group, race or nationality remains unsolved in the current legislation, mainly with respect to that the membership of Slovak citizens in an ethnic group or national minority is based on self-identification, while respecting the individual freedom of each individual's decision.

d) Monitoring, evaluation and publication of adopted temporary special measures

Another defect of the current legal form of Article 8a par. 4, which relates to the monitoring, evaluation and publication of adopted temporary special measures, is the fact that even though the Centre is the body determined for the collection of such data, the Centre has not noticed large use of opportunities to adopt temporary special measures by public authorities. The Centre attempts to remove the defects of the legal regulations in force on the monitoring of temporary special measures in practice through a proactive approach, when on its own initiative the Centre has carried out research regarding the application of such measures, by

distribution of questions and collection or evaluation of the replies of the respective authorities. Insufficient monitoring of temporary special measures, which has failed as regards the duty to report, may be related to a low level of legal awareness among the competent entities in the area of regulatory legislation with respect to anti-discrimination rules.

Recommendations

From among the current temporary special measures, which are applied by the Slovak Republic, we can perceive the promotion of education for the members of the Roma minority through the presence of Roma assistants and field social workers as formally adequate. Due to the low efficiency of temporary special measures in the Slovak Republic, it is necessary to modify the relevant legislation and create preconditions for its successful implementation in collaboration with all actors concerned. Therefore in order to increase the efficiency of the regulatory form of temporary special measures, we propose the following steps:

Extend the range of entities that are empowered to adopt temporary special measures also to other state administration authorities, self-administration bodies and other legal entities (private legal institutions and employers),

Expand the scope of grounds on which it will be possible to adopt temporary special measures,

Implement a mechanism preventing the abuse of benefits under temporary special measures to persons, who do not satisfy the conditions of discrimination,

Introduce sanctions for failure to perform the duty to report with respect to the monitoring body, which should have powers to act in case of any failure to perform the duty by the receiving bodies, and thus act not only for remedy, but also for prevention.

Legal Protection and Proceedings Concerning the Violation of the Principle of Equal Treatment

Pursuant to the prov. of **Article 9 of the Anti-discrimination Act**, under this Act, every person shall be entitled to equal treatment and protection against discrimination. Every person who considers themselves wronged in their rights, interests protected by law and/or freedoms because the principle of equal treatment has not been applied to them may **pursue their claims by judicial process**. They may seek that the person violating the principle of equal treatment **be made to refrain from such conduct and,** where possible, **rectify the illegal situation** or **provide adequate satisfaction**. Should adequate satisfaction prove to be not sufficient, especially where the violation of the principle of equal treatment has considerably

impaired the dignity, social status and social functioning of the victim, the victim may also seek **non-pecuniary damages in cash**. The amount of non-pecuniary damages in cash shall be determined by the court, taking account of the extent of non-pecuniary damage and all underlying circumstances. This Act shall not prejudice the entitlement to damages or other compensations pursuant to separate provisions. Every person has the right to protect their rights out-of-court **through mediation**.

Pursuant to the prov. of **Article 10 of the Anti-discrimination Act**, parties to the proceedings concerning the violation of the principle of equal treatment may also be represented by legal entities

a) who have such authority under a separate law (the Centre), or

b) whose activities are aimed at or consist in the protection against discrimination (non-governmental organisations, trade-union organisations).

If a legal entity takes up representation, it shall assign one of its members and/or employees to act on behalf of the person represented.

Pursuant to the prov. of **Article 11 of the Anti-discrimination Act**, proceedings concerning the violation of the principle of equal treatment **shall be initiated by petition** from a person who feels wronged by the violation of the principle of equal treatment (hereinafter: the "plaintiff"). In the petition, **the plaintiff** is obliged to **identify the person** that has allegedly violated the principle of equal treatment (hereinafter: the "defendant"). **The defendant** has the obligation to prove that there was no violation of the principle of equal treatment if the evidence submitted to court by the plaintiff gives rise to a reasonable assumption that such violation indeed occurred. The proceedings concerning the violation of the principle of equal treatment shall be governed by the **Code of Civil Procedure,** unless this Act provides otherwise.

The regulations regarding the legal protection against discrimination, specific proceedings concerning the violation of the principle of equal treatment, follow the requirements enshrined in the European anti-discrimination directives, which demand that the Member States should ensure that all persons who feel wronged by the violation of the principle of equal treatment, will have available judicial and/or administrative proceedings, and also conciliation proceedings, if the States consider this appropriate.

The principle of reversed burden of proof has been transposed into the Slovak system of law; however, in comparison with the regulations enshrined in the European directives, we notice the following differences:

In the Slovak legal regulations, reversed burden of proof applies **with respect to all forms of the violation** of the principle of equal treatment

In the Slovak legal regulations, **it is sufficient to report facts** indicating that discrimination has occurred, which is seen as a **more favourable regulation** in comparison with the anti-discrimination directives, which require proving such facts.

Recommendations

In decision-making on claims with respect to cases related to the violation of the principle of equal treatment it is necessary that the competent bodies construe the relevant provisions according to the requirements of the European anti-discrimination directives. They should, in particular, take into account the requirements for ensuring that their decision-making and specific decision-making results will be effective, adequate and sufficiently deterrent. The Centre highlights a persistent problem with effective enforcement of the principle of equal treatment consisting in a **lack of national judicial decisions** on which one could rely when judging the cases of the violation of the principle of equal treatment according to the Anti-discrimination Act and the related special laws.

Court fees for filing a motion in cases concerning the violation of the principle of equal treatment are specified in Act No. 71/1992 Coll. on Court Fees and the Fees for Criminal Register Excerpts, in the Scale of Court Fees, item 7d:

a) From a motion to commence proceedings in cases concerning the violation of the principle of equal treatment according to special law, **without a motion to compensate non-proprietary loss in cash in the amount of 66 EUR**,

b) From a motion to commence proceedings in cases concerning the violation of the principle of equal treatment according to special law, **with a compensation of non-proprietary loss in the amount of 66 EUR and 3% of the amount of enforced non-proprietary loss**.

The above stated Act on Court Fees was amended by Act No. 465/2008 Coll. with effect from 01.01.2009 (the above amount of court fee has been in force since then); however, the new amendment stipulates the amount of fees in the original Scale of Court Fees under item 1:

From a motion to commence proceedings, unless a specific rate has been set

a) of the price (payment) of the subject of proceedings or of the **value of the subject matter of dispute** in the amount of 6%, **minimum** 500 SKK (EUR conversion: **16.60 EUR**), **maximum** 500 000 SKK (EUR conversion: **16,597,- EUR**)

b) **if the subject of proceedings cannot be valued in money** in the amount of 3 000 SKK (EUR conversion: **99.60 EUR**).

Conclusion

Considering the above it is clear that the court fees for filing a motion in cases concerning the violation of the principle of equal treatment have been **reduced in part without a motion to compensate non-proprietary loss in cash**, however, in **seeking compensation of non-proprietary loss they have been increased with respect to the minimum rate and without setting the limit of the court fee**. For seeking compensation of non-proprietary loss the given amount of court fee is deterrent for prospective plaintiffs. However, it is necessary to mention the fact that as regards persons without income, pursuant to the prov. of Article 4, par. 3 of Act on Court Fees, a participant shall be exempt from the fee to whom the right to the provision of legal aid was awarded according to a special regulation – Act No. 327/2005 Coll. on Provision of Legal Aid for People in Material Need. Pursuant to the prov. of Article 6, par. 1 of Act No. 327/2005 Coll. on Provision of Legal Aid for People in Material Need, a natural person is entitled to be provided with legal aid without financial participation, if

a) his/her income is lower than 1.4 multiple of the amount of the living wage provided by a special regulation and he/she is not able to cover the expenses of legal services by means of his/her property,

b) the case is not clearly unsuccessful, and

c) the litigation amount exceeds the amount of the minimum wage except for disputes in which the litigation amount cannot be determined.

The possibility of the resolution of disputes through a **mediator** (mediation services are also provided by the Centre) is governed by Act No. 420/2004 Coll. on Mediation. Mediation is an informal method of the resolution of disputes, in which parties to a dispute, with the assistance of an impartial third party, try to reach a bilaterally accepted written agreement, which is binding on both parties.

Since disputes arising out of discrimination are civil-law in nature, it is possible to apply mediation to settle them. This method of the resolution of disputes could be appropriate also for the discrimination victims as its application may prevent, for instance, an employee from being stigmatised by having a dispute with the employer, and also for companies that will

avoid negative publicity associated with the presence of discrimination practices in the company.

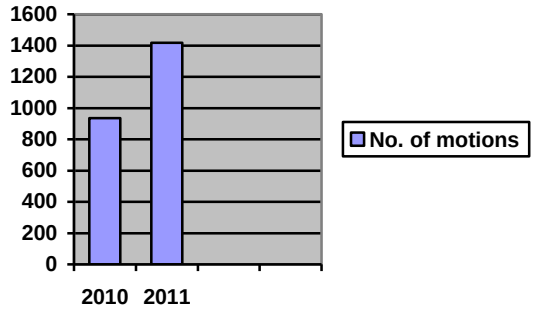
Criticism

The amendment to Act No. 141/2010 Coll. on Mediation has been opposed by several citizens' associations associating Slovak mediators, and also the Centre expressed its comments on it. The comments relating mainly to unfavourable financial and administrative effects on the parties to mediation contract have not been accepted. The Centre is afraid of that the mediation process will become more complicated as at the beginning all parties to mediation will be obliged to have **their signatures on the Agreement to initiate mediation officially verified**. Then the Agreement to initiate mediation will have to be deposited **in the Notarial central register** of deeds, and mediation will not commence before its registration. Not only will the compulsory registration of each Agreement to initiate mediation by a notary public **prolong the mediation process and result in its excessive price**, but **it also does not correspond to the requirement for safeguarding the confidentiality either**. Thus the Centre observes that such changes have an adverse effect on the clients of institutions providing mediation as a public service, i.e. free of charge. It will limit the availability of mediation for the Centre‘s applicants for legal aid, if they feel discriminated against, as well as for the Legal Aid Centre‘s clients being in material need. The Centre believes that introducing the obligation of registration in the Notarial central register and of official verification of signatures may be discouraging for the clients of the above institutions.

Recommendations

With a view to de lege ferenda, in developing other legislative approaches and approaches contained in the processes of the preparation of public policies, the Centre recommends reassessing the concept of mediation and for the purposes of dealing with cases of the violation of the principle of equal treatment its setting so that it presents a usable, simplified and efficient mechanism.

Information on Received Motions of Natural Persons in the Scope of Powers of the Centre
In 2010, 936 motions were received, and in 2011, 1 418 motions were received.



Final Recommendations

In the opinion of the Centre, amendment to the Anti-discrimination Act or to the Act on Consumer Protection is necessary, which would directly regulate a ban on discrimination of the disabled in providing goods and services, including the housing. Then the procedure of legal protection would be provided according to the Anti-discrimination Act, too.

Article 3

Introduction

The Constitution of the Slovak Republic (hereinafter referred to as the "Constitution") in Title 2 entitled "Fundamental Rights and Freedoms" in Article 12 stipulates that all human beings are free and **equal** in dignity and in rights, i.e. not only in fundamental rights, but also in rights regulated in the legal regulations of lower legal force, predominantly in laws, and which regulate in detail the exercise of the fundamental right or freedom. The provision of Art. 12, par. 2 of the Constitution, according to which **fundamental rights and freedoms** (transposed into other laws) **shall be guaranteed in the Slovak Republic to everyone regardless of sex**, race, colour, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, descent or any other status.

The constitutional order of **equality** in dignity and in rights for each individual and their guarantees regardless of the status of the individual exercising his/her right or freedom expresses a ban on discrimination in the Slovak law. If this ban is violated in exercising a right (freedom), everyone may pursue their protection by judicial process.

Participation of Women in Public Affairs Administration

n the context of issues of equal rights of women and men, according to its competences provided by law, the Centre deals in particular with the observance of the principle of equal treatment and ban on discrimination on grounds of sex in the area of labour-law and similar legal relations, social security, healthcare, provision of goods and services and education.

In the conditions of the Slovak Republic, the participation of women in the administration of public affairs has been very low in the long term, which the Centre highlights on a regular basis in its Reports on the Observance of Human Rights including the Observance of the Principle of Equal Treatment in the Slovak Republic. Following long-term statistical surveys we can observe that in all types of elections men are more successful. The participation of women in public life is very limited. In the **elections to the National Council of the SR, which were held in June 2010,** a total of 2 366 persons stood for a seat in the 150-membered Parliament, of which the share of women was 22.8%. Before elections the share of women in the Parliament was 18%. At present, there are 24 women in the Parliament of the total number

of 150 MPs, which is only a 16% share. This figure, along with Slovenia, ranks us 21st – 22nd among the EU countries. A lower share has Ireland, Cyprus, Romania, Hungary, and Malta[2]. The share of women in the Slovak Government has slightly increased (2 women of the total number of 15 government officials, which accounts for 13.33%). The condition in the positions of the managers of particular offices of ministries seems to be the most balanced – women account for 30.77% of the managers of offices (4 women of the total number of 13 managers of offices). The share of Slovak women in the European Parliament of the total number of 13 MPs for Slovakia is 5 women, which is 38.46%.

Representation of women in Slovak Governments since 1989[3]:

Period	89-90	90-91	91-92	92-94	94-94	94-98	98-02	02-06	06-10	10-
No. of members	19	23	23	21	18	19	22	16	16	14
No. of women	1	0	2	3	1	3/4	3/2	0/2	1/2	2
Share %	5.2	0	8.7	14.3	5.5	15.8 /21	13.6 /9	0/ 12.5	6.3/ 12.5	14.3

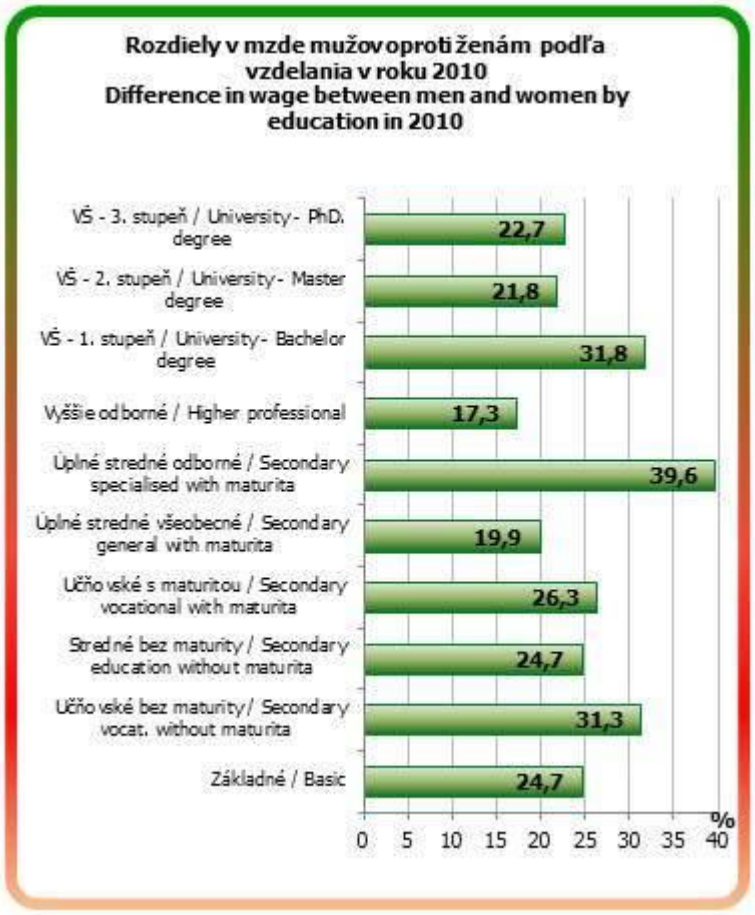
Discrimination on grounds of sex in labour-law relations is governed by the Labour Code in Article 1, Article 6, Article 13, and in Article 119a.

Even though the ban on discrimination on grounds of sex in labour-law relations can be considered one of the oldest, in Slovakia the situation in the area of gender equality in labour-law relations is not very positive. It results from the information of the Statistical Office of the SR[4] published in 2010 that the highest share of asserting themselves on the labour market have men, including the salaries. In 2010, the level of economic activity for women and men was 50.8% and 67.8% respectively. In 2010, the level of employment for 15 years old and older population was 43.4% for women and 58.2% for men. More than 90% of women and almost 80% of men worked as full-time employees. Only 9.2% of women (in comparison with 21.3% of men) carried on business within their employment, and the ratio of the genders in the business activity developed further to the detriment of women. The unemployment rate of women grew in 2010 in comparison with the previous year to 14.6% and was higher by 0.4

[2] Source: http://ec.europa.eu/social/main.jsp?catId=774&langId=en&intPageId=659
[3] Source: A history of Slovak Governments, http://www-8.vlada.gov.sk/index.php?ID=1073
The Slovak Government 9.7.2010. http://www.vlada.gov.sk//21939/vlada-sr-od-9-7-2010.php
[4] Statistical figures for 2011 are not available

percentage points than for men. Women earn less money than men, regardless of their education. On the average, the wage of women was lower by 24.7% than the average wage of men. The highest pay gaps between the genders were in the category of 40 - 44 years old people (33.4%) and for persons with complete university education of level 1 (35.4%). As regards the groups of job classification, the average wages of women are lower than those of men; the figures are most striking (by 39.6%) for operations employees in services and business. Only 9.6% of women (in comparison with 20.2% of men) carried on business within their employment. Women earn less money than men, regardless of their education. On the average, the wage of women was lower by 25.3% than the average wage of men. The highest pay gaps between the genders were in the category of 35 - 39 years old people (34.5%) and for persons with complete bachelor education (34.7%). In all sectors the average wages of women are lower than those of men.

Low or lower wages at the active age imply subsequent problems for women also at a higher retirement age when in principle women depend on a lower pension, whereby they face a higher risk of poverty than men.



[5]

Average monthly gross wage of women and men and gender gap by regions (in EUR, % 2010)[6]

	men	women	Gender pay gap (in %)
Bratislava	1 248.97	955.74	23.48
Trnava	894.29	659.93	26.21
Trenčín	838.12	618.08	26.25
Nitra	815.90	630.86	22.68
Žilina	855.22	638.63	25.33
Banská Bystrica	779.05	628.99	19.26
Prešov	737.20	588.02	20.24
Košice	889.69	672.63	24.40

[5] Source: The Statistical Office of the SR
[6] Source: Information system on the price of labour ISCP (MPSVRSR 1-04), calculations Trexima Bratislava + internal calculations

Conclusion

Over the course of 2011, the competent authorities in the Slovak Republic did not notice any apparent change, whether positive or negative, with respect to the perception and exercise of rights in the area of employment, especially in remuneration on grounds of sex.[7]

Gender pay gap is still striking and our country belongs to the EU countries with the highest figures. Gender pay gap is reflected to a lesser extent in basic and table salaries, however, it is very marked in incentive payments. A higher gap is mainly in the private sector.[8]

The growth of discrimination against persons (men and women) is evident at their higher age, against pregnant women and mothers caring for children, not only in the area of job searching, but also of their dismissal from employment, in particular for organisational reasons.

Recommendations

Remuneration gaps reflect continued discrimination and inequality on the labour market as a whole, which in practice affects mainly women. Measures could help to enhance the situation, which would consist, inter alia, in:

a) preparation of a detailed analysis of the economic and social trend in society,

b) submitting reports on remuneration gaps for women and men,

c) taking measures to safeguard transparency in remuneration on the level of companies and individuals or jointly through delivery of information to employees and consultations,

d) duty to provide the classification of jobs and salary tables, which would make no gap between the genders,

e) more detailed wording of regulations on sanctions for violating the right to equal pay, whereas the sanctions should have a discouraging effect (preventive form of protection).

[7] Source: Statements of the Ministry of Labour, Social Affairs and Family intended for the Centre to prepare the Report on the Observance of Human Rights including the Observance of the Principle of Equal Treatment in the SR for 2011

[8] Source: A statement of the Ministry of Labour, Social Affairs and Family intended for the Centre to prepare the Report on the Observance of Human Rights including the Observance of the Principle of Equal Treatment in the SR for 2011

An Equal Opportunities Policy in Labour-Law Relations

Despite rhetoric on individual chances and objective assessment of a male/female employee on the basis of performance, an equal opportunities policy as the reflection of personal and family situation does not work. Employers prefer emphasizing of the traditional process and organisation of work to assessing the working results. Any type of change in the organisation of work is often considered a departure from the standard. For instance, providing a male/female employee with a part-time schedule is accompanied by reducing his/her pay or the chance of professional advancement within the workplace. The performance is not considered to be full-valued. The reluctance of employers may result also from insufficient information on the benefits of such work organisation models, from concerns about higher demands for operating conditions, administrative demands, etc.. In addition to objective obstacles, a low share of the application of flexible forms of work is conditioned by concerns of the male and female employees themselves. Subjective reasons are in particular economic and result from the necessity to have a model of households with two full salaries. Ignorance of legislative and other possibilities may also play a role.[9]

Recommendations

It is necessary to demand an enhancement of general conditions on all social and economic-political levels, which would take into account different requirements and needs of male and female employees, also as regards specific possibilities of the harmonisation of work, family and personal life in specific phases of the life cycle.

For instance, in the present conditions of Slovakia, on one hand a part-time work can mean a way out of gender segregation on the labour market, long-term female unemployment, etc. Mainly for women – mothers of little children it can be a chance to keep the work habits, skills, a stage that will allow them to get more smoothly to full-time employees, after the highest burden of family duties has finished. On the other hand, such work presents a risk of lower remuneration, limited professional advancement, exclusion from participation in employee education and other benefits.

Therefore new forms of the organisation of work and working time should be accompanied by a wide range of social and pro-family measures promoting both women and men.

[9] Good practices in non-discrimination and in enforcement of equal opportunities and diversity in employment relations – 2010 (the Slovak National Centre for Human Rights, the Institute for Labour and Family Research, Equal Opportunity is Worthwhile)

Pay Gaps of Women and Men and Professional Growth - Professional Advancement Men and Women[10]

Pay gaps of women and men in the SR reflect continued direct discrimination and inequality on the labour market. The gaps are supported by professional segregation and gender stereotypes. The current legal regulations in the SR without the development of an adequate institutional mechanism of equal opportunities do not guarantee consistent observance of the principle of equal remuneration in practice. An effective inspection system in the area of gender equality is missing, which would be safeguarded by sanction powers.

Women clearly earn less money in demonstrably equal positions and demonstrably perform work of the same value as men. It is also typical to set a different value of work performed by women, albeit the work can be identical with or similar to the one performed by men.

For more detailed information including findings and recommendations see the text concerning Article 3 of the Covenant.

Professional growth - professional advancement men and women

Women usually apply for jobs in social, medical branches and arts and humanities. They have a majority share in the public sector in the provision of services. Men prevail in technical disciplines, natural sciences and in the private sector. Most of entrepreneurs are men who are able to risk more. Also in the Slovak Republic, the biggest "hampering" factor for women is maternity and care for the family members. Therefore in most cases they hold lower working positions, which are also less paid.

Vertical segregation of women in their access to higher positions is characterised by the so-called "glass ceiling", which is a barrier the women encounter in their advancement into higher levels. The ceiling either prevents women from advancing to higher levels directly or also through informal, hidden methods.

An example of over-feminized sector in the SR is the health service where women relatively easily reach positions in the middle management, but their share in top positions is still undersized and does not reflect the proportional share in the relevant sector. Stereotype understanding of the division of gender roles is visible in society and distrust against women in top positions persists

[10] Reference to a part of Article 3 of the International Covenant on Economic, Social and Cultural Rights

In the Slovak Republic, as at 31.12.2010, 58 211 employees were employed with health care facilities under review, of which 45 833 were women, which was 78.74%. In managing positions in the health care facilities were 3 839 employees, of which 2 476 were women, i.e. 64.5%, but the director's office was held by 160 employees, of which only 50 were women, i.e. 31.25%.

It implies that in Slovakia, for the years 2010 and 2011 we cannot talk about a balanced representation of men and women in top positions at all.

Overburdening of women with care for the children and household and insufficient services making it possible to harmonise the family and work life often result in that the women themselves give up the professional advancement. The human potential of women is undervalued and used insufficiently not only in the health service.

Pregnancy, Motherhood, Breast-feeding, Parenthood within the LC

The European law and the Slovak system of law permit a different treatment, the purpose of which, is to protect women due to pregnancy or motherhood. Such exceptions (admissible form of different treatment) establish that different treatment of pregnant women in comparison for instance with non-pregnant ones must be to the benefit of pregnant women.

Issues related to the creation of employment

The Labour Code protects women in this area in the form of the so-called positive discrimination. This applies to the protection of women, on one hand, as regards their physiological maternal function, and on the other hand, as regards other special working conditions of women and men due to child care.

The protection of women on the creation of employment is safeguarded by the basic principles of the Labour Code laying down that the right to work and the free choice of employment belongs to persons without any sort of restriction and discrimination, inter alia, also on grounds of sex. This right must be in compliance with the above legal regulations and also with good morals; nobody may abuse these rights to the damage of another participant to the labour-law relations, or their fellow-employees.

Concerns about that a woman with children will have to stay at home due to the care for sick family members and refusal of her employment on grounds of this is an unlawful procedure, in the relevant case, discrimination. It is only admissible to distinguish job applicants by their sex in decision-making on employment in activities where sex is an explicit prerequisite.

According to the European legislation, a refusal to hire a pregnant woman is considered to be direct discrimination. From the beginning of pregnancy up to the end of maternity leave a woman is protected and may not be dismissed or refused on grounds of her pregnancy.
In practice in the area of the creation of employment with women the legal regulations are often violated by that women are refused when applying for a job for reasons formally not being discriminatory.
In practice there are cases of discrimination of women as early as in defining an offer of jobs; offers of jobs are limited by sex or age in a discriminatory manner. In the event of a legal process it must be proved that it was not discrimination. At present this issue is covered by Act on Employment Services.
In practice if pregnancy is determined there are cases of female employee‘s dismissal in the probationary period, or of extended employment only until the commencement of maternity leave. In this case it is discrimination with pressure because the woman would sign the agreement due to distress.

Working conditions of pregnant women and mothers

The Labour Code lays the employer under an obligation to establish, maintain and improve the level of sanitation amenities and other facilities for women. These obligations are specified in particular in occupational health and safety regulations. They also specify the generally enunciated obligation enshrined in the applicable special provisions of the Labour Code with respect to the special status of pregnant and nursing women, as well as of mothers until the end of the ninth month following childbirth. In addition to ordinary sanitation amenities they include other facilities for laying purchases, in some working activities they include relax facilities, etc. Labour hygiene means the promotion of favourable effects of working environment and work on employee’s health and their protection against detrimental effects, against excessive and abnormal load of the organism. Workplaces must be sufficiently roomy, with a functional layout, tidy and well-maintained, with sufficient hygienic and welfare facilities and other conditions for personal hygiene.
Physiological individualities of pregnant and nursing women and mothers exclude the performance of certain work until the end of the ninth month following childbirth. The work assignments which are physically inappropriate for them or which harm their organism, are prohibited. Lists of prohibited work are regulated by Order of the Slovak Government No. 272/2004 Coll. An exception to the protection of female employee related to the status of

pregnancy, breast-feeding and motherhood during nine months following childbirth is only the case when the employer has not been informed of such facts.

Thus according to the Labour Code, a pregnant employee shall only be an employee who has informed her employer in writing of her condition and who has submitted a medical confirmation of this. A breastfeeding employee shall be an employee who has informed her employer in writing of this fact.

A pregnant and nursing woman or mother until the end of the ninth month following childbirth may not be employed even in such works that according to medical opinion jeopardise her pregnancy or maternal function due to health causes pertinent to her person. If she already performs such works, the employer shall be obliged to implement a temporary change to working conditions. If a change to working conditions is not possible, the employer shall temporarily transfer the woman to work that is suitable to her and in which she may attain the same earnings as that for the hitherto work within the scope of the employment contract, and where such is not possible, he/she shall transfer her upon agreement to a different type of work.

If a change to working conditions is not possible, the employer has in principle three options, in particular:

a) transfer the woman employee temporarily to a suitable work without the loss of earnings,

b) transfer the woman employee temporarily upon agreement to a different type of work without the loss of earnings or with lower earnings,

c) if it is not possible to implement the above options, the employer shall be obliged to provide the woman employee with time off and wage compensation.

Maternity leave and parental leave and return to work

In connection with childbirth and caring for a newborn child, a woman shall be entitled to maternity leave for duration of 34 weeks. A solitary woman shall be entitled to maternity leave for 37 weeks, and if a woman gave birth to two or more children concurrently, she shall be entitled to maternity leave for 43 weeks. In connection with caring for a newborn child, man also shall be entitled to parental leave to the same extent, if caring for a newborn child. In order to deepen the care of a child, an employer shall be obliged to provide a woman and man on their request, with parental leave until the child reaches three years of age. In the event of a long-term seriously disabled child requiring exceptional care, the employer shall be obliged to provide them with parental leave until the child reaches six years of age. A woman and man are obliged to report to the employer at least one month in advance the expected date

of the commencement of maternity leave or parental leave, and also the expected date of its interruption, termination or change related to such dates. By the most recent amendment the Labour Code gives the employee an opportunity to draw the parental leave, if agreed with the employer, to the extent to which it has not been drawn, up till the child reaches five years of age, and for a long-term seriously disabled child up till the child reaches eight years of age. Thus it means in practice that the total length of parental leave will not be extended, but it is only its flexible form of drawing or additional drawing for a longer period of time. In current practice flexible drawing of parental leave is relatively exceptional and limited to cases when such a solution will correspond to the legitimate interests of employer.

After the return of woman from maternity leave or of man from parental leave in the scope of maternity leave they shall be entitled to the guarantee of the original work and workplace. If it is not possible in practice, the employer shall be obliged to transfer them to another work corresponding to the employment contract. The employer shall be obliged to transfer them to work on conditions that will not be less favourable for them than the conditions that they had at the time when such leave commenced including all improved working conditions they would have been entitled to if the woman had not been on maternity leave and if the man had not been on parental leave in the scope of maternity leave.

After the return of woman or man from parental leave drawn to deepen the care of a child, up till the child reaches three years of age, or for a long-term seriously disabled child up till the child reaches six years of age, the employer shall also be obliged to guarantee them the original work and workplace. If the transfer to their original work and workplace is not possible, then the employer shall be obliged to transfer them to a workplace corresponding to the employment contract. The man and woman shall have the right to the maintenance of all rights that they had or that were created to them at the time of the commencement of parental leave in the original scope. Such rights shall be exercised including the changes arising out of legal regulations, collective bargaining agreement or of established practices of the employer.

Criticism

In practice even despite such a high standard of statutory protection, a relatively frequent phenomenon is that after the return from maternity or parental leave the woman employee will only have a job with less favourable conditions than the ones she had before the maternity or parental leave. It is also not rare that after the return from maternity or parental

leave the employer dismisses a woman under pretence of various fabricated organisational reasons.

Breaks for breast-feeding

An employer shall be obliged to provide a mother who breast-feeds her child, in addition to breaks in work, special breaks for breast-feeding.

A mother, who works for the fixed weekly working time, shall be entitled to two half-hour breaks per child for breast-feeding until the end of the sixth month of the child's age, and in the succeeding six months one half-hour break for breast-feeding per shift. These breaks may be combined and provided at the beginning or end of the shift.

Where working with a shorter working time, however for at least half of the fixed weekly working time, she shall be entitled to only one half-hour break for breast-feeding per child until the end of the sixth month of the child's age.

Breaks for breast-feeding shall be calculated to working time and shall be provided with wage compensation in the amount of her average earnings.

The person entitled to breaks for breast-feeding shall only be the child's mother who breast-feeds the child. It cannot be another person who breast-feeds the child.

Working time and rest periods

The Labour Code imposes an obligation to take into account the needs of women and men caring for children, when designating employees to work shifts. In this context, the employer is obliged to accommodate a request and make a reduction in working time or other appropriate modification of the set working time possible for a woman and man caring for a child younger than 15 years of age. The criterion of the attribute of "substantive" operational reasons must be examined objectively in each specific case, namely with respect to the performance of work which is performed by the person demanding the modification of working conditions and to ordinary operating possibilities of the employer.

In the context of harmonisation of work and family, in practice different forms of flexible working time have proved practical with several employers; the latest is also the possibility of the so-called full flexible working time without the need to set a time segment for an employee in which he/she is obliged to be present in the workplace.

Night work and a large scope of overtime work present a considerable burden for the human organism and it has also been proved that unfavourable factors of such forms of organisation of work can affect markedly not only the health but also the family life of employees.

Therefore it is correct that the Labour Code imposes limits on night and overtime work ordered by the employer, when no substantive operational reasons exist for it. A woman or man continuously caring for a child younger than three years old, a solitary man or woman continuously caring for a child younger than fifteen years old may be employed for overtime work only with their agreement.

Work stand-by may only be agreed upon with them. Even though the night work of women is not prohibited, night work of a woman caring for a child younger than 9 months of age is only permitted with her approval. If such a woman employee requests a transfer to daily work from the employer, the employer shall be obliged to grant this request.

The new possibility of agreed flexible drawing of compensatory time off for overtime work in a period of twelve calendar months following the month in which the overtime work was performed, may also partially contribute to the harmonisation of employee and family duties.

Uneven distribution of working time, especially its new form of the so-called working hours account, can markedly affect the organisation of employee family life and the performance of necessary duties in relation to family care. Therefore it is justified that the Labour Code requires that to adopt such a decision with respect to an employee continuously caring for a child younger than three years of age or to a solitary employee continuously caring for a child younger than 15 years of age, the employer should have an agreement with them.

The provisions of the Labour Code are also related to the requirement of dignified performance of employee work, from which a duty results for the employer to provide employees with an additional equivalent rest period between two shifts in the event of its reduction from 12 h to 8 h, as well as the provision of compensatory equivalent continuous rest in a week, if it was reduced from two days to only 24 hours. The statutory principle that rest in a week should fall mainly on Sunday and the rigorous statutory obligation of the so-called "holiday" law, which prohibits work during important holidays governed by the LC related to retail sale, also contribute to the support of employee's family life.

Leave for rest and personal obstacles to work on the part of employee

A very significant tool in employer's care of employees caring for a child is the concept of leave for calendar year, its total length and setting the options for its drawing even after several years, if a woman or man employee could not have drawn it due to maternity or parental leave. The legal regulations of the Labour Code enshrine only a minimum duration of annual leave which can be prolonged for employees directly in the employment contract or collective bargaining agreement. Even though according to the law it is the priority of the

employer to set the drawing of leave, it is employer's obligation to take account of the legitimate interests of employees. For the employer not to neglect such interests, it is the employer's statutory obligation to discuss the commencement of leave with an employee. Among supporting measures by the employer contributing to the harmonisation of the work life and parental duties we can also rank an appropriate level of the acceptance of obstacles to work on the part of employee for various family reasons.

The legal framework of leave for calendar year and significant personal obstacles to work is only a statutory minimum laid down by the Labour Code, which, however, does not prevent the employer from being more cooperative and allow an employee to draw leave and paid time off to a wider extent. However, in application practice such cooperation is exceptional.

Protection against dismissal

New regulations of the Labour Code limit the termination of employment within the probationary period with a pregnant woman or mother until the end of the ninth month following childbirth or a breast-feeding mother. The termination of employment in such cases can be only exceptional, for reasons not related to pregnancy or motherhood, and they shall be duly substantiated in writing by the employer. In practice the new legal condition will help only such woman employees who have already been employed for an indefinite period.

It is inadmissible that an employer terminates employment immediately with a woman employee who is pregnant or on maternity or parental leave or a solitary woman continuously caring for a child younger than three years. It is possible in exceptional cases only to terminate employment with her involuntarily by notice.

For a woman employee on maternity leave, the only reason for her dismissal is external organisational changes of the employer. In practice it is for instance a situation when the employer is dissolved without a legal successor.

Conclusion

Despite the fact that the Slovak Republic has transposed into its system of law all key international and European documents in the relevant area, the application of labour-law protection of employees with parental duties can be considered an all-society issue the persistence of which is supported not only by the absence of effective control mechanisms, but also by the negative effects of globalization and of the financial and upcoming economic

crisis. Thus employers are not economically motivated by the legal regulations to employ persons caring for a child, but the regulations directly discourage them from such employment.

An external factor affecting the labour market unfavourably is the globalization process by growing pressure on the elimination of social aspects of the labour law protecting employees. Unwanted trends of a reduction of the European standard of employee protection are strengthened considerably by the global economic crisis, which by escalating the conditions in the global market contributes to a reduction of employees who do not present a guarantee of high labour performance.

Specific Cases Dealt with by the Centre since the Effect of Anti-discrimination Act which Highlighted the Violation of Gender Equality:

Discrimination on grounds of sex is difficult to identify and practically has a negative influence on one of the sexes. Stereotypes, which determine the unequal position of women and men, are however, in general perceived as natural and are thus tolerated by the society. The Centre has tackled a few dozens of cases objecting gender inequality. Most often maternity was given as a reason of unequal treatment, several cases of sexual harassment, cases of dismissals on grounds of pregnancy, etc. The majority of these cases were examples of unequal treatment in employment relations or similar legal relations.

Specific cases dealt with by the Centre:

Add 1/

By written application a female physician (hereinafter: the "applicant") contacted the Centre with an application for an expert opinion in the matter related to gender equality in access to employment. The applicant was a physician – specialist in the relevant specialisation with level one and two attestation. The applicant was upgrading her qualifications during her long-term practice. The applicant applied for a competitive selection procedure to fill a vacant medical centre in her specialisation. Also one of applicant's colleague participated in the selection procedure, who however at that time had only first level attestation, did not have a long-term practice in the relevant specialisation which the applicant had, and according to applicant's statements did not prove any further upgrade of his qualifications. Despite such differences in professional qualifications the said colleague was the successful candidate in the competitive selection procedure. The applicant considered the result of selection procedure to be **discrimination against her on grounds of that she is a woman** because

when selecting the candidate the competent board whose members were only men did not take into account her expertise and practice in the relevant specialisation in comparison with lower qualifications and shorter practice of the successful candidate. As results from the judgments of the European Court of Justice, in seeking employment, all criteria required for an assessment of the candidate shall be considered. If preference was given to a candidate automatically in a certain area only on the basis of that he is of certain sex, according to the Court, it is discrimination on grounds of sex. In the opinion of the Centre, if the only decisive criterion for the selection of a candidate to fill a vacancy of specialist in a specialised centre was not first of all an assessment of professional qualifications and practice of particular candidates, in this case of a woman candidate, and the selection board did not assess such facts to a sufficient extent, the action of the selection board can be qualified as direct discrimination against the applicant on grounds of sex. In personal consultations with the applicant's legal representative she brought legal action to the competent court for the violation of the principle of equal treatment. At present the case is at the stage of decision-making.

Add 2/

By written application a female employee of permanent public service (hereinafter: the "applicant") contacted the Slovak National Centre for Human Rights (hereinafter: the "Centre") with an application for an expert opinion in the matter of objected discrimination against her in the workplace. In her application the applicant pointed out the behaviour of her manager and one of the colleagues which, in her opinion, resulted in that the applicant's colleagues started to consider her inferior. The reason was to be for instance reproaching only the applicant for work mistakes by the manager on meetings. One colleague harassed her with foul and lascivious e-mails. She drew his attention directly to the fact that such behaviour was unfavourable to the applicant and harassed her. In its expert opinion the Centre informed the applicant of the legal regulations in force on a ban on discrimination in the Slovak Republic, which ranks harassment among forms of discrimination. Specialised literature considers sexual harassment **discrimination on grounds of sex** because sex is the determining factor for a person on grounds of which she/he is harassed. Sexual harassment is defined as any unwelcomed behaviour of sexual nature in a workplace or other sexual behaviour, the main feature of which is that it is unwelcomed for the victim. The Centre recommended to the applicant filing an application for investigation of the case to the competent authority according to Act on Civil Service and advised her of the possibility of solving the case in a court of law. The applicant has not contacted the Centre since then.

Add 3/

By written application a woman employee who has been a full-time employee at a company since 1987 (hereinafter: the "applicant"), contacted the Centre. In her application the applicant stated that her problem in the workplace had started after appointment of Mr. P. to a post of the head of company. According to statements of the applicant he was a habitual drinker, vulgar and aggressive man who started to harass her sexually in the workplace. After the applicant demonstrated that his sexual behaviour was unwelcomed for her and she did not want to tolerate it, he started to say threats to her saying "you will see what will happen..." and really started to create an unpleasant, deterrent and degrading environment towards the applicant in the workplace. The applicant warned the employer several times in writing of such treatment by her direct superior. After several complaints of the applicant the employer established a committee to investigate her complaints. The committee took certain measures to eliminate the problem; however, the solutions were significantly detrimental to the applicant, and therefore she understands them as her victimisation by the employer. In her opinion, in her labour-law relation she was exposed to sexual harassment and also to harassment pursuant to Article 2 par. 5 of Act No. 365/2004 Coll. on Equal Treatment in some Areas and on Protection from Discrimination, amending and supplementing certain other laws (the Anti-discrimination Act). Moreover, the applicant stated that she had been a victim of unauthorized sanction by the employer and that the other employees in the workplace also had been spurred by her superiors to discriminate against her. In its opinion the Centre holds the view that harassment and spurring to discrimination against occurred in the applicant's workplace. Since the applicant applied in the Centre for a full provision of legal aid including the takeover of her representation in proceedings before court, today the Centre is considering filing an action in the court and gathering the required documentary evidence.

Add 4/

A client was discriminated against in a competitive selection procedure because despite the fact that she met all the required qualification criteria of the selection procedure and also all criteria that were considered a benefit (a Roma, speaks Roma language, field-work with the members of marginalized groups, long-term practice, relevant education, etc.) she was not selected to the required position of "field social worker" and classified into the group of successful candidates, unlike candidates who did not meet the required qualification criteria and were selected for the position despite that fact. The Centre has provided legal counselling

and legal aid to the required extent and prepared a draft legal action due to the violation of the Anti-discrimination Act, and the action has been brought to the court.

Add 5/

A client was a long-term employee of a social services establishment (hereinafter: the "SSE"). After the return from maternity leave she suffered from harassment by her female superior, for instance by that the superior kept record of her work as in one-shift operation, whereas she worked in three-shift operation, and as a result of it, her overtime work was calculated incorrectly. After director's unwillingness to deal with this issue, she asked the governing body - the promoter and the Labour Inspectorate for collaboration, which confirmed the above. At that time she filed an application for the modification of working time due to the care for a minor, which was granted only upon inspection by the promoter. The client was further orally harassed, got notices for a breach of discipline, whereas comparable employees received no notices for identical or more serious breaches. In addition, she was not awarded the bonuses, and her incentive bonus was withdrawn. In March 2009, the defendant changed the organizational structure and reduced the size of the staff in the position of health care assistant where the client worked, from 9 to 6; and dismissed all women whose working time was modified due to the care for children. During the period of notice the employer assigned no work to the client, but despite it during the working time she had to be present on the defendant's premises (outdoors in a kiosk) where she was exposed to harassment by both the colleagues and SSE clients. The Centre has provided legal counselling and legal aid to the required extent and prepared a draft legal action due to the violation of the Anti-discrimination Act, and the action has been brought to the court.

Conclusion

The economic and financial crisis has different effects on men and women with respect to their different social and economic status. The limitation of adverse effects of crisis on the economic equality of men's and women's participation on the labour market should be the basis of a policy which would be applied based on an analysis and systematic assessment of the effects on men and women.

Sustained gender stereotypes in society obstruct the full exploitation of human resources. To ensure gender equality it is important to attain balance between the work and private life. It

presumes ensuring of not only modern organisation of work, but also quality, affordable services for the family, in particular securing the care of children and seniors or disabled members of the family. The possibility of harmonisation of the work and family life has a direct effect on the employment of women and their position on the labour market, on their earnings and economic independence.

A gender analysis of the effects of economic crisis has shown that **taking of predominantly gender-insensitive anti-crisis measures has led to the growth of vulnerable women's work** (a self-employed person, assistance in the household), to ousting women from the labour market and weakening of their social protection. The anti-crisis measures were directed usually to sectors where the concentration of women is low (the business sector, the automobile industry), whereas the sector of services where mostly women are employed almost went unnoticed. The measures focused primarily on the prevention of fall in the business cycle, and not on the structural crisis of economy and employment. Despite a markedly worse situation of women on the labour market as early as before the crisis, the political measures did not focus on the prevention of reducing women's employment. Plus, now it is evident that the programme of revitalization of public finances brings about a reduction of expenses in the area of services and education, family politics, care for seniors and dependent members of family, reduction of employment in the public sector and administration – all this in areas primarily related to women. The gender unbalanced conditions of economic, political and social institutions results in that the effects of financial, economic and debt crisis deepen the already discriminatory conditions in society for women.

Gender gaps decrease not thanks to an improving situation of women, but as a result of worsening situation of men.

The highest share of gender pay gaps is caused by different and considerably lower remuneration of the so-called women's work associated with care assistant work or social value, or simply because these works are performed by women. Undervaluation of work performed by women contributes to the hierarchization of sectors and jobs.

Recommendations

The Centre recommends setting specific priorities to achieve the equality between men and women in the process of development and implementation of a policy in all spheres of public life and also creating frameworks and bases reflecting an access of women and men in the relevant sector; setting the targets to achieve them.
Focus efforts for the reduction inequalities in the labour sphere on a reduction of inequalities at work, in wages and in staffing particular positions, which enhances the quality of the offer of jobs, reduces segregation on the labour market and the risk of poverty.

Challenges in the area of equality between men and women are as follows:
Achieve identical economic independence for men and women (work segregation, inequality in pays, discrimination in the labour market, business activities of women, social protection – especially of solitary women and mothers, poverty and social exclusion),
Better balance between the work and private family life,
Strengthen women's participation in decision-making,
Eliminate all forms of violation and trafficking in human beings,
Achieve equality between men and women in education and qualifications,
Consider equality between men and women in the area of environment and sustainability,
Eliminate different effects of economic and financial crisis on men and women,
Focus of the gender equality policy on intercultural dialogue, immigration and asylum,
Guarantee equality between men and women as main part of the public health promotion policy.

We suggest concentrating in particular on:
Monitoring of various groups of participants in activities by social categories stated in a definition of equal opportunities
Integrated development strategies involving also issues of equal opportunities and gender equality
Special educational activities concerning equal opportunities
Special educational activities in the field of application of gender equality (gender mainstreaming)

Motivation of a certain gender in education in order to reduce horizontal and vertical gender segregation

Mechanisms for the monitoring of gender gaps in remuneration for work

Introduction of flexible forms for the organization of work making it possible to harmonise family and work life

Interconnection of mobility needs of people with family duties and policy priorities of local or regional self-governments

Introduction of gender mainstreaming and of the aspect of equal opportunities into research, surveys and analyses for the provision of health services

Gender sensitive approach in educational theory and practice – focused on the elimination of gender stereotypes, sensitizing to gender inequalities and support of gender equality

Projects focused on the elimination of gender stereotypes and other forms of prejudice and stereotypes.

Articles 6 and 7

Introduction

An international framework of the regulation of the right to work and right to favourable conditions of work and to fair wages for work is laid down mainly by the provisions of Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights, Articles 2–8 Part II. of the Revised European Social Charter and Article 31 of the Charter of Fundamental Rights of the EU and other international treaties within the ILO or WHO systems.

In the national legal regulation of the SR the right to work, to free choice of profession, to preparation for profession, to appropriate material welfare of those who cannot work without their own fault, to fair and satisfactory conditions of work, in particular, the right to wages for the work performed, sufficient to secure a dignified standard of life, to the protection from arbitrary dismissal and discrimination at work, to the protection of safety and health at work, to appropriate rest time after work and to collective negotiations, is guaranteed by the Constitution of the Slovak Republic in Articles 35 and 36 (hereinafter referred to as the "Constitution of the SR").

The above stated rights are linked to the existence of a labour-law relation and pertain to all of its parties in the employee position (regardless of their nationality). The above stated fundamental rights can only be sought within the limits of the law implementing such provisions, such as the Labour Code, (Act No. 311/2001 Coll. as amended), Act on Employment Services (Act No. 5/2004 Coll. as amended), Act on Civil Service and on amending and supplementing certain acts (Act No. 400/2009 Coll.), Act on Safety and Health Protection at Work, Act on Minimum Wages, and others.

Specifically in the Labour Code (hereinafter: the "LC") unlike the Constitution of the SR, the specified rights are addressed to natural persons, not to citizens, i.e. it is a broader concept than the one contemplated by the Constitution of the SR.

The stated rights belong to natural persons without any sort of restriction and direct discrimination or indirect discrimination on grounds of sex, marital status and family status, race, colour of skin, language, age, state of health, belief and religion, political or other conviction, trade union activity, national or social origin, national or ethnic group affiliation, property, lineage or other status, with the exception of case established by law, or in the case

of real reason for the performance of the work consisting in preconditions or requirements and the nature of work which the employee is to perform.

Advertising in Labour-Law Relations

Even though job advertisements are an important tool of the labour market, as regards the principle of equal treatment and ban on discrimination, it escapes notice of the expert and laic public, whereas they present a significant step or, on the contrary, a barrier for many persons in access to employment. An advertisement has the character of public announcement and in a certain way forms the legal conscience of people, while it also reflects the current level of society. Job advertisements constitute a discrimination indicator showing the quality of life and play a key role in the public life and have an immense effect on key moments in the destiny of many people. Employers searching for new employees according to their demands, however, with job advertisements often act in a discriminatory manner, even against population groups. Due to their distress job seekers are forced to subordinate themselves to such unequal treatment. The rest of society not participating in such "public auction" of jobs is evidently looking at this adverse social phenomenon on a daily basis, hears of it and, above all, tolerates everything silently.

Following an internal analysis of the Centre performed between 14.02.2011 and 27.02.2011, however, it was proved again that the equality of job opportunities remains for many groups of people rather an unachievable myth than everyday reality. A high share of advertisements containing direct or indirect discrimination or having possible discriminating impact on the male/female job seekers presents a barrier for too many people in job searching. We can also state that equal opportunities in access to employment in the least are not secured for everyone in job advertisements. The Slovak labour market is marked by inequality and discrimination. Not only women have worse opportunities of asserting themselves on the labour market, but also the disabled (although in job advertisements job offers clearly do not exclude such persons), school leavers, senior candidates, persons released from prison, etc. Many employers and job agencies view male and female candidates through the prism of gender and age prejudice. The problem does not consist, however, in the absence of legislation or in insufficient legal regulations. On the contrary, in addition to general antidiscrimination regulations laid down by the Anti-discrimination Act, also other laws are in force in Slovakia, regulating in detail the rights and obligations of job applicants, as well as of employers, in searching for and offering a job. Act on Employment Services stipulates a very

important provision that prohibits publishing offers of employment, which contain any restrictions and discrimination for specified reasons. Other restrictions of possible discrimination by employers are enunciated in the Labour Code which specifies which data an employer may demand from candidates when hiring employees. The Slovak National Centre for Human Rights has ascertained, among others, the following data:

Summary of the analysis: **4 269** job advertisements in **7** sources

	TOTAL	(in %)
Directly or indirectly discriminatory:	2 573	(60.27%) - erroneous
According to the antidiscrimination legislation:	1696	(39.73%) - satisfactory

Recommendations

Enhance awareness of people on the labour market with respect to their rights relating to access to employment, right to equal treatment and illegitimacy of employers procedure in the event of discriminatory job offers (regular training of job seekers);

Improve the quality of the system of control of the observance of the existing legislation related to discriminatory job offers by employment agencies, regular monitoring of the observance of the existing legislation;

For cases of repeated violation of the existing legislation, no tolerance of the failure to observe legislative measures, **to a larger extent use sanction mechanisms** in the context of legislative provisions;

Enhance the professional level of the staff of institutions that are competent to control the observance of the principle of equal treatment in access to employment and of the provisions of Act on Employment Services and of the Labour Code;

Systematically increase the legal awareness of employers regarding the duty to observe the principle of equal treatment at all stages of employment relationships including the prohibition of publication of job offers containing any restrictions or discrimination;

Implementation of the discrimination issue into the educational system of elementary and secondary schools (also because partially these issues relate to human rights, which is part of curriculums, but information on the Centre as the only institution in Slovakia that serves as the body for equal treatment, is absent);

Promote competitions for employers (similar to, e.g., "Family Friendly Employer"), which would focus on employment of other discriminated groups of people (discriminated on the

labour market, e.g., on grounds of their age, sex, school leavers, disabled persons, etc.) and dissemination of best practices;

Apply intensively the possibilities of independent determination and situation testing as tools for possible discovery of discrimination on the labour market by institutions, which have powers also according to the legislation to control the observance of applicable laws.

Selected Legislative Amendments of the Labour Code (Act No. 311/2001 Coll. as amended)

With effect from 01.04.2011, the Labour Code was amended by Act No. 48/2011. The Labour Code defined in a new manner, while applying the principle of equal treatment, the relation between Anti-discrimination Act (Act No. 365/2004 Coll., as amended, hereinafter referred to as the "AA") to the Labour Code. For judging the observance of the principle of equal treatment, in addition to the Constitution of the SR, the Anti-discrimination Act is the crucial legal rule. The AA is applied with respect to labour-law relations as a special legal regulation, which unlike the Anti-discrimination Act governs specific rights of employees and obligations of employers.

Trade-union organizations do not perceive "the important amendment to the LC"as beneficial to employees. They are afraid of that the application of the working hours account or flexi-account and overtime will allow employers to intervene in the personal time of employees regardless of their personal needs. After cancellation of the concurrence of notice period and compensation they believe that employers will get rid of employees much faster. According to official OECD data, over the past five years, the productivity of labour in Slovakia has increased by 25.5%, while in Poland by 11%, in the Czech Republic by 7.3%, in Hungary only by 5.5%, and physical skills of employees have their limits. Equally, the trade unions criticise also the shortening of the period of paid work (night bonus) for employees working night shifts from 8 hours to 7 hours. Opinions of employers vary. They do not like, e.g., the limitation of "overtime" as it is possible to order to an employee only 150 hours of overtime work per year, and an employer may agree with an employee additional 250 hours of overtime work. The Amendment to the LC allows only executive employees to work voluntarily 56 hours per week; the other employees shall have a limit 48 of hours per week. Employers refuse views that amendments to the LC will allow the creation of a high number of working positions.

Disabled Persons in Labour-Law Relations

Handicapped persons are one of vulnerable groups towards which the majority population tends to behave differently than towards persons without disabilities. The area of work is often a place where handicapped persons encounter discrimination.

Statutory provisions

In Article 8, the Labour Code imposes on employers a duty to provide handicapped employees with working conditions enabling them to assert themselves and improve their aptitudes to work, with regard to their state of health, and in Article 13 of the Labour Code, discrimination on grounds of disability is prohibited.

The Labour Code protects such employees to a larger extent also through Article 66, where an employer may only give notice to an employee with disability subject to the prior consent of the competent Office of Labour, Social Affairs and Family, otherwise such notice shall be deemed invalid. Such consent shall not be required where notice was given to an employee who has reached the age entitling him/her to old-age pension or for reasons as stipulated in Article 63 par. 1 a) (if the employer or part thereof, is wound-up or relocated) and e) (if there are reasons on the part of the employee, for which the employer might immediately terminate the employment relationship with him/her, or by virtue of less grave breaches of labour discipline; for less grave breaches of labour discipline, the employee may be given notice if, with respect to breach of labour discipline, he/she has been cautioned in writing within the previous six months as to the possibility of notice) of the Labour Code.

Criticism

The rules under which the Office should give consent are not clear. It causes a serious problem in employment of handicapped persons.

In Articles 158 and 159, the Labour Code stipulates rights of a handicapped employee beyond the scope of other employees' rights as follows:

● An employer shall be obliged to employ handicapped employees in suitable positions, and to enable them training or study to attain the necessary qualification and shall also be obliged to attend to the development of such qualification,

● An employer shall be obliged to create conditions for employees to have the possibility of applying themselves in work and to improve the facilities of workplaces so that, where possible, they may attain the same work results as other employees, and for their work to be made as easy as possible,
● For a handicapped employee whom it is not possible to employ under usual working conditions, an employer may reserve or set up a protected workshop or protected workplace,
● The employer shall enable a handicapped employee with theoretical or practical preparation (requalification) with the aim of maintaining, increasing, expanding or amending his/her hitherto qualification, or adjust it to technical development towards the goal of retaining the employee in an employment relationship,
● An employer shall negotiate measures with employees' representatives to create conditions for employing handicapped employees and also fundamental questions over the care of such employees.

Examples of discrimination in employment on grounds of disability **in applying for a job**:
A candidate meets all professional or qualification requirements, but a different candidate is hired to the position – although without the qualification, but without disability
Ill-will, unwillingness to employ candidates with a certain health problem
Prejudice against persons with disabilities as regards their incapability to provide labour performance
Insufficiently accessible workplace (only a barrier-free access is not sufficient, it is also necessary to adapt the entire workplace, e.g., the toilet-room, office, etc.)
Financial demands for the alterations and adaptation of workplace to handicapped persons
Need to adapt working conditions to handicapped persons and need of work assistance for handicapped employees
Insufficient qualifications and work experience of handicapped persons
Lack of adequate working positions.
Examples of discrimination at work **in keeping the job and dismissal from work**:
An adapted, hard-working and successful employee with disability does not have a great chances to be promoted – a better job will often get a fit colleague, although his/her work results are often worse,
In reducing the number of personnel in organisations, handicapped citizens are often dismissed as the first, but their employment agreement is not extended despite the fact that they do not breach the work discipline, have good results and are loyal to the organisation,

Employers force employees to ask for severance of the labour relation themselves – otherwise the employees are victimized

By amendment to Act No. 49/2009 Coll. on Employment Services, a contribution for establishing a protected workshop or protected workplace (an active measure on the labour market) Article 56 was created.

Other possibilities for obtaining contributions aimed at the support of employment of handicapped persons include:

Training for applying of a handicapped citizen in work and legitimate expenses in §§ 55b and 55c of Act on Employment Services.

Contribution for retaining a handicapped citizen in employment - § 56a of Act on Employment Services.

Contribution for operating or performing self-employment to handicapped citizens - § 57 of Act on Employment Services.

Contribution for the refurbishment or technical improvement of movable property within the protected workshop or protected workplace - § 57a of Act on Employment Services.

Contribution for activities of the assistant at work - § 59 of Act on Employment Services.

Contribution to cover operating costs of the protected workshop or protected workplace and employees'transport costs (the employer) - § 60 of Act on Employment Services.

In 2011, on the average, 12 397 handicapped citizens were kept on file of job seekers of the Office of Labour, Social Affairs and Family, with a 3.2% share of the total number of job applicants. As at the end of December 2011, 12 755 job applicants with disabilities were recorded, whereas their share of the total number of job applicants accounted for 3.19%.[11]

Conclusion

The Centre observes a unilateral approach of the SR focusing only on a model of protected employment, the absence of measures promoting the creation of working positions on an open labour market, as well as of measures aimed at the integration of slightly disabled persons on the labour market.

[11] Statement of the Ministry of Labour, Social Affairs and Family intended for the Centre to prepare the Report on the Observance of Human Rights including the Observance of the Principle of Equal Treatment in the SR for 2011

In practice, protected workshops have a problem mainly with the reimbursement of costs for employees' wages. Overcharged with administration, they admit they due to various absurdities by labour offices they might not receive the money for work at all.

The offices demand 17 enclosures in total from protected workshops. One of them, for instance, requires that a workshop should document on a quarterly basis that in the register the office has available is still the workshop under the relevant name. The seventeenth enclosure to the application is an enclosure where the office can think up what else they need from the workshop.

For such a high number of documents the probability that a deadline will not be met or a mistake will occur, is high. At that moment the application will be refused and the institution cannot enter a protest at all.

Main factors discouraging handicapped person from employment:

More advantageous drawing of contributions

Risk of loss of contributions upon the commencement of employment

Unwillingness of employers to employ handicapped persons due to their worries about expensive alterations of the workplace.

Employers would pay a sanction to the state for failure to meet the compulsory share of handicapped persons rather than employing a handicapped person. For protected workshops and protected workplaces excessive bureaucracy and complexity of the entire mechanism of protected employment persists, which discourages prospective employers from plans to set up protected workshops and protected workplaces for disabled people. The failure to meet the obligation to employ disabled persons applies to all entities, both private and state of all levels.[12]

Minimum Wage

The amount of minimum wage is set by Decree of the Slovak Government on a yearly basis. Starting from 01.01.2012, the monthly minimum wage is 327.20 EUR.

As regards the observance of human rights, in particular of Article 36 of the Constitution of the SR it is questionable whether the provided remuneration for the work performed in the form of minimal wages is sufficient to secure a dignified standard of life, i.e. whether

[12] Statement of the Association of Disabled Persons Organisations of the SR dated 27.02.2012

employees will be able to cover their cost of living from such amount, in particular single parents or families with several children.

Rights and Working Conditions of Slovak Employees in Foreign Investors' Firms Based in the SR

Rights and working conditions of Slovak employees in the firms of foreign investors based in the SR are not always in conformity with the Slovak system of law and with the obligations of the SR arising out of international treaties. As early as in 2010, the National Labour Inspectorate[13] pointed out the fact in its opinion that the method of work at certain foreign employers operating in this country for a short period of time often was not compatible with our system of law, moral and human principles, e.g. labelling of employees with coloured strips, aggressive behaviour by managers to the subordinate. Also the Confederation of the Trade Unions[14] drew attention to the violation of the LC by multinational companies operating in the business sector, in particular in the area of the observance of duration of working time (non-observance of weekly working time for employees working two or three-shift operation), for overtime work (failure to record and pay overtime work), for night work, for rest of employees (failure to observe continuous rest for an employee in the week). The Centre employees providing the victims of discrimination and unequal treatment with legal aid and counselling also encountered complaints with the similar content in the relevant years. Employees mainly of production companies with Asian corporate agents reported against the non-observance of the LC with respect to overtime work, insufficient rest between shifts, and the non-observance of breaks at work, and also physical punishment or humiliation of employees with inadequately low wages.

According to findings of the Centre, foreign employers, apart from several exceptions, do not allow employees to settle disputes between the employer and employees out of court in the form of mediation. Such an option for employees is not written in internal regulations or other in-house documents either. Thus in most cases disputes end in courts.

Some cases of the complaints of Slovak employees in foreign companies have also been made public in media.

[13] A reply from the National Labour Inspectorate dated 18.02.2010
[14] A reply from the Confederation of the Trade Unions dated 05.03.2010

Among complaints that the clients sent to the Centre and its regional offices in 2010 prevailed complaints mainly with respect to forcing to work overtime, verbal humiliation at work, inadequately low wages, etc.

The National Labour Inspectorate observed that in comparison with 2009, the number of complaints against employers with foreign ownership increased. For 2009, the labour inspection system recorded 1423 complaints. In 2010, it reported 1464 complaints against 485 organisations with foreign ownership as the legal form. If any defects are discovered in the labour inspection, immediate remedy is ordered, and for serious violations a sanction is imposed pursuant to Article 19 of Act No.125/2006 on Labour Inspection and alternations and amendments of Act No. 82/2005 Coll. on Illegal Work and Illegal Employment and alternations and amendments of certain laws. Today when the situation with employment is becoming worse we can expect a further drop of working positions. According to the National Labour Inspectorate, again less employees will report against the violation of legal regulations during the term of their labour-law relation, and thus to unequal treatment. Their primary attempt will be to keep their job.

Recommendations

Despite the legislative regulations on labour-law relations some foreign employers attempt to circumvent them continuously, though being aware of sanctions that follow their violations. In this context the Centre stresses that it is necessary to point out such defects constantly, not only among experts, but also through mass communication media and public civil discussions.

In this context the Centre recommends adopting such legislative measures on the national level, on the basis of which each and every foreign employer coming to Slovakia to run a business would attend a compulsory series of training focused on the applicable national legislation – and the Labour Code and Anti-discrimination Act.

In addition, the Centre recommends adopting a measure on the basis of which employers would be obliged to draw up the Codes of Conduct in their workplaces, business premises and production plants, and large business premises (above 20 employees) would be obliged to set up Ethics Committees.

Legislative Amendments of Act on Labour Inspection

(Act No. 125/2006 Coll., as amended)

Over the course of 2010, the Act was amended twice, and in 2011, 6 times. Amendments of the Act allow more effective labour inspections aimed at higher transparency of the activity of inspection bodies in inspection and imposing fines with respect to illegal employment. Since 01.01.2012, in special cases it has been possible to perform labour inspections also outside the territory (Article 7 par.1). Such practice will enable inspectors who are not linked to the local environment to perform an inspection, which will limit the risk of possible corruption behaviour. When investigating the causes of certain occupational accident occurrence (Article 7 par. 3 b), labour inspectorates shall issue on demand of an employer/natural person the copies of documents provided, and the labour inspectorates‘responsibilities shall include an obligation to issue on demand of the above persons a confirmation of the occurrence of an occupational accident, if they investigated the occupational accident. According to the new regulations, during an inspection, a labour inspector is also obliged to deal with submitted comments and proposals of employee representatives for occupational health and safety, and shall be entitled to determine an appropriate period for taking measures (Article 12 par.3 and 4); and he/she shall be entitled to inform of the measures also orally, which shall be recorded in a report on the result of inspection.

According to a new wording of Article 21 par.2, all written documents required for the performance of labour inspection shall be delivered to an employer by personal delivery according to the Administrative Procedure Code, which solves problems with the present refusal of document takeover.

The performance of supervision and competences of labour inspectorates are regulated in detail in a new provision of Article 7a. The performance of supervision over products launched on the market and put into operation has been added. Labour inspectorates shall perform supervision to the necessary extent also at producers, importers, distributors and exhibitors on exhibitions and fairs regarding the satisfaction of requirements according to special regulations, for the purpose of verifying the compliance of products with safety standards and regulations.

The amendment also introduced compulsory imposition of penalties in the event of a serious infringement of obligations and in the event of failure to eliminate deficiencies A serious infringement of obligations resulting from provisions stipulated in Article 2 par.1 a) shall mean according to the provision of Article 19 par. 3 - failure to meet the conditions set for

the working time and time of rest in the performance of work classified by the state administration body in the national health service unit into category 3 or 4 according to a special regulation – failure to meet the conditions set for pregnant women, mothers till the end of the ninth month after the childbirth, nursing women, adolescents and handicapped employees – failure to take the necessary measures / failure to secure protective or safety equipment to limit possible consequences of danger to life and health of employees, failure to provide functional personal protective equipment in an environment that requires them.
According to a new wording of the provision of Article 19, the labour inspectorate shall be obliged to impose a penalty for (1) violation of a ban on illegal employment amounting from 2,000 EUR to 200,000 EUR, (2) the conduct of activity without a licence, certificate, card or permit, if it is required for the conduct of activity, amounting from 300 EUR to 33,000 EUR, (3) serious violation of obligations arising out of regulations stipulated in Article 2 par. 1 a) amounting from 1,000 EUR to 200,000 EUR, and (4) non-compliance with obligation imposed according to Article 12 par. 2 b) - i) amounting from 300 EUR to 100,000 EUR.

Recommendations

An ambition of the labour inspectorate should be to strengthen prevention in the form of cooperation with employers. The ability of labour inspectorate to prove discrimination of employees in labour-law relations and impose sanctions can be characterised as insufficient. In 2011, one of the first steps in this area was the preparation of a series of free expert seminars for employers concerning labour-law provisions and regulations in the area of occupational health and safety. The topics of seminars focused on areas where inspections demonstrate the violation of law most frequently. Expert advisory or active contacting through information materials should help employers to eliminate the ascertained deficiencies.

Safe and Healthy Working Conditions

Changes in occupational health and safety that has brought an amendment of Act No. 124/2006 Coll.:
- Since January 2012, Occupational Health Service has been compulsory only for employees of risk work included in the third and fourth category. In workplaces with work in the first or

second category, however, the obligation to perform medical examinations at general practitioners has been kept.

- The period of reconditioning stays has been shortened
- In judging the seriousness of industrial accident. An industrial accident is not serious if the expected or real duration of incapacity of work is at least 42 days". By this act, a serious industrial accident shall only be death or severe injury to health.
- The obligation for employers and specified entities: to immediately report to the competent Labour Inspectorate the occurrence of direct threat of an occupational disease, shall be cancelled.
- The employer's obligation according to the internal regulation to ensure the employees´ drinking regime in the workplace shall be deleted. Thus the employer shall not be obliged to specify the activities and form of the provision of drinking regime.

Criticism

The adopted amendment of Act reduces the standards achieved for ensuring occupational health and safety arising out of the Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work. It is reasoned by the statement that Occupational Health Service is justified only for employers with activities included in the 3rd or 4th category of risk works. Also the cancellation of employer's obligation to perform at least one joint inspection of the employer's workplaces per year through the Safety Technical Service and Occupational Health Service is also considered a serious intrusion in the level of occupational health and safety.

Act on Employment Services

(Act No. 5/2004 Coll. as amended)

The principles of equal treatment in labour-law relations directly apply also to the provisions of Act No. **5/2004 Coll. on Employment Services** (hereinafter: "Act on Employment Services"), which in **Article 14** defines the right of access to employment in such a manner that a citizen has the right of **access to employment** without any restrictions, in compliance with the principle of equal treatment in labour-law relations and similar legal relations, provided for under a special regulation. This Act prohibits discrimination also on the grounds

of marital status and family status, colour of skin, language, political or other conviction, trade union activity, national or social group affiliation, disability, age, property, lineage or other status. The enforcement of the above rights and obligations arising out of the right of access to employment must be in compliance with good morals. Nobody may abuse such rights and obligations to the damage of another citizen. Nobody may be persecuted or otherwise sanctioned because of making a complaint before the Office against another citizen, or making a complaint, bringing a charge or action to commence criminal proceedings against an employer. In the event of violation of the above rights and obligations, a citizen shall have the right to make a complaint or pursue their claims by judicial process.

a) One of preventive legislative measures against the economic crisis was a draft of Act No. 49/2009 Coll. by the Government, amending and supplementing Act on Employment Services, with effect from 01.03.2009. It was necessary to search for immediate solutions to maintain employment in the existing working positions, promote the creation of new working positions, for dismissed employees and also for job applicants kept on file of labour offices. Legislative proposals drawn up on the basis of a package of measures which were agreed and adopted in negotiations of the Economic Crisis Council early in 2009. Active measures on the labour market in the form of existing contributions (a contribution for education and preparation for the labour market of job seekers, persons interested in employment and employees; a contribution for self-employment; a contribution for commuting to work; a contribution for the creation of a new working position (investment assistance); a contribution for establishing a protected workshop or protected workplace; a contribution for employing a disadvantaged job seeker; a contribution for the graduate practice) have been supplemented by this amendment of Act with contributions for preserving of employment, contributions for creation of new workplace, contributions to the salary of the employee, contributions for the support of self-employment, and contributions for self-employment in the domain of agricultural products and trading with them; however, these lost effect at the end of 2010.

b) Another amendment was adopted with effect from **15 January 2010.** The amendment was **implemented by Article IV. of Act No. 594/2009 Coll.**, amending and supplementing Act No. 48/2002 Coll. on the Stay of Aliens and on amending and supplementing certain other laws as amended. The amended text of Article 21 par. 1 a) of Act on Employment Services laid down that the alien who is a participant of legal relations pursuant to Act on Employment Services has the same legal status as a citizen of the Slovak Republic in the provision of employment services, if the alien was issued a work permit and temporary stay permit for the propose of employment, unless stipulated otherwise by a special regulation

(Act on the Stay of Aliens). Article 20 par. 3 of Act on the Stay of Aliens provides a comprehensive definition of situations in which the temporary stay permit of aliens for the propose of employment is not required, and on the basis of it, according to the new provisions, the temporary stay permit of aliens for the propose of employment is not required within 90 days of entry to the territory of the SR. Amendments of Article 22 par. 7 of Act on Employment Services, however, reduced the circle of aliens from whom a work permit is not required.

c) Another one was amendment of Act on Employment Services (**Act No. 52/2010 Coll.), effective from 01.03.2010**. New implemented modifications of active measures on the labour market responded to a programme document "An analysis of the current state and development of employment, employment development risks in the upcoming period, baseline and draft measures for the support of employment growth and the reduction of unemployment", adopted by Resolution of the Slovak Government No. 777 of 9 November 2009. The amendment was a follow-up to already implemented active measures on the labour market adopted in March and April 2009 in the form of two Acts (Act No. 49/2009 Coll., Act No. 108/2009 Coll. – amendments of Act on Employment Services), which focused primarily on the creation of legislative conditions for the support of preserving of employment and for the support of generating new jobs on the nationwide level, including the support of self-employment activity. It addressed also other measures adopted in October 2011 (Act No. 463/2009 Coll. – amendment of Act on Employment Services), which focused on certain vulnerable categories of labour market participants in the Slovak conditions, in particular discriminated job seekers. This amendment generally monitors in particular the support of employment growth in marginalized groups of discriminated job seekers, as well as the stimulation of employability of effective and qualified work force on a micro-regional and local scale.

The amendment also regulated the basic general conditions the fulfilment of which is necessary for inclusion in and keeping a job seeker on file so as to prevent illegal work.

d) On **1 January 2011,** another amendment of Act on Employment Services became effective – **Act No. 373/2010 Coll.** The said amendment dealt with issues related to the financing of active measures on the labour market and the protection of financial resources allocated to finance them.

One of parts of the amendment also set a minimum duration of graduate practice as 3 months with a maximum upper limit 6 of months.

The period of discriminated job seeker‘s joining-up process was also specified. The amendment also specified the provision of Article 56 par. 1 of Act related to protected workshops. A contribution for establishing a protected workshop or protected workplace shall be provided per job seeker being a disabled citizen starting from the effective date of decision on inclusion of disabled citizen in the Register of Job Seekers. It also laid down a minimum scope of working time for a disabled employee, to at least a half of determined weekly working time; regulated the calculation of maximum monthly pay of disabled employee, and set conditions and period for repeated making of such contribution.

By the effect of the amendment of Act, the contribution for graduates employment, education and preparation for labour market pursuant to Article 51a of Act on Employment Services was cancelled. Pursuant to Articles 50e - 50h of Act on Employment Services, the contributions, i.e. contribution for creation of new workplace, contribution to the salary of the employee, contribution for the support of self-employment, contribution for self-employment in the domain of agricultural products, were provided not later than on 31 December 2010. The contribution pursuant to Article 50d of Act on Employment Services, i.e. the contribution for preserving of employment was provided not later than on 31 December 2011 (extension in comparison with the previous legal regulation).

A new wording of Article 54 of Act on Employment Services created conditions for the implementation of pilot projects for verifying new active measures on the labour market. The said measures are adopted by the Ministry of Labour, Social Affairs and Family of the SR and implemented by the Central Office of Labour, Social Affairs and Family and the Office of Labour, Social Affairs and Family. The above pilot projects are financed from the state budget or from resources of the European Social Fund and cofinanced from the state budget.

e) The need to deal with the issue of long-term unemployment resulted in the adoption of another amendment of Act on Employment Services; by **Act No**. **120/2011 Coll.** with **effect from 1 July 2011** by extended application of the contribution for activation activity. The amendment is part of measures that are to promote the integration of handicapped groups into the labour market in particular in lagging regions with high unemployment. The amendment introduces a new form of activation activity, namely **minor services**. The new wording of the prov. of Article 52 par. 3 defines minor services as a form of the activation activity of long-term unemployed citizens, executed by performing work designed to develop, protect, preserve, and improve the environment and to assist in emergencies and remove their consequences. Minor services are executed for a self-governing region and organised by a self-governing region or budget organisation or allowance organisation whose founder or

promoter is a self-governing region. The performance of minor services by the long-term unemployed is on a willingness basis. The concept of willingness to perform minor services was also reflected in the amended prov. of Article 36 par. 5 b). According to this provision, refusal to participate in the activation activity in the form of minor services shall not be considered lack of cooperation of the jobseeker, i.e. participation in the activity is voluntary.

The amendment permits the performance of minor communal services or minor services for a self-governing region. However, the amendment does not permit concurrent performance of both services. Minor services for a self-governing region or minor communal services for a commune can be performed by a long-term unemployed person for 6 calendar months in the scope of maximum 20 hours per week, except for the week in which the service began. They can be performed repeatedly maximum for additional 12 calendar months. According to the applicable legal regulations, minor services can be performed by a long-term unemployed person repeatedly maximum for additional 6 calendar months.

In addition to the regulation of conditions for a contribution for activation activity, the amendment modified the maximum age-limit for obtaining a contribution for the graduate practice from current 25 years to 26 years of age.

f) In the amendment of Act on Employment Services No. **223/2011 Coll.**, amending and supplementing Act No. 82/2005 Coll. on Illegal Work and Illegal Employment and alternations and amendments of certain laws, as amended, and amending and supplementing certain laws (**effective on 20.07.2011**), there have been the following changes:

- In the scope of powers of the Central Office of Labour, Social Affairs and Family with respect to the deletion of competence to perform the inspection of illegal work and illegal employment, to the performance of inspection for the discharge of obligations according to this Act and to record-keeping of third-country nationals,
- In the regulation of employer's obligation for employment of a third-country national,
- In the regulation of criteria for the imposition of penalties for the violation of Act on Employment Services.

The above stated amendment regulates the competences of the Central Office and Office with respect to the issue of certificates of the possible fill of vacancy for the purpose of issue of new blue cards, the legal status of blue card holder for the purposes of this Act and obligations of employer in employing a blue card holder.

The purpose of the amendment is to transpose into the Slovak system of law the Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009, providing for minimum standards on sanctions and measures against employers of illegally staying third-

country nationals (hereinafter referred to as the "Directive 2009/52/EC") and the 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 (hereinafter referred to as the "Directive 2009/50/EC").

g) Amendment of Act on Employment Services No. **257/2011** Coll. with **effect from 01.09.2011** created a legal framework for the implementation of the Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.

The definition of temporary-work agency is specified, a ban on the collection of fees from temporary agency workers for arranging for them or for concluding a contract of employment with a user undertaking after carrying out an assignment in that undertaking, is laid down, the obligations of temporary-work agency with respect to access of temporary agency workers to vocational training during the period of their assignment, are extended, and access of temporary agency workers to child-care facilities is improved. A binding deadline for the submission of annual reports on temporary-work agency's activities is laid down.

Unemployed Graduates

The unemployment rate of young people is much higher than of other age groups. Nowadays, the unemployment rate of persons at the age of 15 - 24 years accounts for more than 22%, i.e. since 2008 when the rate was above 15%, it has increased by a half also as a result of the crisis.[15]

The system of graduate practice according to Act on Employment Services is very poor and in fact incites to misuse. The main problem of both graduate practice and activation work is that it is a form of subsidy where is absolutely no control of the outcomes. The only control is on the level of attendance lists or signed contracts. The control of whether the relevant persons really perform something useful is missing, not only in officer's work, but also in the system itself.

[15] The Employment Institute

Recommendations

Within an improvement of employment and mainly of employability of young people, the Centre suggests:

- Cancel the current form of graduate practice and replace it by grant-aided employment – the system of graduate practice is very bad, among other things, it puts administrative obstacles in employer's path in retaining a graduate. It is necessary to apply positive discrimination of graduates in the form of standard employment contracts. Provide a grant to the employer, if they employ a graduate with a standard employment contract for an indefinite period, which should be in the amount of payments for a 6 months period.
- Single bonuses for useful disciplines and a change of the educational system funding – At present, the interconnection between the needs of the labour market and system of schools is missing, and mainly financial incentives for schools to perform useful disciplines are missing. Therefore we propose a one-shot subsidy from this package to those schools which perform very effective disciplines (technical disciplines) and also starting a reform of educational system funding.
- Support micro-regions – It is necessary to support selected micro-regions for the purpose of creation of adequate comprehensible conditions for the development of economy in the region (infrastructure, premises, human capital ...). It is necessary to implement particular parts within a reasonable period of time.
- Re-assess the policy of lifelong education
- Concentrate on elderly people with lower than secondary education
- By promoting extramural studies attempt to increase the level of education among the strong generation born after 1970
- Re-assess the method of financing of medical disciplines on all levels of education. They are disciplines which are demanded on the market but their studies are expensive. It would be suitable to consider special rules for the financing of medical disciplines.
- Re-assess the possibility of higher control with respect to the content of studies and number of graduates of certain less attractive technical and socioscientific disciplines. A more comprehensible analysis focused on differences in attractiveness would be required to identify critical disciplines.

Labour Market Condition

The plan to promote the creation of working positions through active measures on the labour market has not been successful in practice yet. The assistance system in material need is complicated and nonmotivational. Therefore within the support of employment growth, the Slovak Government has undertaken to propose legislative modifications for the promotion of the unemployed by introducing a combination of work and benefits for the long-term unemployed (an intermediate labour market), to involve employers in the creation of working positions for the long-term unemployed by insurance premium and health insurance allowances, for both national and foreign entrepreneurs. Moreover, the Slovak Government has undertaken to assert a modification of the Labour Code and of other labour-law regulations with a view to introducing more flexible employment relationships. Such modifications should involve cancellation of the concurrence of notice period and compensation on the termination of employment by the employer, weakening of the position of trade unions and limitation of the concurrence of pension and income for government employees, employees performing work in the public interest, and for employees in the service relationship. In the social area, in the statement of policy the Slovak Government has undertaken to concentrate on the promotion of the growth of living standard even in the complicated conditions of the ongoing economic crisis by promoting the creation of new working positions to secure the growth of income for the population.

The labour market in the SR is characterised by a high unemployment rate with a significant share of long-term unemployed. Such persons have lost contact with the labour market and are losing their work habits. A high percentage of the unemployed are the involuntarily unemployed, in addition to persons who do not want to work or for whom work is not worthwhile due to their low level of education and work skills, and misuse the social system.

It is necessary to note that in the period under review the promised effective measures for a drop of unemployment were not implemented by the Slovak Government. The intermediate labour market was not introduced, which would allow employees to draw social benefits in case of insufficiently paid work. The concurrence of pension and income for government employees was not limited; sufficient attention to the unemployment of university graduates was not paid. The system of schools further prepared a high number of graduates whose professional knowledge and skills did not meet the needs of employers. Despite state

assistance employers were not able to create an adequate number of working positions, and the labour market did not expand.

According to statistical figures from the Central Office of Labour, Social Affairs and Family for 2010, on the average the number of unemployed was 389 000. The average unemployment rate grew to 14.4%. In December 2011, the number of unemployed grew to 399 000. In December 2011, the rate of recorded unemployment reached 13.59%, which is the worst December result since 2003. In December 2011, of the total number of 399 000 unemployed persons, 362 428 persons were able to start working immediately, i.e. they were not persons unable to work or persons on graduate practice or conversion training.

Cases of Objected Discrimination in Labour-Law and Other Similar Legal Relations in 2011 Delivered to the Ministry of Labour, Social Affairs and Family and to Labour Inspectorates[16]

In 2011, 3 complaints against discrimination were delivered to the Ministry of Labour, Social Affairs and Family of the Slovak Republic (hereinafter: the "Ministry"). All 3 complaints were unsubstantiated.

The Ministry keeps a record of two legal processes for invalid termination of state employment relation in which the petitioners state that they were discriminated against by the Ministry on the termination of state employment relation. One of the petitioners, however, during the proceedings specified that he claimed invalid termination of state employment relation on grounds other than on grounds of discrimination against him. In both cases the legal proceedings are pending, i.e. the legal proceedings have not been closed validly yet.

In 2011, 96 motions were filed to Labour Inspectorates and to the National Labour Inspectorate, in which employees complained of discrimination. Of the said number, 1 motion was substantiated, and 95 motions were unsubstantiated. As regards the motions as such we can observe that their common feature was complaining of discriminatory behaviour of the managers in different areas of their activity (e.g., misbehaviour or vulgar behaviour, discrimination in assessment, on the termination of employment, allocation and arrangement

[16] A statement of the Ministry of Labour, Social Affairs and Family intended for the Centre to prepare the Report on the Observance of Human Rights including the Observance of the Principle of Equal Treatment in the SR for 2011

of work), in the management and control of working activities. In most cases the employer was asked to provide a written statement in which they undertook to investigate the case.

Concrete Cases Handled by the Centre since the Entry into Force of the Antidiscrimination Act

A civil servant who assumed that within her civil service employment relationship she had been discriminated against on the part of her superior executive (harassment – creation of hostile and humiliating environment and direct discrimination) and despite repeated complaints addressed to the service authority, nothing had been rectified by the employer. (The complainant asked the Centre for the provision of legal aid and representation in proceedings before the court. The Centre addressed in this matter also the employer and requested its stance on the matter. After becoming acquainted with this stance, the Centre recommended the complainant not to settle the problem before the court. The Centre acquainted elaborately the complainant and her employer with the legal regulation of discrimination ban as well as the possibilities of legal solution and it at the same time proposed both parties that first of all, they should try to solve the existent problems (mainly of personal nature) on the level "complainant – service authority" and the complainant should apply to the court only in case of failure. Both parties agreed with the solution proposed. Subsequently, the complainant notified the Centre that there had been a rectification at the workplace.)

An employee who turned to the Centre with a request for the provision of legal advice. He assumed that within his civil service employment relationship the action of superior employees had resulted in the breach of the principle of equal treatment, primarily by direct discrimination, harassment – creation of hostile and humiliating environment and also by the action of executives contrary to moral standards. The reason was the fact that in the past the complainant had referred several times to the non-fulfilment of the obligations by the executives as well as to the violation of certain labour law regulations by the executives. (The Centre provided the employee with legal advice in the required scope. After his decision to bring a legal action, the Centre processed the action at employee´s request and the action was brought before the court).

The Centre handled a request for the provision of legal advice and possible representation in proceedings before the court in the matter of the breach of the principle of equal treatment within complainant´s employment relationship. As the complainant said, the reason for

discrimination against her was that her husband (previously employed at the same employer) had referred to certain shortcomings at the employer´s yet during his employment and later he had instituted legal proceedings in the matter of invalidity of employment termination – victimization. Discrimination against the complainant was under way in the form of direct discrimination, by diminishing her dignity at the workplace and creating hostile, intimidating and humiliating environment on the part of the employer. After escalating pressure on the complainant, her employment was finally terminated by agreement (on the basis of "a change in organization") and complainant´s health condition was severely damaged. (The Centre provided legal advice and legal aid in the necessary scope and prepared a draft legal action owing to the breach of the Antidiscrimination Act, the action was brought before the court).

A client worked in a nursing home (hereinafter referred to as „NH") from 1994. After the new director took office in 2008, he gradually acquainted himself with her managerial practices and alerted to regulation violations and uneconomical handling of public means on her part. Due to the aforementioned the NH director started to apply diverse bullying practices and law abuse aimed against him, she suspended his authorization to representation, deprived him of his personal surcharge, failed to award premiums to him, she gave him two warnings of alleged non-satisfactory fulfilment of his work tasks and in the end she dismissed him owing to alleged redundancy. The client objected that the NH director had disadvantaged him within employment relationships compared to other employees because he had alerted to regulation violation on her part. (The Centre provided legal advice and legal aid in the necessary scope and prepared a draft legal action owing to the breach of the Antidiscrimination Act, the action was brought before the court).

A client objected to direct discrimination and illegitimate recourse on the part of the director at her former employer´s. The client worked for her employer from the day of its foundation, she held leading positions and was entrusted by former management with deputizing for the director in case of his absence. Following the appointment of a new director, the new director annulled all previous authorizations of the client and removed her from the position of deputy director. The new director disadvantaged the client at work compared to other employees of the employer. (The Centre provided legal advice and legal aid in the necessary scope and prepared a draft legal action owing to the breach of the Antidiscrimination Act, the action was brought before the court).

In 2010, the Centre dealt with the problem of the Roma complainant, Mgr. Viera S., who objected to discrimination against herself as regards approach to employment. Having completed university education with certificate in history – pedagogy, she applied for

a position of a history teacher at an elementary school. Also her sister with university education, Mgr. Andrea S., who applied for the position of an educator at a special elementary school and who had work experience from previous years as teacher assistant, had the same problem with employment. School principals preferred persons with lower education to the complainants. The S. sisters were convinced that the actual reason for not employing them had been their Roma origin. The Centre used all of its competences to help the S. sisters with access to employment. It communicated with all relevant institutions, such as School Inspection, School Authority, Labour Inspectorate, the municipality as well as the organizer of the schools that hadn´t employed the sisters as well as the Ministry of Education of the Slovak Republic. Since the S. sisters objected also to the alleged spreading of untrue information and slander on the part of several statutory bodies of addressed schools, the Centre pointed out the possibility of claiming protection of personality in which it had provided them with complex legal advice. Striving to help the complainants, the Centre sent 14 written documents (various applications, notices, expert stances) and conducted at least 10 personal meetings with the given institutions and persons without interrupting contacts with complainants. Primary reasons were the lack of evidence and facts referring to discrimination. The Centre came to the conclusion that despite the suspicion of racial discrimination, Mgr. Viera S. wouldn´t have born the burden of proof in a lawsuit objecting to discrimination. That was the fundamental precondition for the burden of proof being transferred to the defendant, who has to prove that it hadn´t discriminated. Taking into consideration current social situation of Mgr. Viera S., the Centre didn´t want to expose her to failure in court proceedings and high court fees she would have been forced to pay in case of failure. In March 2011, the court of first instance decided that there had been no discrimination against the complainant confirming thus the legal opinion of the Centre. Dealing with the possibility of employing the S. sisters, in terms of the communication with the Ministry of Education of the Slovak Republic the Centre aimed at the established practice of preferring unqualified pedagogues to qualified ones, which was due to lack of funds on the part of schools. In order to solve the problem of the Roma with university education, a meeting of Centre representatives with the MPs from the Committee on Education, Science and Youth was held as well. At this meeting the Centre representatives introduced their experience of the monitoring, communication with persons objecting to violation of human rights and discrimination victims. The Centre attained to a view coincident with the one of the MPs of the Committee of the National Council of the Slovak Republic that was expressed in the record of parliamentary survey, which declared the following problems and needs:

Free hand for principals in respect of the selection of applicants for job vacancies without the need to take into account the compliance with the principle of equal treatment and non-discrimination

Lack of funds for the wages of pedagogues forces the principals of elementary and secondary schools to prefer less qualified pedagogues to qualified ones

Need to take measures on the level of state so that higher qualification of a pedagogue is no obstacle to get a job

Need to take preventive measures in school environment against unequal treatment and discrimination, mainly owing to nationality, race, ethnicity, sex, origin and disability.

Conclusions and recommendations

The fact that the principals of elementary and secondary schools prefer the employment of less qualified pedagogues to qualified ones is present irrespective of age, race, nationality or gender because of savings, or rather, restricted quota of funds for the wages of pedagogues. It is necessary to make system changes on the level of the Ministry of Education of the Slovak Republic so that paramount emphasis is laid on the quality of education process by employing pedagogues meeting the qualification criteria. The Ministry of Education of the Slovak Republic was notified of this in writing by the Centre. State power fails also in this case and ignores the need for system solutions to serious problems.

Although Mgr. V. Samková didn´t succeed due to lack of proofs within the first instance court proceedings, this case referred to a serious social problem, namely a more difficult assertion of qualified pedagogues on the labour market.

In the school practice it means that less qualified pedagogues, who stand for a cheaper workforce on the labour market, are given precedence. In comparison to them qualified pedagogues are disadvantaged as for access to employment and the performance of qualified occupation. Qualification of pedagogues became an unfavourable burden encumbering school´s budget. On the contrary, an advantageous bonus of applicants for the work of a pedagogue is the deficiency in their qualification, taking into consideration savings in terms of school´s budget. The fact that via its system measures the state ensures only training and education of students provided by less qualified staff intentionally needs to be judged extremely critically. As a particular negative must be considered the fact, that the state adopted measures for the removal of severe shortcomings, but neither following the Centre´s

recommendations nor on the basis of the cited resolution of the Committee of the National Council of the Slovak Republic. The fulfilment of international contractual liabilities as well as internal liabilities of the Slovak Republic to protect the right to education is insufficient.

Rest, Recovery, Reasonable Definition of Working Hours, Leave, Remuneration during the Days of Public Holiday

Reasonable Definition of Working Hours

The Labour Code defines the **working time** in Article 85 as a period of time in which the employee is at employer´s disposal, performs the work and fulfils its obligations in accordance with the employment contract. The working time of an employee amounts to no more than 40 hours a week. The working time of an employee who staggered his or her working time so that he or she performs work alternately in both shifts within a two shift operation amounts to no more than 38 and 3/4 hours a week and in all shifts within a three shift operation or non-stop operation no more than 37 and 1/2 hours a week. The working time mustn´t exceed eight hours in the course of 24 hours, unless the Labour Code stipulates otherwise. Average weekly working time of an employee, including overtime, mustn´t exceed 48 hours. A special regulation applies to medical employees, namely by the provision of Article 85a of the Labour Code.

Pursuant to Article 86 and Article 87 of the Labour Code it is possible to organize working time evenly or unevenly.

Even organization:

The employer decides on the even organization of working time following negotiations with the representatives of employees. In the event of even organization of working time into individual weeks, the difference of the length of working time falling on individual weeks shall not exceed three hours and the working time during individual days shall not exceed nine hours. In this case the average weekly working time in certain period, usually four weeks, mustn´t exceed the limit of stipulated weekly working time. In case of even organization of working time the employer organizes the weekly working time in principle into five working days during a week.

Uneven organization:

If the nature of work or operation conditions don´t allow the working time being organized evenly into individual weeks, the employer may organize the working time unevenly into

individual weeks following an agreement with the representatives of employees or after an agreement with the employee. Here the average weekly working time mustn´t exceed the stipulated weekly working time over the period of four months maximally. Following an agreement with the representatives of employees and, if there are no representatives of employees working at the employer´s, after an agreement with the employee, the employer may organize the working time unevenly into individual weeks for a period longer than four months, however, no longer than 12 months, in the event of activities requiring different need for work during the year. Here the average weekly working time over this period mustn´t exceed the stipulated weekly working time. The working time for certain organizational units or kinds of work may be organized equally. Working time in the course of 24 hours mustn´t exceed 12 hours.

The Labour Code regulates in Article 88 and 89 also the so-called **flexible working time** which the employer may implement after negotiations with the representatives of employees. If flexible working time is applied, the employee chooses the beginning as well as the end of the working time during individual days in terms of the periods of time stipulated by the employer (optional working time) by himself or herself. Between two periods of optional working time a period of time in which the employee is obliged to be present at the workplace (basic working time) is inserted.

The Labour Code regulates in Article 87a also the **working time account**. It was implemented by the amendment No. 257/2011 Coll. with effect from 1 September, 2011. Before 1 September, 2011, the Labour Code didn´t regulate the working time account as a separate institution. In practice, however, the concept of working time account was used, namely in the context of the so-called flexi account, which was applicable under Article § 252c of the Labour Code (since 1 September, 2011, it has been Article 142a of the Labour Code), or it was a denomination of rules for the adjustment of uneven organization of working time at certain employer´s. Working time account isn´t directly mentioned in a provision different from Article 87a of the Labour Code.

The provision of Article 87a, par. 1 of the Labour Code requires that the working time account may be implemented by the employer **exclusively following an agreement with the representatives of employees.** The word "exclusively" emphasizes that an agreement with the representatives of employees is prerequisite for the implementation of the working time account, i.e. the working time account may be implemented only if the employer reached an

agreement with the representatives of employees. **If there are no representatives of employees working at the employer´s, the employer cannot implement the working time account.**

Whereas in Article 87, par. 2 of the Labour Code an alternative partner for the agreement is mentioned as well, i.e. the employer may organize the working time unevenly following an agreement with the representatives of employees, **and if there are no representatives of employees working at the employer´s, after an agreement with the employee**,.... in Article 87a, par. 1 of the Labour Code such an alternative partner isn´t mentioned.

It means that **it is not possible to implement the working time account at an employer´s where no representatives of employees work.**

In case of the working time account, the employer has **to keep the working time account, paid wage account and differential account**. In practice it means that "the employer pays the employee the agreed wage and in case that there is less work in one month, he or she will work it off in the following months. The wage for the given month needn´t be changed, he or she may get equal amount all of the time" (Article 87a, par. 2 of LC). This way is advantageous predominantly for the employers whose production or services depend on the season. We understand the intention of the legislator to implement system, transparency and legitimacy into employer´s practices. Nevertheless, the truth remains that this is just another administrative encumbrance for the employer which may lead to discouragement from the application of the institution of the Account. Non-transparency and incomprehensibility of these accounts may be expected, and it will be probably most to the detriment of ordinary employees. In connection with the amendments to the provisions on employment termination, we also have to point out that the proposed protective function of the Account will miss its aim in case of non-application of this institute. The employer may resort to (easier) employment termination or conclusion of agreements beyond employment (advantaged payroll tax burden).

To make the picture complete, comparison with the so-called flexi account comes in handy. The flexi account becomes a permanently applicable institution of labour law thanks to the provision of Article 142a. Hitherto, it has functioned as a temporary labour law tool contained in Article §252c (interim provision until the end of 2012). The fundamental difference compared to the Account is that the flexi account may be used only in case of an obstacle to work on the part of the employer. The flexi account guarantees wage to the employees over the granted time off, although the work is not performed. The flexi account may be regarded

as easier to apply, administratively less demanding and, in return for that, applicable solely in specific cases. That´s why it is the Account that appears to be a "more flexible" institution.

Through Article 90 the Labour Code declares that the **work shift** is a part of the determined weekly working time which the employee is obliged to work off in terms of 24 consecutive hours and a break on the basis of a work shift schedule fixed beforehand. The morning shift mustn´t start prior to 6:00in principle, the afternoon shift mustn´t end after 22:00 in principle. If the working time is organized into two work shifts, it is a two-shift working mode. If the employer organizes the working time into three working shifts, it is a three-shift working mode.

Rest and Recovery

Pursuant to Article 91 of the Labour Code the employer provides the employee (in case that he or she works more than 6 hours) with a **break for relaxation and eating** lasting 30 minutes.

The employer organizes the working time so that between the end of one shift and the beginning of the next one the employee has **rest** lasting at least 12 consecutive hours in the course of 24 hours and in the event of an underage employee at least 14 hours in the course of 24 hours. The said length may be shortened to 8 hours in case of non-stop operations, rotation work, imperative agricultural works, imperative reparation works, if these are to avert hazards putting at risk the life or health of employees and in case of emergency[17].

Public holidays are days which uninterrupted rest of an employee during the week falls on and holiday. Work during public holidays may be ordered only exceptionally after negotiations with the representatives of employees. On the day of uninterrupted rest of an employee during the week, the employee may be ordered just inevitable works laid down in detail in the Labour Code which cannot be performed over working days. During holiday an employee may be ordered only works which may be ordered over days of uninterrupted rest of the employee during the week, works in non-stop operations and works necessary for guarding employer´s premises. On 1 January, Easter Sunday, 24 December after 12:00 and 15 December, employees can be neither ordered nor contracted a work which constitutes sale of

[17] Article 92 of the Labour Code

goods to end customers, including related works (hereinafter referred to as "retail"), with the exception of retail under Annex No. 1a; provisions of Article 3 letter f) and Article 4 shall not be applied in this cases. At workplaces with night shifts public holidays begin with the hour corresponding to the work start of the work shift which starts working as the first one during the working week according to shift schedule.[18]

Remuneration during Public Holiday[19]

For work during holiday the employee is entitled to wage for the hours worked + wage benefit for work during holiday equivalent to at least 50% of his or her average salary. Depending on employer´s decision, the amount of wage benefit for holiday may be even higher than the minimum limit stipulated by the law. As in case of overtime, also as regards holidays it holds that instead of wage benefit, the employee may choose compensatory leave during the period of next three calendar months or during a period agreed on otherwise.

Holiday leave[20]

The employee who performed work for the same employer without interruption of employment at least 60 days in the calendar year is entitled to a leave in one calendar year or a proportional part of holiday leave if the employment didn´t last without interruption during the whole calendar year. The basic amount of holiday leave is equivalent to 4 weeks. The leave amounting to at least five weeks was originally intended for employees who completed 15 year of his or her employment after 18th year of age until the end of the calendar year. With effect from 1 January, 2012, the employee who completed the 33rd year of his or her age until the end of the calendar year will be entitled to 5 weeks of holiday leave.

Likewise amended has been the provision of Article 103, par. 3 of the Labour Code under which the holiday leave of a school principal, principal of a school training and education facility, principal of a special education facility and their deputies, teachers, pedagogical assistants, masters.

Further changes were made also as regards **holiday leave reduction**. The employer may reduce the holiday leave of the employee, who has met the condition of working at least 60 days in the calendar year for which the holiday leave is granted, for the period of first 100

[18] Article 94 and 95 of the Labour Code
[19] Article 122 of the Labour Code
[20] Regulated by Articles 100 to 117 of the Labour Code

missed working days evenly by one twelfth if he or she didn´t work in the respective calendar year because of extraordinary service performance in the period of crisis situation or alternative service in times of war or warfare, drawdown of parental leave under Article 166, par. 3, long-term release for the holding of a public office or the holding of a union office under Article 136, par. 2, important personal obstacles at work under Article 141, par. 1 and par. 3 letter c) of the Labour Code. Employee´s holiday leave shall not be reduced for the period of temporary incapacity for work in the aftermath of an accident at work or occupational disease for which the employer is responsible and for the period of maternal leave and parental leave under Article 166, par. 1 of the Labour code.

In view of the needs of the practice, the provision of Article 111, par. 3 enabled the employer to ordain the employees to **take mass holiday leave** even to an extent larger than enabled by the original regulation, i.e. two weeks. Nowadays, the employer may ordain the employees to take mass holiday leave after an agreement with the representatives of employees, if necessary due to operational reasons. The taking of mass holiday leave mustn´t be ordained for more than 2 weeks, unless the Labour Code regulates otherwise. In the event of serious operational reasons which the employer announces the employees at least 6 months in advance, the taking of mass holiday leave may be determined for three weeks.

The amendment supplemented employer´s obligation to enable a person to take a holiday leave for the reason of recognizing their temporary incapacity for work due to disease or accident in case that he or she hasn´t taken all of his or her holiday leave until the end of next calendar year following the year in which her or she was entitled to the said leave, after the end of temporary incapacity for work of the employee.

Conclusions of the Centre with Regard to the Abidance by the Principle of Equal Treatment

Prevailing fields and reasons where the Centre objects to the breach of the principle of equal treatment are:

- employment relationships and similar legal relations
- discrimination as regards the approach to employment (age, gender discrimination, health condition, unequal conditions within competition procedures for recruitment or keeping of job, membership of an ethnic minority)

- discrimination at workplace (unequal treatment as regard work performance, different remuneration, different working conditions, different attitude to the assignment of new machines and technical aids by the employer, threatening of the employer with employment termination, harassment at workplace, including sexual one)
- discrimination upon employment termination (abuse of LC provisions on employment termination owing to organizational changes, non-compliance with internal legal regulations by the employer, psychical pressure on employees forcing them to suggest employment termination by agreement by themselves).

From the point of view of areas protected by the Antidiscrimination Act, employment dominates unequivocally. Other comparably represented areas are education, healthcare and provision of goods and services. Among the most frequent protected reasons giving rise to discrimination is nationality or the membership of an ethnic group, gender/sex, age, disability, sexual orientation, race and colour of skin.
Age, gender and family status are the most frequent reasons for discrimination. Reduced possibility to find a job deepens the loss of working habits in the long-term unemployed who will hardly assert themselves, or rather; fail to assert themselves on the labour market. A phenomenon is the attitude of certain employers to the handling of complaints of employees who objected to the breach of the principle of equal treatment on the part of their superiors or colleagues. Instead of meeting their obligation to answer the complaint objecting to discrimination as well as to fulfil their obligation to take preventive measures against discrimination, the employers often circumvent it deliberately and shift the responsibility to discrimination victims, applying legal provisions on complaints when handling them. This is so despite the fact that the complaint about the breach of the principle of equal treatment and discrimination is not evaluated according to the act on complaints. Mistrust of persons affected by the discrimination towards court decisions in the matters of discrimination, fear of court fees and delays in court proceedings guided discriminations victims to more extensive use of mediation as a suitable tool of out-of-court settlement.

The Centre states that although the given legal regulations regulating discrimination ban in employment relationships and antidiscrimination legislation in Slovakia meet the criteria of complexity on the level of European standard, **problems occur when they are put into practice. The society is not sensitive enough to discrimination practices on the labour market, particularly in connection with recruitment and dismissal due to age, sex,**

ethnicity and so on. The efficiency of means of the fight against discrimination on the labour market is conditional on the knowledge of the actual state of discrimination.

Recommendations

We recommend focusing primarily on:

The reduction of differences in unemployment and long term unemployment between men and women

Decrease in vertical and horizontal segregation between men and women on the labour market

Improvement of wage and working conditions for part-time workers

Reduction of indirect and direct discrimination as for recruitment and career advancement and advancement in professional training and education,

Improvement of approach to employment, business and training opportunities for certain disadvantaged groups of women (women from an ethnic minority, with disability, poor women from marginalized Roma communities),

- Improvement of participation of women in management and decision making

advisory activities concerning job selection and social skills – adaptation to target group

Procurement of availability of employment services for everybody

Monitoring systems – statistics sensitive from the viewpoint of gender, other groups

Flexible forms of labour organization and support of the reconciliation of professional and family life, diverse services for families with children (explanation of CSR), and financial benefits

Training centres and business – focus on women and other target groups

Integrated attitude to job creation in regions – inclusion of the equality of opportunities

Increase in the number of projects for small and medium enterprises, self-employed person (financial services, consultancy – supporting services) – according to target groups in general

Support of female entrepreneurship development through education and establishment of joint supporting centres for women - entrepreneurs (also in terms of general support of business to prevent the origin of specific clubs)

Monitoring of financial allocation to the creation and retention of jobs according to target groups

Motivation programmes for active approach to employment seeking (mainly on long-term unemployed women caring for children, older people)

Protected employment for citizens with disability

Employment of graduates

Programmes aimed at older employees (women and men) –

Professional consulting services in case of collective redundancies

Article 9

Introduction

Pursuant to Art. 39 of the Constitution of the Slovak Republic, citizens shall have the right to adequate material security in their old age, as well as in cases of incapability for work and death of the breadwinner. Any person suffering material need shall have the right to such kind of assistance that is necessary to secure his or her basic standard of life. It is possible to seek the rights stipulated in Article 39 of the Constitution of the Slovak Republic only within the limits of laws executing such provisions. The most extensive part of the social security system is social insurance, which is regulated by Act No. 461/2003 Coll. on Social Insurance, as amended. According to this Act, social insurance covers sickness insurance, pension insurance, which comprises old-age insurance and disability insurance, accident insurance, guarantee insurance and unemployment insurance. The support of social inclusion of citizens and the satisfaction of social needs of citizens in unfavourable social conditions is regulated by Act No. 448/2008 Coll. on Social Services. The Act lays down social services for the provision of inevitable conditions for the satisfaction of the basic vital necessities in relevant facilities, social services for the support of families with children, social services to address unfavourable social conditions due to severe disability, unfavourable health condition or due to reaching the pension age, social services using telecommunication technology and support services. The conditions for the provision of financial allowances to overcome or mitigate the social consequences of severe disability, i.e. a certain handicap of a natural person due to their severe disability in comparison with a natural person without any disability of identical age, sex and on identical conditions, which they are not able to overcome themselves due to their severe disability, are regulated by Act No. 447/2008 Coll. on Financial Allowances for Compensation of Severe Disabilities and on amending of certain acts. Act No. 601/2003 Coll. on Subsistence Minimum and on Amendment and Supplementation of Certain Laws defines the subsistence minimum as a socially recognised minimum income level of a natural person, below which the person is considered to be in material need. Material need is a condition when the income does not reach the subsistence minimum and it cannot be increased by own activity. In such case the Act allows obtaining a benefit, contribution for health care, activation allowance, housing allowance, protective allowance. The provision of social assistance benefit and allowances is regulated by Act No. 599/2003 Coll. on Assistance in Material Need and on amendments to certain acts, as amended.

Social Security and Poverty Indicators

The social security system determines the standard of life of a large part of the population and has an immense impact on the functioning of the entire state economy. The social system is influenced by the economic stability or imbalance of the state and affects employment, the population trend and many other factors of life in the society and state.

Complaints and filings delivered to the Centre related in particular to the violation of rights in the field of social security by state administration bodies - refusal of entitlement to benefits or entitlement to low benefits insufficient to cover the essentials of life, the applicants pointed out the violation of right to adequate material security with respect to an incorrect procedure of the competent bodies, in particular of the Social Insurance Agency and Offices of Labour, Social Affairs and Family, improper application of the relevant legal regulations, incorrect calculation of a specific benefit or allowance. The applicants pointed out unequal treatment in comparison with other socially dependent persons, unequal treatment and discrimination of persons who due to their age, health condition, family status and other position depend on various types of social benefits; discrimination of "old pensioners", failure to provide an assistance in material need, and due to lack of financial resources, the subsequent threat of homelessness. Such filings and applications present a distinctive group with which the Slovak National Centre for Human Rights is obliged to deal based on tasks imposed on them by the Act on the Establishment of the Centre in conjunction with the Anti-discrimination Act. Statistical results of the Centre have shown that between August and November of the past year, in comparison with January to June 2011, the Centre recorded a double increase of filings, complaints and requests for information and aid in the field of social security. The Centre as a monitoring institution, however, monitors complaints and filings from citizens through other bodies and institutions and the application of relevant legal regulations in practice also from other sources. Several citizens draw attention of bodies and state institutions in particular during proceedings for the award of relevant social benefits or allowance to benefits saying that they are desperate due to their difficult financial situation in which they are: "I am desperate; I have nothing to live on." "I am desperate, I am in material need, I am borrowing money and not paying it back." "Please help me in my situation because I am in a difficult social and financial situation. My health condition requires a continuous treatment, which is very expensive. To overcome the period without income I was forced to take a loan which I have to repay." "My application for disability pension has been handled for 3 (!) years and it has not finished yet. I am on the threshold of subsistence possibilities,

how can I live like this?“. “I have had no income for a year, I am completely without any financial resources. I have considerable health problems and depend on regular use of medicines, which I can hardly do without income. If this situation continues further I am afraid that it will cause irreversible damage to my health condition. Yet I do not mention what the quality of my life is today. It is unbelievable that today in the 21st century it takes one year (!) to send a certificate from one insurance company to another, though in neighbouring countries.“

Average amount of paid pensions in euros and number of paid pensions as at 31 December 2011 (source: the Social Insurance Agency)

Type of pension	Average amount	No. of paid pensions
Old-age	362.08	957 633
Early old-age	357.63	32 130
Invalidity (including partial invalidity)	255.63	223 182
Widow´s	222.00	299 389
Widower´s	169.67	37 986
Orphan´s (per 1 child)	125.88	27 617
Other (paid by the state)	2.90	1
Wives (paid by the state)	19.00	1 271
Social (paid by the state)	202.50	2 534
Invalidity from the youth (paid by the state)	243.00	6 450

In 2010, as at the end of the year, the average amount of monthly pension for men and women was 400 EUR and 315 EUR respectively.

Number of unemployment benefit recipients in particular months of 2010 and 2011 (source: the Social Insurance Agency)

Particular months	Number of unemployment benefit recipients in 2010	Number of unemployment benefit recipients in 2011
January	45 300	38 235
February	48 056	43 221
March	48 716	44 808
April	48 442	45 617
May	46 708	43 283
June	45 088	43 267
July	42 085	41 467
August	40 921	41 585
September	39 114	41 257
October	37 480	40 827
November	36 701	40 644
December	37 408	41 628

Average amount of unemployment benefit in Euros in 2009, 2010, 2011 (source: the Social Insurance Agency)

Year	Average amount of unemployment benefit
2009	248
2010	257
2011	289

Risk-of-poverty rate in **% (source: the Statistical Office of the Slovak Republic)**

(Selected cross-sectional indicators of the European Union based on cross-sectional component of EU SILC)

Indicator	2009	2010

Risk-of-poverty rate after social transfers by sex		
Total	11.0	12.0
Men total	10.1	11.7
Women total	11.8	12.2
Risk-of-poverty rate after social transfers by age groups		
0 - 17 years old	16.8	18.8
18 - 24 years old	13.3	14.7
25 - 49 years old	9.6	11.4
50 - 64 years old	7.3	8.7
65 + years old	10.8	7.7
Risk-of-poverty rate after social transfers by economic activity		
Working people	5.2	5.7
Unemployed	48.6	41.1
Pensioner	8.9	6.7
Another inactive person	15.9	16.5
Risk-of-poverty rate after social transfers by household type		
Individual, < 65 years old	20.0	23.4
Individual, 65+ years old	26.2	15.2
Individual, man	19.6	22.2
Individual, woman	24.5	17.9
2 adults, without children, both aged < 65 years old	4.2	7.8
2 adults, without children, at least one of them 65+ years old	3.5	4.6
One parent, minimum 1 child	23.0	25.0
2 adults, 1 child	10.5	12.0
2 adults, 2 children	9.9	11.0
2 adults, 3+ children	27.9	29.8
households without children	7.7	8.1
households with children	13.4	15.0
Risk-of-poverty rate before social transfers except old-age and survivor benefits by sex		
Total	17.1	19.8
Men total	16.3	19.9
Women total	17.8	19.7
Risk-of-poverty rate before social transfers except old-age and survivor benefits by age groups		
0 - 17 years old	24.1	29.3

18 - 64 years old	15.8	19.1
65 + years old	14.4	11.9
Risk-of-poverty rate before social transfers including old-age and survivor benefits by sex		
Total	35.9	38.2
Men total	32.6	35.4
Women total	39.1	40.9
Risk-of-poverty rate before social transfers including old-age and survivor benefits by age groups		
0 - 17 years old	30.4	34.8
18 - 64 years old	27.5	29.8
65 + years old	86.3	86.9

As at December 2010, there were totally 190 391 recipients of social assistance benefits and contributions. The number of recipients of social assistance benefits dropped in the last months of 2011. In November 2011, it reached 184,674. If the number of recipients included also persons considered jointly, then their total number at the end of 2011 was even 359,584. Citizens object also to the amounts of subsistence minimum as provided by law saying that it is not sufficient to cover their basic essentials of life in particular in situations when the recipient of such benefit is sick in the long term or disabled. In addition, citizens object to the compensation of the consequences of severe disability, problematic awarding of compensations or their refusal despite their low income and despite the fact that the non-provision in some cases meant social exclusion for such persons. Another issue is that the demand for social services and thus also the unavailability of social service for clients still increases.

Social insurance

One of frequently objected legal regulations in the Slovak Republic is the Act on Social Insurance. The adoption of Act on Social Insurance, which replaced the previous legal regulation (Act No. 100/1988 Coll. on Social Security) resulted in the origination of different categories of pensioners, namely the so-called old pensioners to whom the benefit from old-age pension scheme was awarded according to the provisions of Act on Social Security, and the so-called new pensioners to whom the benefit from pension insurance scheme was

awarded according to Act on Social Insurance. A large part of pensioners who retired according to the regulations effective before 31 December 2003 feel to be injured with respect to the amount of their pensions for the period in which they were employed, and they state that with respect to the recent growth of prices they are not sufficient for the basic subsistence, even despite the receipt of pension valorisation and removal of differences between poorer and richer pensioners. They feel that the "state is not interested in them at all and only awaits the moment when they will not be here". Continuous changes in the system only deepen the feeling of injury of the citizens concerned and the legal safeguard. Since 2004 the cited Act has been amended more than 40 times. A dissenting attitude to the method of pension valorisation is clear from the citizens' complaints. In October 2010, the Minister of Labour, Social Affairs and Family announced that the Ministry had prepared a draft law which would change from 2012 the method of pension valorisation in such a manner that the percentage method of pension increase would be replaced by fixed increases. The Government undertook to change the method of pension increase in order to deepen solidarity in the pension system (solidarity towards the recipients of low pensions). A fixed amount by which the pensions were to grow every year was to depend on year-on-year inflation and on the amount of average old-age pension. By such a calculated fixed amount the old-age pensions, early old-age, social and invalidity pensions were to be increased. The outgoing Minister, however, in April 2012, stated: "It's a pity that due to the non-agreement in the coalition we have not managed to change the valorisation of pensions to the benefit of pensioners with below the average income. Thus in 2011 and 2012 pensions were valorised according to the rules valid since 2005."

Also the issues of the so-called Czechoslovak pensions are still hot. The adoption of Act on Social Insurance increased the number of pensioners whose pensions would be higher if their calculation was not influenced by the provision of Art. 20 of the Agreement on Social Security between the Slovak Republic and the Czech Republic and they were granted taking into account all periods of pension insurance (pension scheme) according to the legal regulations of the Slovak Republic. The Minister of Labour, Social Affairs and Family stated, inter alia, with respect to the issue: "During the existence of the common state more employers were based in the Czech Republic, and thus more citizens of the Slovak Republic worked for Czech employers. Therefore more pensions are paid from the Czech Republic to Slovakia than vice versa. The amount of Slovak pensions granted pursuant to Act No. 100/1988 Coll. on Social Security, as amended, was considerably lower than the amount of Czech pensions. The amount of Slovak pensions paid to the Czech Republic was affected very

adversely also by the Slovak koruna to the Czech koruna exchange rate. For the given reasons the Czech party often applied the removal of the rigidity of Agreement pursuant to Article 26 and paid additionally to pensioners living on its territory an equalization amount up to the amount of Czech pension". As regards an objection of applicants regarding the fact that the Slovak Republic on its accession to the European Union in regulations in terms of coordination of the European Union in the area of social security the possibility to apply the provisions of Art. 26 of Agreement was not enforced, the Minister said: "A proposal of the Member States on which provisions of bilateral agreements should be applied further is also considered by the European Commission. Although the Czech Republic aimed at keeping the execution of Article 26 of Agreement, its proposal was not accepted by the European Commission. With respect to it the Slovak Republic and the Czech Republic, upon accession to the EU, do not execute the Agreement, save for the provisions of Articles 12, 20 and 33 dealing with the classification of insurance periods after the dissolution of the Czech and Slovak Federal Republic and applicability for the payment of pensions granted before the dissolution of the Czech and Slovak Federal Republic. Even after the accession to the EU the Czech party demanded to apply Article 26 of Agreement further. By letter of March 2005, the then Minister of Labour, Social Affairs and Family announced to his Czech colleague that he proposed to him that the Czech Republic should have negotiated the application of Article 26 of Agreement in the Administrative Commission for the Coordination of Social Security Systems, or to deal with any possible additional payment of pensions for persons with a permanent address on the territory of the Czech Republic to whom the right had been created to pension according to the provisions of Agreement in a different manner, e.g., by a national legal regulation.". The outgoing Minister also stated that he eagerly expected the judgment of the Court of Justice of the European Union in the case C – 399/09. With respect to the current development of the issue in the Czech Republic after delivering the judgment of the Court of Justice of the European Union dated 22 June 2011 in the case C-399/09 in which they concluded that the payment of "equalization allowance" to the old-age benefit is not in contradiction to the Regulation (EEC) No. 1408/71 of the Council on the application of social security schemes to employed persons and their families moving within the Community, the Minister of Labour, Social Affairs and Family was asked to submit an opinion on the relevant issue, as well as the possibility of its solution through a joint agreement with the Czech Republic. His opinion on the possibility of pension compensation through a special benefit (equalization allowance) was, however, negative.

The health condition assessment by Social Insurance Agency's physicians is still criticised by the citizens in the long term. In many cases the citizens do not consider their assessment to be objective. Non-objectiveness of assessment physicians and generally their negative approach to them and unwillingness to listen to and examine them carefully present a frequent reason for dissatisfaction of disabled pensioners. Therefore for several years proposals have been voiced for the exclusion of assessment activity from the powers of Social Insurance Agency. Health condition assessment for entitlement to invalidity pension and for compensation of severe health disability by a special legal entity can be considered as a solution that could guarantee higher confidence in the impartiality of assessment by the citizens. Therefore it is necessary to report yet any experienced and unreasonable delays in proceedings of the Social Insurance Agency concerning old-age benefits, whereby many citizens find themselves on the poverty line and literally their existence is threatened. A specific case of proceedings concerning an application for invalidity pension was reported from October 2006, in which the Social Insurance Agency did not make a valid award for four years. The reason for lengthy proceedings was a problem in setting the reduction rate for conducting a gainful occupation, whereas the applicant's health condition was assessed by social insurance assessment physicians during the period several times. Decisions of the Social Insurance Agency in the relevant case were viewed by the court twice, and in both cases the applicant was successful and the court cancelled the relevant decisions. The Social Insurance Agency did not make an award for four years, which would meet all statutory essentials so that the court can confirm such a decision, as a result of which the proceedings concerning the applicant's entitlement to invalidity pension would be closed validly. The longest reported case like this one lasted even 9 years. Documented unreasonable delays in the proceedings of the Social Insurance Agency were substantiated also by an insufficient number of qualified staff. Insufficient staff of the public bodies do not relieve the state from responsibility for the violation of citizens' constitutional rights.

Social Services

The Ministry of Labour, Social Affairs and Family expected from the adoption of Act on Social Services which became effective on 1 January 2009 a higher variability of social services. It was a comprehensive and difficult legal regulation, which in comparison with the previous Act on Social Assistance (Act No. 195/1998 Coll.) introduced in the social services system a series of new elements and rules for the provision thereof.

In the context of several negative signals and also direct experience in admission of clients in social services homes including senior citizens' homes and senior citizens' lodging-houses, one of the Centre's priorities within the monitoring and research in 2009 was monitoring regarding the observance of human rights and the principle of equal treatment for clients of such facilities in institutional powers of self-administrations. Directors of visited facilities welcomed the interest of the Centre in examining the effects of legislative changes on the area of social services for seniors after putting Act on Social Services into practice. They highlighted the difficulties resulting from this Act and pointed out in particular the complexity and slowness of the new system of client re-assessment by the level of dependence, including the impact on higher personnel capacities and financial costs for the facility, which in many cases does not reflect the real and current condition of the client as assessment physicians assess clients only according to submitted documents, without meeting and examining them personally. It resulted from the experience of many self-government regions that natural persons who depend on the provision of health care are admitted to social facilities, mainly clients – patients who depend on the provision of palliative or hospice care, in many cases at the terminal stage of life, clients in the coma, etc. Such recipients of social services need health care that the social service facilities usually are not able to provide.

Since the implementation of Act in practice has brought about several problems to villages, towns and regional self-government units in the funding also with respect to the impact of the economic and financial crisis on the budgets of self-government bodies, the Government has taken several measures to deal with them. Despite taking ad hoc actions by the Government and basic principles enshrined in the new legislation of social services, in the field of social services we can identify key issues, i.e. insufficient financial coverage of all social services, prevailing and gradually growing demand over the supply, i.e. unavailability of a social service for the client resulting from ageing of the population and population trends and from the absence of sufficient sources for the provision of social services. As at 31 December 2009, 14 905 persons were registered into the waiting list for the provision of social service in facilities established by the commune or by regional self-government units (out of which 9 932 persons were for seniors' facilities and 4 810 for the social services establishment), which is 42% of the number of clients to whom social service is already provided in facilities. Certain types of social services are not provided to clients at all or to a limited extent only. We have registered a case when a municipal district as the social service provider breached

the duties laid down by Act on Social Services since in a certain period of time they failed to provide a social service through a non-profit organisation, on which a citizen depended on the basis of an assessment for social service dependence issued by the municipal district. Thus in specific cases social services declared by this law are unavailable to many persons who are eligible to them. The method of financing was problematic not only due to the lack of financial resources but also that in the payments for the provision of such services from public funds the so-called public providers were preferred (i.e. providers whose promoter was the state, a regional self-government unit or a commune), and private providers of social services (non-public) were disadvantaged, which was also proved by the judgment of the Constitutional Court. The issue was dealt with by Act No. 551/2010 Coll., with effect from 1 March 2011.

The Ministry of Labour, Social Affairs and Family prepared intensively a large amendment to Act on Social Services. It was to deal with the financing so that the system is sustainable and the availability of services increases. A multi-source financing system was prepared (the state, self-administration, health insurance companies, the client and in the future special supplementary insurance). However, they did not complete it due to early elections. The Ministry, however, submitted only the so-called small amendment the purpose of which should be, according to their statement, to assist social service facilities to survive in 2012. In addition, they corrected a mistake and modified the client's right to choose the social service provider with respect to the judgment of the Constitutional Court.

Comments on the amendment of Act which was returned by the President upon adoption to the National Council related mainly to the fact that the provisions of adopted Act, in comparison with the valid and effective legal regulations regulate the issue concerning the specification of payment for social service for the social service recipient considerably more adversely. In addition, the adopted Act that was to become effective on 1 January 2012 retroacted, whereas for the purposes of payment for the social service provided it allowed the assessment of income and property stated in the valid and effective legal regulation according to Act effective from 1 January 2012. It resulted from other provisions of adopted Act that on the conditions stated in its provisions no amount of subsistence minimum had to remain to the recipient from his/her income after payment for social service, even deeply below this amount, up to the drawing of amount obtained from the sale of such real property. The outgoing MPs of the National Council managed to re-adopt the Act and accepted President's comments.

In Slovakia there are more than 300 social service facilities. They cover not only facilities for seniors, but also hospices, lodging-houses, rehabilitation centres and others. The expected impact on the state budget for the whole year 2012 accounts for 42 mil. €. According to statistical figures, in 2010, the expenses of all social service facilities (both public and non-public) were 210 180 737 €. The expenses of communes for home care service (the figures about non-public providers expenses are not available) were 26 288 703 €.

Compensation of the Consequences of Severe Disability

Since the effect of Act No. 447/2008 Coll. on Cash Benefits for Compensation of Severe Disability and on amending of certain acts persons with severe disability has been contacting the Centre who object to that the granting of benefits under this Act is very problematic and to many of them the compensation benefit was not provided despite their low income and despite that its non-provision meant social exclusion for such persons. The Minister of Labour, Social Affairs and Family and the Committee of the National Council for Social Affairs called attention to the need of an alteration of the legislation with respect to the case of a mother who objected to the incorrectness and insufficiency of the legal regulations in the area of compensation of severe disability, as a result of which a benefit for the purchase of a motor vehicle was not provided to her daughter. The applicant‘s daughter met the conditions for the cash benefit, dependence on individual transport by a passenger motor vehicle, provision of a weekly residential social service, provision of transport to the social service facility. However, the entire problem was the type of social service facility. The purpose of law-makers of Act on Cash Benefits for Compensation was to prevent or eliminate the occurrence of barriers in everyday life of persons with severe disability, the creation of comparable opportunities for such persons, as well as their protection against social exclusion, and protection of their human dignity. For a specific cash benefit for the purchase of a motor vehicle it is necessary to work on the basic prerequisite (or purpose) for its provision, which is the dependence of a natural person on individual transport by a passenger motor vehicle. For the accomplishment of the purpose it is also necessary to stress the condition of the method and frequency of the use of passenger motor vehicle. However, it is possible to observe that the type of social service facility does not affect the change or non-fulfilment of the above conditions and need not mean any change of the dependence of person with severe disability on individual transport by a passenger motor vehicle, any change of social consequences of the health disability of such person.

With respect to that the implementation of new adopted legal regulation was to be monitored in 2009 by the Ministry of Labour, Social Affairs and Family, the Centre contacted this Ministry with a request for statement related to the application of the cited law. In its answer the Ministry stated that the cited law regulates in a new manner the conditions for granting the cash benefits for compensation of severe disability. It mainly regulates the legal relations in the compensation of social consequences of health disability so that comparable conditions are created for natural persons with severe disability in everyday life and barriers are eliminated. The Ministry also called attention to that the "current application of Act, however, has shown various interpretations of selected provisions of law by competent Offices of Labour, Social Affairs and Family".

Disabled persons believe that the Slovak Republic adopted many international documents for the protection of disabled persons, state aid in the elimination of the consequences of their disability is insufficient. Despite efforts mainly of certain non-governmental organisations the Act on Cash Benefits for Compensation of Severe Disability was adopted without fundamental comments, which were submitted and supported also by petition of the citizens, which was perceived by them as a lack of interest among politicians, Government, Ministries and MPs in real problems of persons with severe disability. Reservations to the Act consisted mainly in that it did not contribute to the creation of conditions promoting the integration and it was not based on the needs of persons with severe disability. Disapproval consisted in monitoring the income of persons with severe disability and of jointly assessed persons. Persons with severe disability consider as one of the most progressive forms of state aid cash benefits for compensation of severe disability, mainly the cash benefit for personal assistance and the cash benefit for care. However, in their opinion, the conditions for the provision of benefits are too stringent and restrictive, which causes big problems in practice. They believe that the payment of such cash benefit should not be limited by any income of a person with severe disability since such a limitation is considerably demotivating for them. Some of them consider the exclusion of the cash benefit for personal assistance discriminatory in cases where personal assistance is conducted by the parents of a six years child up to his/her legal age, by a natural person who took such child into foster care replacing the parents on the basis of a judgment of court, or by a natural person who was appointed by the court as the guardian of disabled natural person. Many members of a family take care of their severely disabled children, parents or siblings in the long term, without the possibility to find a job. Their work is difficult both psychically and physically. The people allow the disabled to live with dignity

in the home environment partially, whereas the state saves many financial resources for their possible institutional care. However, the amount of cash benefit results in that in many cases such persons (the severely disabled and their care assistants) live on the poverty level, in very modest conditions. Their health condition, medication and medical tools require rather high financial resources which they are not able to obtain. However, the limitation of cash benefit for care depending on the income of care dependent person causes that in the event of an increase in the pension of severely disabled person, the cash benefit for care will be reduced automatically.

Citizens drew attention to the inactivity of the Ministry of Labour, Social Affairs and Family with respect to applications for a cash benefit for care, in cases where applicants lived in the Czech Republic. Applications for care benefits which were forwarded from the Czech Republic or filed directly to the Ministry of Labour, Social Affairs and Family. The reason for keeping the applications by the Ministry of Labour, Social Affairs and Family is an on-going examination of whether the care benefit falls within the scope of the Regulation EEC 15 No. 1408/71 of the Council on the application of social security schemes to employed persons and their families moving within the European Community, or of the Regulation No. 883/2004 of the European Parliament and of the Council on the coordination of social security systems, and thus whether the Slovak Republic is obliged to pay out the care benefit also outside the territory of the Slovak Republic. Several applications have been kept by the Ministry of Labour, Social Affairs and Family for three years.

Disabled persons object to the absence of a network of integrated and complex care for disabled children and adults in particular regions, which in practice leads to their isolation, exclusion from society and life in poverty and in unworthy conditions. However, they have much more problems that bother them.

The Ministry prepared a proposal of legislative change, the adoption of which was to result in a relief for 400 000 seniors and severely disabled persons. The current 4 types of assessments were to be replaced by one. However, it has not been adopted.

Assistance in Material Need and Subsistence Minimum

The Act on Subsistence Minimum lays down the subsistence minimum as a socially recognised minimum level of income of a natural person below which their material need occurs. The amount of subsistence minimum is set by the Ministry of Labour, Social Affairs and Family on a yearly basis by its regulation on the basis of figures from the Statistical Office, according to specific indicators being the growth of subsistence cost of low income households and net money income per person. It depends on the income of person or persons whether they find themselves in material need. If the income of jointly assessed persons (households or families) is higher than the amount of subsistence minimum provided by the law, then the person or household is not in material need and has not entitlement to the benefit and allowances. If the income of household is lower than the amount of subsistence minimum, then the household is in material need, but it does not mean that automatically they will have an entitlement to assistance in material need. It is provided in the form of benefit and allowances, and its amount is fixed by Act No. 599/2003 Coll. on Assistance in Material Need and on amendments to certain acts.

Some citizens with respect to Act on Assistance in Material Need drew attention to that if a citizen or family are in material need, they almost are not able to survive. Specific comments are directed to the issues of young people with low income who according to the relevant legal regulations can hardly establish a family and have children, and families with children where both parents are unemployed are not able to duly support their children, there is even a threat of institutional care for children.

The outgoing Minister said that in this area a lack of time had become very evident. Even though two principally new Acts were prepared and a legislative plan of new law on socially excluded communities, neither of such expected and required laws finally got to the Government negotiations.

Further details regarding assistance in material need and housing allowance are stated in the following chapter to Article 10 of the Covenant, which also deals with state benefits and related allowances paid out to the parents of children.

Recommendations:

- Each amendment of Act on Social Insurance should be drawn up on the basis of a detailed analysis of the effects of pension reform in the interest of beneficiaries and in advance so that the competent body has enough time to prepare and implement particular tasks which are crucial for its application in practice. The purpose must be making the complicated legal regulations more effective and also avoiding constant alterations of the social insurance legal regulations and follow-up issues, thus ensuring legal safeguard in this area.

- We propose re-assessing the system of pension valorisation including the strengthening of the solidarity principle, pension valorisation to the benefit of pensioners with below the average income, and introducing a minimum pension, also with respect to the status of public finances. The purpose of minimum pension should be to protect pensioners and other insured persons who are exposed to poverty. However, the principle of merit should be maintained, so that the people who paid more payments receive a higher pension. The amount of minimum pension has been in the form of discussions yet.

- Plus, we propose excluding the assessment activity from the powers of Social Insurance Agency so that the assessment of health condition for the purpose of entitlement to invalidity pension, as well as for the purposes of entitlement to compensation of severe disability is conducted by a special legal entity. This would ensure higher confidence by the citizens in the impartiality of the assessment of their health condition.

- We propose returning the concept of the removal of the rigidity of law according to regulations valid before 31 December 2003 or an alteration of statutory requirements in order to eliminate cases where an application for invalidity pension, old-age pension, early old-age pension or survivor benefits was rejected due to the non-fulfilment of the required pension insurance period. Often just these citizens get on the poverty line. Re-introducing such regulations would result in the provision of certain income as drawing social assistance benefits for such citizens is not an adequate solution.

- We propose drawing up an amendment of Act on Social Services following a profound analysis of its effects in collaboration with municipal authorities with a special focus

on the provision of financing and availability thereof, including the implementation of debarrierization conditions for such facilities. A detailed analysis in social service facilities is required also with respect to the scope and quality of medical actions.

- We propose amending the legal regulations in a manner allowing the severely disabled to work and develop their career without any threat of reducing or removing the benefits, and thus taking measures aimed at higher integration of persons with physical, sensory or another handicap in society and eliminating the barriers in communication of such persons with other people, to which the ratification of the UN Convention on the Rights of Persons with Disabilities (the Convention) undertakes, which became effective in this country on 25 June 2010, including its Optional Protocol.

- It is necessary to adapt the Act on Assistance in Material Need to the current conditions and take into account, in addition to merits and incentive criteria for work also the required coverage of the basic essentials of life. It is also necessary to take into account the Housing Contribution Act so that the housing contribution is more transparent and can be obtained by more citizens.

Article 10

Introduction

Over previous 2 years, several legislative regulations in the field of social and legal protection of children and social security benefits, which should contribute to better child protection and help for young families in particular, have been carried out in Slovakia. Social policy on protection of families with a child should be carried out in the spirit of Article 10 of the Covenant, which says:

- The family should be provided with the widest protection and assistance possible.
- Special protection should be provided to mothers over a reasonable period before and after the birth of the child.
- Special measures should be taken for the purpose of protecting and assisting all children and youth without any discrimination.

As regards the compliance with this Article, several activities have been already launched or initiated. However, even today do young families often face problems with sustaining since the allowances granted by the state for the support of family don´t cover the real costs on living at all and it would be suitable and necessary to adjust the amounts of these benefits so that the meaning of Article 10 of the Covenant is complied with.

Legislative Regulations in the Field of Policy for Children and Family in the Slovak Republic

In the course of 2010 – 2011, new acts and amendments in the field of support of families with children were implemented into legal standards backing families with children the aim of which was to improve living conditions, of young families in particular, and compensate partially for the deteriorating economic situation by way of direct or indirect financial aid benefits.

Most of legislative measures were focused on financial adjustments and changes in the allowance system of family support, while the system became relatively complicated and less transparent for its addressees.

Act No. 561/2008 Coll. on Child Care Benefit and on Amendment to Certain Acts with effect from 1 January 2011

The Act on Child Care Benefit introduced an oriented tool for supporting families with children in order to create conditions for the reconciliation of their family, personal and professional life as well as to create conditions for the step-up of employment and employability of young parents, retention of job and facilitation of the return of young parents caring for underage children to job. Following the state social allowance – parental benefit, the Act on Child Care Benefit enables a family to choose from multiple alternatives of state support intended for parents caring for child up to three years of age or six years of age. It creates room for parents to choose such form of care for child in the course of his or hers first three years of life which corresponds the most to the current needs of the child or the parent and at the same time accepts also parent´s decision to pursue gainful occupation or participate in education activities in the form of secondary school study or university study or PhD study. Via the child care benefit those parents who decide to pursue gainful occupation and ensure care for their underage child by another legal entity or natural person over this period will be provided with financial aid.

The Act No. 561/2008 Coll. on Child Care Benefit as amended **excludes the concurrence of** the drawdown of child care benefit and the drawdown of parental benefit. In view of the aforementioned fact, the **provision of Article 3, par. 8** of the Act which defines under which conditions **the entitlement to parental benefit doesn´t arise** has been modified. Entitlement to parental benefit isn´t established for any single beneficiary if **(1)** at least one of them is entitled to draw maternity benefits or allowances similar to maternity benefits in a member state and the amount of maternity benefit or the allowance similar to maternity benefit in a member state for the entire calendar year is higher than the amount of parental benefit under the provision of Article 4, par. 1 and par. 2 or Article 4, par. 3 of the Act, **or (2)** the state which is not an EU member state pays one of them an allowance similar to parental benefit or an allowance similar to maternity benefit.

In Paragraph III of the Act on Child Care Benefit there is the amendment to the Act No. 627/2005 Coll. on Allowance to Support Substitute Child Care that removes discrepancies linked with the preference of entitlement to parental benefit to repeated benefit for a substitute parent in the aftermath of which it is not possible to ensure the increase of benefit in case of caring for three and more entrusted siblings. Simultaneously, the problem of alimony for children in foster care which is higher than the provided repeated child benefit has been unequivocally regulated by the Act. Under Article 51 of the Family Act the Court, when deciding on the entrustment of the child to foster care, shall ordain the parents or other natural

persons obliged to provide an underage child with alimony the scope of maintenance obligation and it shall at the same time place them an obligation to remit the alimony to the body of social and legal protection of children. This provision is followed by Article 5; par. 5 of the Act No. 627/2005 Coll. under which the alimony equivalent to the repeated benefit for a child entrusted to substitute care becomes the income of state budget. If the alimony is higher than the repeated child benefit, the difference between the alimony and this benefit belongs to the child. In practice, however, the authority used to transfer this difference to the child just in case that the child´s parent had met the obligation ordered by the court. If the obliged person failed to meet his or her obligation and hadn´t remitted the alimony to the authority, the authority didn´t provide the difference and it didn´t provide the child with alimony even in case that owing to the amount of its income, for instance orphan´s pension, the entitlement to repeated child benefit hadn´t arisen. This practice of authorities disadvantaged the children entrusted to foster care because they weren´t able to apply for alternative alimony since their entitlement to alimony had been transferred by court decision to the Office of Labour, Social Affairs and Family. The new legal regulation shall secure that even if the parents fail to meet the maintenance obligation ordered by the court, the authority will provide the child with the difference between the alimony and repeated child benefit or the whole of alimony. And it is up to the authority to claim compliance on the part of obliged parents by all available means.

Act No. 571/2009 on Parental Benefit and on Amendment to Certain Acts with effect from 2 December 2010

The new legal regulation of parental benefit constitutes an integral part of legal regulations on the basis of which the state supports actively families with children and contributes to financial security of the parents who care for a child up to three years of age or a child with long-term unfavourable health condition up to six years of age. Following the social benefit, child care contribution, which was implemented as from 1 January, 2009, the new Act on Parental Benefit enables the family to choose from multiple alternatives of state support.
On 2 December, 2010, the National Council of the Slovak Republic adopted the **Amendment to the Act** (hereinafter referred to as "the Amendment") **No. 571/2009 Coll.** on Parental Benefit as amended (hereinafter referred to as "the Act on Parental Benefit"). The said Amendment **doesn´t give rise to any restrictions** for parents as regards the exercising of entitlements to the respective allowance. The new regulation **facilitates** in a substantial way

the reconciliation of family, personal and professional life of the parents of children at early age, which is among the primary objectives of the European Union in the field of creation of conditions for the raise of the employment of women with parental responsibilities.

With regard to the **omission of one of the conditions** of the entitlement to parental benefit, namely the non-conduction of gainful occupation by obliged person, the amendment **specified the purpose of parental benefit**. According to the current legal regulation the state provides financial contribution to **all parents** who secure the care for a child at early age, and it is not decisive whether the parent deals exclusively with personal child care or the parent studies or pursues gainful occupation along with child care and secures the child care by means of another natural person or legal entity. Thus the parental benefit shall mean the state social benefit by which the state provides the obliged person with contribution to **the securing of proper child care**.

In accordance with the aforementioned, the wording of **provision of Article 3, par. 4** of the Act on Parental Benefit was amended so that according to the new regulation the condition of proper child care shall be regarded as met if the obliged person **secures proper child care either in person or by any other major natural person or legal entity**.

The unification of the amount of parental benefits for all beneficiaries **to euro 190.10** represents an essential change. The amount quoted, however, is increased according to the number of children. If the obliged person secures proper care for two and more children born concurrently, the parental benefit is increased by 25% for any other child who was born concurrently with the child under Article 3, par. 2. The amount of parental benefit stipulated in this way shall be rounded up to the next ten eurocents.

The parental benefit is lower if the obliged person **neglects** proper fulfilment of compulsory education of another child in his or her charge **for at least three** consecutive calendar months. In the given case the amount of parental benefit is **cut by 50%**, i.e. to euro 95.10.

From the point of view of EU legislation, the c**hildbirth benefit** is a family allowance which is not subject to the coordination of social security systems under the Council Regulation (EC) No. 1408/71 but which the employee may draw in the form of a social advantage under the Council Regulation (EEC) No. 1612/68 on Freedom of Movement for Workers in terms of the Community in the country in which he or she pursues gainful occupation. Place of birth of the child is irrelevant from the viewpoint of this social advantage. This wording removes the risk of duplicate payment of benefit upon childbirth on the part of the respective institution of

other country and the respective institution in the territory of the Slovak Republic concurrently.

The proposed amendment to the Act No. 599/2003 Coll. on Assistance in Material Distress, i.e. the Act regulating the amounts of the allowance in material distress and the amounts of housing benefit.

Under Article 17, par. 4 of the Act No. 599/2003 Coll. on Assistance in Material Distress and on Amendment to Certain Acts the amounts quoted in Article 10 to 14 of the Act No. 599/2003 may be modified by the Government of the Slovak Republic by its decree over the period ended on 1 September on the calendar year. After meeting certain conditions, a citizen in material distress and natural persons evaluated jointly with the citizen in material distress are entitled to allowance in material distress and material distress allowance benefits, namely healthcare benefit, activation supplement, housing benefit and protective benefit.

In terms of the valorisation of the allowance in material distress, higher percentage of valorisation is applied in comparison to the growth of maintenance costs of households with low income and risk groups, namely incomplete families, i.e. individuals with children and families with more children, as these are the groups most endangered by the risk of poverty.

From the last harmonized survey of incomes and living conditions of households in the Slovak Republic, EU SILC 2007, clearly follows that in spite of overall decrease in the risk of poverty in Slovakia (11%), 26% percent of incomplete families with at least one dependent child and 26% of families with 3 or more dependent children were endangered by the risk of poverty. In view of the growth of expenses, on housing among other things, higher percentage of valorisation compared to the growth of maintenance costs of households with low income was applied. Valorisation isn´t applied in case of health care benefit, protective benefit and activation supplement.

Under Article 10, par. 2 of the Act an allowance shall mean:

a) euro 60.50 monthly for an individual,

b) euro 115.10 monthly for an individual with a child or no more than four children,

c) euro 105.20 monthly for a childless couple,

d) euro 157.60 monthly for a couple with a child or no more than four children ,

e) euro 168.20 monthly for an individual with more than four children,

f) euro 212.30 monthly for a couple with more than four children,

while pursuant to paragraph 3 and 4 the given allowance is increased by euro 13.50 monthly in the event of a pregnant woman from the beginning of the fourth month of pregnancy on

condition that she proves her pregnancy by a pregnancy certificate and she visits regularly an antenatal clinic during the pregnancy .

Under Article 11, par. 2 the health care benefit amounts to euro 2.00 monthly.

Under Article 12, par. 1 and 2 the activation supplement belongs to a citizen in material distress and every natural person evaluated jointly with the citizen in material distress for the support of acquisition, retention or improvement of knowledge, expert skills or working habits for the purposes of professional assertion during the assistance in material distress and it is equivalent to euro 63.07 monthly.

Proposed Changes in the Payment of Allowance in Material Distress

According to the proposed Act the basic allowance in material distress would stand for 20% of subsistence minimum, namely 20% of euro 189.83, which would represent euro 37.97 for an individual. Compared to the present amount equivalent to euro 60.5, it exceeds the half only slightly. Motivation allowance up to 45% of subsistence minimum, namely euro 85.4235, would become the majority part of the allowance. It can be obtained mainly through activation works or in return for exemplary school attendance of children. For people who cannot work a solidarity allowance equivalent to euro 76 would be intended. Newly, certain motivation for people who work for minimum wage should be the fact that if they don´t give up their work, they will also gain the allowance in material distress.

Conclusion

The very increase of allowances in material distress and benefits hasn´t been conducted for more than two years. Since the draft bill won´t be adopted this year, the allowances in material distress will be still paid on the basis of present values. On the one hand, the objective of the inconsistent Act is to increase the allowances, but on the other hand, also a saving equivalent to more than euro 17 billion. The new method of allowance payment should move the beneficiaries to action. In case of participation in activation works, the allowance in material distress should be approximately on the same level as it is today. Though simply it may sounds, it isn´t that way in practice. The fact is that still less money is earmarked for community centres and for activation works. Also their number is alarming. Currently, there are just 40 of them; however, around 800 ones are needed. The second problem is the number of beneficiaries of allowances in material distress. Nowadays, their number is around 200,000. There are approximately 49,000 beneficiaries of activation supplements. The initial

idea to divide allowances into basic and motivation ones wouldn´t be bad, and all experts concur in that. More difficult thing would be the putting into practice. The Prime Minister, several MPs and, last but not least, the representatives of the towns and municipalities that would be most affected in respect of the activation works disapproved of the very proposal. The most criticized part of the proposal is that the basic allowance is too low for a man to live on. It is also obvious that the draft bill is in conflict with the Constitution of the Slovak Republic.

Recommendations

It is necessary to determine the amount of basic allowance which would ensure the satisfaction of necessities of life for people in material distress.
Another question to be solved is the creation of a sufficient number of positions for activation works, otherwise the beneficiaries of allowances in material distress will be reliant solely on the basic allowance and thus they will be exposed to the risk of living on the margin of poverty.

Housing Benefit

With regard to the allowances in material distress, the housing benefit whose amount has been changed since 1 January, 2012, has been discussed as well. There are 12,000 more beneficiaries of the housing benefit than last year, namely 109,000. The cause of the growth of beneficiaries is the fact that also people with salary over the limit of subsistence minimum will be entitled to the benefit. The calculation will be carried out on the basis of the formula of the Labour Ministry. The minimum benefit determined is equivalent to 3 euro. Today, the amount of housing benefit per one natural person is euro 68.91. For two and more natural persons the current amount of the benefit is euro 116.98, but this amount cannot cover completely the housing and services linked with housing even in rental housing characterized by lowest rent, not to speak of the living in private sphere.

Recommendation

It is necessary to set the amount of housing benefit concretely according to various categories (individual, young family with 1 and more children, single mother, pensioners) on a level that would take into account the possibilities and capabilities of the given category of beneficiaries of the housing benefit and would be able not only to help, at least at the beginning (e.g. 2 starting years for young families), but also ensure housing for the people in material distress. The reason is that although this isn´t laid down by law, it is automatically related to the satisfaction of basic necessities of life.

Act on Family No. 36/2005 Coll. on Family and on Amendment to Certain Acts as Amended with effect from 1 July 2010

The goal of the amendment to the Family Act which is effective from 1 July, 2010, was to implement the established system of alternate child care and post-divorce care following the divorce of parents into the practice of Slovak courts. Alternate care ensures the child a reasonable contact with both parents, reduces post-divorce traumatisation of children, contributes to emotional balance and healthy mental development of children.

Under Article 3 of the Convention "Child´s interest must be the primary aspect of any activity related to children, no matter if conducted by public or private establishments of social care, courts, administrations or legislative bodies."

Under Article 18, par. 1 of the Convention "The States Parties to the Convention shall put the whole of their effort for the principle that both parents are jointly responsible for the upbringing and development of the child being recognized. The parents or, in corresponding cases, legal representatives shall have primary responsibility for the upbringing and development of the child. Here the fundamental sense of their care must be child´s interest."

The amendment to the Act responds to the Convention on the Rights of the Child. Comparison with the amendment to the Family Act in the Czech Republic was used. German Cochem family court model served as an inspiration too.

Alternate care enables the child **reasonable contact with both parents** and contributes to its healthy emotional and mental development. Based on the amendment, the court may entrust the child to alternate care of both parents if both parents are eligible for the upbringing of the child and if both parents are interested in personal care.

If only one parent shows interest in alternate care, it is not a reason for delivering a rejection. Also in the given case the court will have to examine whether alternate care will be in child´s

interest. The amendment to the Family Act has emphasized in the aforementioned way the need to **observe child´s interests** and has enabled the imposition of alternate care also in case that one of the parents will obstruct the efforts of the other one to conclude an agreement.

When deciding on the entrustment of the child to alternate care of both parents, the court abides predominantly by **child´s interests** and examines whether the said entrustment will **better secure child´s needs**. The formulation of the second part of the first sentence of the new provision of Article 24, par. 2 of the Family Act is supposed to force the court to examine in any event if alternate child care will be first and foremost in child´s interest, e.g. if emotional suffering of the child sets in or if its development is complete unless alternate care for child is enabled. According to the explanatory memorandum on the amendment the court will be forced to concentrate expressly on child´s interests, which should result in gradual relinquishment from the monitoring of parents´ stereotypes.

The new provision of Article 24, par. 2 of the Family Act defines explicitly **the right of the child to the care and upbringing on the part of both parents** also after divorce or family dissolution.

Pursuant to the amended wording of Article **24, par. 4** of the Family Act, when deciding on the exercise of parental rights and obligations or approving the agreement between the parents, the court shall respect the right of underage child to preserve its relationship with both parents and shall always take into consideration the interest of underage child, particularly its emotional ties, development needs, stability of future educational environment as well as the ability of the parent to agree on the upbringing of and care for the child with the other parent. The expected effect of the aforementioned amended provision is also the **active effort of the parents to seek agreement on post-divorce upbringing** of children, for example, with the assistance of a mediator or psychologist. According to the explanatory memorandum on the amendment the given formulation is meant to provide the courts as well as parents with instructions for parenthood performance by stating that an agreement between the parents is better than court proceedings. On the basis of the amendment it is the court´s obligation to pay attention that the right of the child to the maintenance of **regular, tantamount and equal personal** contact with **both parents** is respected. The objective of the implementation of the institution of the entrustment of the child to alternate personal care is to **consolidate its relationship with both parents**.

Entrusting a child to alternate care of both parents will manifest itself also in the **maintenance obligation** of the parents. Under the new provision of **Article 62, par. 6** of the Family Act, when determining the alimony for the child entrusted to alternate personal care of the parents,

the court shall take into account the length of alternate personal care of either of the parents or it may decide not to determine alimony for the period of alternate personal care of the parents.

Conclusion

In this context, however, it is necessary to answer the questions whether the child is able to have two homes and what mark will this leave on the child as regards the establishment of his or her own home. The fact that the child would have own home in which his or her parents would alternate is completely incomprehensible for many people. After all, the parents cannot alternate the housing. Nonetheless, for the child it remains the same. The question arises whether a child that alternates his or her home, for instance, after a week, is capable of establishing stable environment somewhere he or she feels home and safe? One has to add necessarily that the partners who broke up had most likely different notions of upbringing and treatment of the child.

The child experiences thus one education model in one week one and something totally different the other week. That may be very confusing for him or her in the time when he or she learns what is correct and the way things are going. And we still speak just of the children who haven´t any problems and of parents who are capable of communicating with each other openly and on friendly terms, and are willing to accede to miscellaneous compromises.

Recommendation

For the aforementioned reason the courts should consider the best interest of the child as well as the respect for the opinions of the child, who, in view of his or her age, possibilities and capabilities, is able to comment the best on the questions when, how, under what conditions and in the care of which parent he or she wants to remain after the divorce and when he or she wants to meet the other parent.

It is also necessary to define within the act exactly and concretely the age of child, when he or she is already capable of deciding on himself or herself as it already realizes many facts and knows what the best thing for his or her is. We propose to set this limit from 7th year of age, when the child is psychically mature enough on this level of expression to make such decisions.

The Act No. 133/2011 (hereinafter referred to as “HIA amendment”) that amends the Act No. 580/2004 Coll. on Health Insurance as amended (hereinafter referred to as “HIA”) with effect from 1 May 2011

Change in the Definition of the Concept “dependent child”

Owing to criticism from the public and student body concerning the adjustment of age limit (when the student was considered a dependent child as early as at 26 years of age and was thus obliged to pay insurance premium as from 1 January, 2011) the provision of Article 11, par. 7 letter a) HIA has been amended. The age limit has been increased to 30 years of age since 1 May 2011. Dependent child for the purposes of HIA since 1 January 2011 shall mean the dependent child under Article 9 and 10 of the Act No. 461/2003 Coll. on Social Insurance. Under Article 11, par. 7 letter a) HIA he or she is a dependent child - natural person up to the age of 30 years who studies at university until the achievement of second degree education at the latest, except for part-time (external) form of study, he or she is a person insured by the state also during holidays until the taking of final state examinations or until the enrolment in third degree university study in the full-time (daily) form of study if the enrolment in third degree university study was conducted until the end of the calendar year in which the second degree university education in daily form of study was achieved.

In this case it is a positive change in the definition of the concept “dependent child” from which, however, the age limit could be transferred also to equal age rate in the Family Act (Act No. 36/2005 Coll.).

III. Optional Protocol to the Convention on the Rights of the Child

On 28 February, 2012, Slovakia signed the Optional Protocol initiated by itself

The Optional Protocol to the Convention on the Rights of the Child was ceremonially opened for signature on 28 February in UN Office in Geneva. The endorsement of the Protocol is an important step towards the strengthening of the exercise of the rights of the child on international level. The respective Convention was the last of nine key agreements in the area of human rights which hadn´t had an announcement mechanism. In this way the procedure of complaints enabling the children or their representatives to turn to the Committee on the Rights of the Child in case of violation of rights guaranteed by the Convention and its two protocols on participation of children in armed conflicts and on child trafficking, child prostitution and child pornography was created. Thus the Committee may address recommendations to the state in question and the state has to inform of the corrective measures adopted. Another mechanism of the Protocol is the examination procedure when the Committee may initiate proceedings against a country if it concludes that serious or systematic violation of the Convention or its Optional Protocols has occurred.

The third OP to the Convention shall facilitate full conduction of Article 12 of the Convention, while it supports preferentially the origin of independent mechanisms of monitoring the violation of the rights of children and mechanisms of filing complaints from children, either in their behalf, or on national level, i.e. authorities of children´s ombudsman, specialized departments of national institutions for human rights, children´s commissioners etc.

Article12 of the Convention on the Rights of the Child

In June 2009, the UN Committee on the Rights of the Child approved the twelfth "General Comments", which explain elaborately the philosophy and implementation mechanisms of individual articles of the Convention. In this case the subject matter was Article 12, which was extraordinarily delicate as to its interpretation and very important at the same time. Among experts on the rights of the child and activists in the field of the rights of the child there are no doubts that the right of the child to be heard, Article 12 of the Convention, has a special meaning. Already the first Committee on the Rights of the Child founded in 1991 for the monitoring of this Convention decided that Article 12 incorporated not only the right, but also the principle of the Convention. This Committee called it a principle with the aim of clarifying that the implementation of most of other articles of the Convention requires that the child be heard no matter whether or not it is set forth in the respective article. This right is exercised everywhere. This principle says that the child must be heard as regards all matters that influence him or her and an adequate weight must be given to these opinions expressed by the child.

Conclusion

There are opinions saying that the children aren´t provided with any law through this article. They refer to formulations in the article, like "the child which is capable of formulating his or her own opinions" or the weight to be given "according to age and maturity". These clauses may be easily used for the disqualification and exclusion of children from any participation because these words leave it to free discretion of the adults whether or not they should listen to the child.

We assume that this objection ignores the fact that the text we have been talking about is a legal document and that a legal document should be interpreted on the basis of court interpretations of the concepts used. Hearing isn´t a common problem but means a well defined procedure of high judicial quality. As a rule, judges require age limits in order to

protect court proceedings against appeals affirming that the child who wanted to contribute with his or her opinion hadn´t been heard.

Recommendations

- Definition of age limits, which should be very low. We incline towards the age limit stipulated in Norway which sets the age at seven years when the children must be appealed to provide their view during court and administrative proceedings.
- For full realization of Article 12 of the Convention it is necessary to recognize the child as a subject of law who decides independently of his or her own behalf (and at the same time in his or her best interest).
- Establishment of the office of children´s ombudsman.

Maternity Protection

Apart from the said legislative conditions of protection, it is necessary to mention also other allowances that are supposed to contribute to better assistance for mothers and families in the securing of healthy development of their children.

Child Allowances and Child Benefits

Child Benefit in 2012 is regulated by the Act No. 600/2003 Coll. as amended

Child benefit stands for a social benefit through which the state provides the beneficiary with contribution to the upbringing and maintenance of a dependent child. The current amount of monthly benefit from 1 January, 2012, to 31 December, 2012, is equivalent to € 22.54. The amount of this allowance is dependent in direct proportion on the subsistence minimum and it is increased by the same coefficient like the subsistence minimum. Predominantly the parent who cares for the dependent child is entitled to the child benefit. The amount of income isn´t important. In case that the parent doesn´t care for the child, the law shall stipulate precisely who is entitled to the benefit. The first condition is, however, that the parent or any other person must care for the child. The parent as well as the child must have permanent or at least temporary residence in Slovakia.

Child Benefit Surcharge pursuant to the Act No. 532/2007 Coll. as amended

Predominantly the parent who cares for the dependent child is entitled to child benefit surcharge. The amount of income isn´t important. In case that the parent doesn´t care for the child, the law shall stipulate precisely who is entitled to the surcharge. The first condition is,

however, that the parent or any other person must care for the child. The parent as well as the child must have permanent or at least temporary residence in Slovakia. So that the beneficiary may apply yet for surcharge, he or she must meet also the following conditions:

•he or she must be the beneficiary of retirement pension, early-retirement pension, invalidity pension due to capacity to pursue gainful occupation reduced by more than 70%, age pension or any other pension set forth in the act.

•he or she cannot pursue gainful occupation and neither can any other natural person that could declare tax bonus in respect to the child.

•in case that he or she exercises the entitlement to benefit and applies for surcharge, he or she cannot declare the tax bonus in respect to the child.

The amount of the child benefit surcharge from 1 January, 2012, to 31 December, 2012, is equivalent to €10.57.

Childbirth Benefit Surcharge under the Act No. 235/1998 Coll. as amended

Childbirth Benefit Surcharge stands for a social benefit of the state through which the state provides a contribution to the coverage of expenses linked with the securing of inevitable needs of a newborn. This benefit is provided at the birth of the first, second and third child. At the birth of other children, the benefit is not provided. The current amount of the benefit is equivalent to €678.49. The beneficiary may apply for the surcharge within six months of the childbirth. Predominantly the mother is entitled to the childbirth benefit. In case that the mother dies during the delivery, the father of the child or any other person, in case that the mother relinquishes the child or abandons him or her, is entitled to the benefit.

Benefit for the Birth of More Children at a Time since 1 January 2012

This benefit belongs to the parents to whom three or more children were born simultaneously or to whom twins were born repeatedly over two years. The benefit is provided up to the 15th year of child´s age for every child once a year.

The amount of the benefit depends on the age of the child as follows:

- child up to 6 years of age - €81.990
- child from 6 years of age to 15 years of age - €101.250
- child who is 15 years of age - €107,550

Childbirth Benefit since 1 January 2011

Childbirth Benefit stands for a social benefit through which the state provides a contribution to the coverage of expenses linked with the securing of inevitable needs of a newborn. The amount of the benefit since 1 January, 2011, is still equivalent to €151.37. If two or more children were born at a time, the entitlement to the benefit for every child shall be increased by a half, namely euro 75.69. That means that at the birth of twins the amount of the benefit is equivalent to euro 227.06 (euro 151.37 + 75.69).

Parental Benefit pursuant to the Act No. 280/2002 Coll. as amended

Parental Benefit stands for a social benefit through which the state provides the parent with a contribution to the securing of proper care for a child up to three years of age. If the child suffers from long-term unfavourable health condition or he or she is entrusted to substitute care, this benefit is provided up to six years of child´s age. If the parent suspends the drawdown of parental leave, he or she may agree with the employer to draw the parental leave at the latest by the day when the child achieves 5 years of age (in case of unfavourable health condition of the child, up to 8 years of child´s age).

The amount of the benefit for 1 child from 1 January, 2012, to 31 December, 2012, is equivalent to €194.70. If two or more children are born at a time, the parent is entitled to a benefit for the second and further child equivalent to 25%, i.e. in case of securing proper care for twins, the amount of the benefit is equivalent to euro 243.40 (euro 194.70 for one child and euro 48.70 for the other one).

Parental Benefit Reduction

If the parent cares also for a schoolchild that is absent over a period of three consecutive months from more than 15 unauthorized lessons, the parent shall have the parental benefit for child reduced by a half – to euro 97.35. The parental benefit reduced in this way shall be provided for the next three months. To put it simply: It´s a situation when the parent who stays at home for parental leave and receives parental benefit for a child up to three years of age and at the same time raises an older child attending school, and it is the older child who neglects school attendance. The parental benefit for one child may be drawn just by one of the parents, namely the one designated following a mutual agreement.

Conclusions and Recommendations

The current state and issues of families and family policy should be the main topic of politicians, who, unfortunately, need to be perpetually reminded that the family, as one of the fundamental elements of the building of healthy society, must be dealt with in a complex way as one whole and from various aspects, namely medical, sociologic, social, cultural and educational as well as economic one. The economic and security function of a family doesn´t pertain solely to the material point of view, but also to social area, including its psychological, legal and other aspects, social security of a family, its consistency and durability. Simultaneously, these aspects are tied to emotional function in immediate connection with economic and security malfunctions. Nowadays, lots of young people postpone the founding of families just for the reason of financial crisis, social insecurity and fears that not a single individual is able to live on the allowances provided by the state, even on a level lower than the average one, not to speak of a young family with a child whose upbringing is time-consuming as well as financially demanding not only in the first 3 years of child´s age. But the requirements and demands grow proportionately to child´s age and the state doesn´t contribute in any way (diverse school trips, e.g. nature classes, ski trips, trips at the end of school year, various courses/e.g. swimming/). Though these amounts to a one-time expense, however, a costly one, and many parents cannot afford these expenses due to minimum or even below-average amounts of salaries. That´s why certain state allowances should be stepped up proportionately to the age and needs of the child.

Professional Parenthood

Professional parenthood is one of the forms of conducting Article 20 Paragraph 1 of the Convention "a child temporarily or permanently deprived of his or her family environment or a child that cannot be left in this environment in his or her own interest has the right to special protection and aid provided by the state".

Institutional care, provisional measures and educational measure shall be conducted in a professional family mainly for a child that:

- has been removed from the care of parents for an interim period necessary for the adjustment of conditions of the child, or has been admitted to orphanage in emergency cases

(particularly if the child has been left without any care or if the life or health of the child is endangered),
- requires therapeutic and educational care on the basis of the results of expert diagnostics, or he or she is a citizen with serious disability,
- requires enhanced care due to behavioural disorders on the basis of expert diagnostics,
- requires enhanced care due to drug addiction or any other addiction on the basis of expert diagnostics,
- requires enhanced care on the basis of expert diagnostics because it has been tormented, sexually abused or it has been the victim of a crime jeopardizing his or her favourable mental development, physical development, or there is a legitimate suspicion that he or she has been the victim of such a crime.

For the purpose of covering the expenses on child or young adult who is a dependent child in professional family, the orphanage provides an amount according to the age of the child, however, no more than the triple of the amount of subsistence minimum for a dependent child, basic equipment and covers the increased costs linked with health condition, special needs, sports activity. The particulars are regulated by the Decree of the Ministry of Labour, Social Affairs and Family of the Slovak Republic No. 643/2008 executing certain provision of the Act No. 305/2005 Coll. on Socio-Legal Protection of Children and Social Guardianship and on Amendment to certain Acts as amended.

The step-up of the number of professional families is inevitable mainly with regard to the application of Article 100, par. 9 of the Act No. 305/2005 Coll., under which the organizers of orphanages shall ensure and create conditions in orphanages so that it is possible to integrate every child up to one year of age into a professional family, with the exception of a child whose health condition requires special, enhanced treatment and care in a specialized, individual group. Since 1 January, 2009, this holds for every child up to three years of age.

Problem Topics of the Institution of Professional Parenthood

Employment without employment rights

Although a professional parent is an employee under the Labour Code, he or she isn´t granted, or rather, he or she cannot exercise all rights of an employee under this law. The existent labour law legislation doesn´t cover the performance of the occupation of professional parents.

Especially a regulation adjusting the remuneration of professional parents is missing. The determination of the amount of wage is fully in charge of the directors of orphanages. Wage

should be awarded to professional parents on the basis of identical criteria and it should take into consideration the disadvantagedness of the child and the number and age of children. Today, professional parents have low wages, problems with taking leaves and solution to childcare during their incapacity for work is missing as well. The working time of professional parents is unceasing; there is no legal regulation of possible accidents at work, refund of travel expenses, the possibility of complementing the education of professional parents isn´t regulated, etc.

The working time of a professional parent lasts 24 hours; he or she has actually not right to rest. He or she has entitlement to a leave, but is often unable to take it in real life. The problem is also the possible incapacity for work of a professional parent. It is questionable whether these facts will reflect on the quality of performed work in the future. The imposition of emergency professional families will help since the orphanage is not always willing to care for the child. After all, the professional parent doesn´t want to cause trauma to the child by putting it back to the orphanage for an interim period. Individual orphanages don´t vary very much in the provision of services to professional parents, some orphanages offer complete service, other ones just selected services or activities.

Mental health of a professional parent

Supervisions are missing and it is also very important to cope with the questions of mental health of a professional parent as a men working in a profession providing services to a child.

Control mechanisms for the placement of children

Directors of orphanages have competence to decide on the placement of a child into professional families, however, their steps are not always conducted in child´s best interest. It is therefore necessary to unify the conditions for professional parents and ensure more thorough control mechanisms. When placing children into professional families, it will be necessary to take into account the existent number and age of the children already placed into the family, no matter if these are biological children or children in any other form of substitute care.

Lifelong education

The preparation of professional parents in the scope of 60 to 40 hours isn´t sufficient. It is necessary to cope also with their lifelong education. This education should be aimed primarily at consultancy and assistance of experts in dealing with crisis situations they might find themselves in.

Undesired emotional ties

“Failure of a professional parent” in case that he or she is thus much tied to the child that he or she isn´t able to bear the departure of the child into another substitute family (even despite realizing the temporariness of this form of care) requires assistance of competent employees of the offices of labour, social affairs and family and orphanages. Many professional parents face serious relationship problems (on one level it is the tie but on another level it is the pain of tearing apart this relationship). Unfortunately, the children themselves often face these problems as well, therefore all persons involved should help as much as possible when sorting out these difficult processes. Professional parents need appreciation, support and accompaniment, only so can they carry out their work well and meaningfully. In view of the aforementioned facts, the Centre regards the fulfilment of international contractual liabilities concerning the protection of the rights of the child under the provisions of the Preamble, Article 3 Paragraph 1 and 2 and Article 20 Paragraph 1 of the Convention on the rights of the Child (1989), which take precedence over the laws of the Slovak Republic, as insufficient.

Recommendations

The Centre is of the opinion that the performance of professional parenthood should be regulated by a special act in view of its specific nature.

In connection with the aforementioned, the Centre urgently recommends defining fundamental guarantees of the performance of professional parenthood in the Labour Code within the period ending with the adoption of the special act regulating the performance of professional parenthood:

- Working time - Articles 85, 87, 90, 98 97 of LC – to regulate specially the beginning and the end of the working time of a professional parent, possibility of taking leave (with or without wage compensation) /- to regulate specially the terms of night work performance

- Entitlement to leave - Article 106 of LC – to stipulate uniform length of leave and facilitate its efficient drawdown, or regulate in cooperation with employers (orphanages) the terms of leave drawdown /regulate the possibility of taking extraordinary leave for recovery /consider the possibility of concluding a work performance agreement with the other family member in special cases (leave drawdown by a professional parent, incapacity for work, visit a the doctor´s and treatment of professional parent)

- Wage amount - Article 121, 122 of LC – to determine the amount of wage for professional parents according to identical criteria (peculiarities of the concrete case would be considered concurrently, e.g. the number of entrusted children, disability of entrusted child and other), to differentiate the amount of wage of a professional parent and emergency professional parent/ adjust the conditions of the entitlement to stand-by duty refund

-**Working conditions** - Article 140 of LC – to ensure information on the child by the employer / secure care for entrusted child in case of temporary incapacity for work of the professional parent / ensure the boarding of employees - professional parents / ensure the improvement of qualification of professional parents /refund "business" trips (meeting of entrusted child with biological parents, visit at the doctor´s, etc.) /define precisely the terms and scope of work of a professional parent

Apart from the aforementioned, the following is regarded by the Centre as necessary for the improvement of conditions and the assurance of quality of professional parents´ activities:

1. Introducing professional parenthood as a specific occupation.
2. Promoting and supporting professional parenthood as specific occupation in the circles of the specialist and general public.
3. Assuring the improvement of professional parents´ qualification.
4. Improving cooperation and communication between employers and professional parents.
5. Improving the financial situation and staffing of orphanages.
6. Ensuring the education and motivation of directors of orphanages with the aim of placing into professional families as many children as possible.
7. Giving systematic attention to the management of orphanages; particularly in the form of explaining conception intentions and objectives, continual education in the field of the rights of the child as well as employment relationships and protection of rights of professional parents (because directors of orphanages play a key role in professional parenthood when they decide on who will become a professional parent and which child will move to selected family).
8. Implementing the institution of "specialized" foster care the regime of which would be more accommodating towards the needs of the children requiring enhanced care.
9. Differentiating between the short-term and the long-term care in a professional family.
10. Securing continuous service of a professional parent (expert advice and services).

11. Making the relations between professional parenthood and foster care or adoption more flexible – child´s best interest should be the clue.

Employment of Children and Adolescents

Labour of a natural person up to 15 years of age or labour of a natural person over 15 years of age until the end of compulsory education is prohibited. These natural persons are allowed to pursue easy works the nature and scope of which don´t pose a hazard to their health, safety and further development or school attendance just in case of:
acting or co-acting in cultural performances and artistic performances,
sports events,
promotional activities.

The performance of the said easy works is permitted by the respective labour inspectorate at employer´s request following an agreement with respective body of public health system. The permission shall encompass the number of hours and terms under which easy works may be performed. The respective labour inspectorate revokes the permission if the terms of the permission aren´t complied with.
In the event of employment of adolescents from 15 to 18 years of age, the employer is obliged to keep record of adolescent employees employed by it in terms of employment. The record must contain the date of birth of adolescent employees.
The employer is imposed an obligation to create favourable conditions for universal development of physical and mental abilities of adolescent employees also by a special modification of their working conditions. The employer shall cooperate closely with legal representatives of the adolescents in dealing with essential questions pertaining to the adolescents.
The employer may conclude an employment contract with an adolescent only after prior medical examination of the adolescent (Article 41 of the Labour Code). The employer is obliged to ensure that the adolescent employee is examined by a physician also before his or her redeployment to another labour and also regularly, in case of need, at least once a year, unless special regulation stipulates otherwise. The adolescent employee is obliged to undergo specified medical examinations. When assigning tasks to the adolescent employee, the employer abides by medical opinions (Article 176 of the Labour Code).

The legal representative of an adolescent employee must be informed of the notice given to the adolescent employee as well as immediate termination of adolescent employee´s employment on the part of the employer. If the employment is terminated by adolescent employee´s notice, by immediate termination of employment, during trial or if his or her employment is supposed to be terminated by agreement, the employer is obliged to request the statement of the legal representative (Article 172 of the Labour Code).
The employer is allowed to assign only such tasks to adolescent employees which are commensurate with their physical and intellectual development and which don´t jeopardize their morality. The employer provides them with enhanced care in terms of the work. The same holds for schools and citizen association according to special regulation if they organize labour for adolescents in terms of their participation in youth education (Article 173 of Labour Code).

The employer mustn´t assign overtime work and night work to adolescent employees and it mustn´t ordain them or agree with them on a stand-by duty. In exceptional cases the adolescents over 16 years may perform night work not exceeding one hour if it is necessary for their occupation training. Night work for an adolescent must directly follow up on his or her work falling on day time according to the work shift schedule.
The employer mustn´t use such way of remuneration for work which would result in hazard to the safety and health of adolescent employees in case of raising the work performance.
If the employer isn´t allowed to assign work to the adolescent employee for which he or she is qualified because its performance by an adolescent employee is banned or because according to medical opinion it poses hazard to his or her health, the employer is obliged to provide the adolescent employee with other adequate work commensurate with his or her qualification, if possible, until the moment when the adolescent employee is eligible for the performance of such a work (Article 174 of Labour Code).
The adolescent employee mustn´t be assigned underground works, like extraction of minerals or digging of tunnels and adits. Furthermore, he or she cannot be assigned works that aren´t adequate, dangerous or noxious for him or her with respect to anatomic, physiologic and psychic peculiarities of his or her age. Lists of works and workplaces that are banned for adolescent employees are governed by the Regulation of the Government No. 286/2004 Coll.
The employer mustn´t assign works to adolescent employees during the performance of which they are exposed to increased risk of accident, during the performance of which they could

put at risk the safety and health of co-employees or other persons (Article 175 of the Labour Code).

The Criminal Code contains the actus reus of the criminal offence of threat to moral education of youth. Those who employ a child under 15 years preventing it from compulsory education contrary to the generally binding legal regulation (Labour Code) shall be punished with up to two years´ imprisonment. The commitment of this criminal offence necessitates intention and also factual prevention of the child from the fulfilment of school attendance, i.e. physically, by threatening, persuading etc. According to the commentary on the Criminal Code the object of this criminal offence is the public interest in healthy physical and mental development of children younger than fifteen years.

Article 11

Introduction

Housing belongs in the set of basic needs of a man and is also the precondition for the conduction of many other activities and desires in life. The right to housing belongs to every citizen without prejudice to sex, age, religion or race. This right is defined in various documents of international importance the signatory of which is also the Slovak Republic, although it is not a constitutionally enshrined right, not all groups of inhabitants in Slovakia were and still are capable of securing own housing by themselves. That´s why the question arises in what manner are we to approach the solution to the problem of housing of those groups of inhabitants that aren´t able to secure housing by themselves for various reasons.

In spite of the fact that the right to housing isn´t explicitly defined in the Constitution of the Slovak Republic, it is considered one of fundamental human rights.

Basic document comprising the right to housing is the **Universal Declaration of Human Rights (**1948): "Everyone has the right to a standard of living adequate for health and wellbeing of himself and his family, including food, clothing and housing". In **the International Covenant on Economic, Social and Cultural Rights** (1966) the right to housing is regulated in Article 11: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing".

European Social Charter (1996) speaks of: "the support of the approach to housing, the right to adequate and affordable housing, housing policies for all disadvantaged groups". On the national level the subject matter is the assumption of antidiscrimination legislation pushing through the principle of equal treatment, including housing.

Attention is focused solely on diverse possibilities of improving approach to housing for those that are on the margins of society. In Slovakia the self-governments of towns and municipalities play a key role in this context. These can apply for subsidies for the provision of social housing if their housing development programmes have been endorsed. In these documents they define concrete target groups for which the social housing is intended.

Legislative Regulations in the Field of Housing Policy in the Slovak Republic

On levels, central as well as local, many tools that tried to solve the problem of housing arose. Among the most important ones on state level are:

• State Housing Development Fund (SHDF) providing the possibility of applying for non-repayable contribution or credit according to set rules.

• Housing Development Programme of the Ministry of Construction and Regional Development of the Slovak Republic in which the terms of provision of subsidies for procurement of rental housing or the preparation of area and the building of technical facilities are regulated;

• **Act No. 539/2008 Coll. on Regional Development Support,** in which the objectives and terms of the regional development support are set and the competences of municipalities and other subjects of territorial cooperation as well as the conditions for coordination and conduction of regional development are regulated.

The main and most important legal tool that makes the representatives of self-governments responsible for solution to the problem of housing in their territory is **the Act No. 369/1990 Coll. on Municipal Constitution.** This Act defines in Article 4 the tasks of towns and municipalities, including also the task: "...to procure and approve housing development programmes and concur as to the creation of suitable conditions for housing in a municipality". Towns and municipalities are thus forced to search for various ways how to take care of the housing for their inhabitants, mainly for those who need help as regards this question.

The Act No. 260/2011 Coll. on the Termination and Settlement of Certain Rental Relationships, which deals with the way of terminating certain lease agreements where the landlord is a private person and the price for rental is still regulated by legal regulations. This Act enabled the provision of alternative housing to original tenants. It is provided by the municipality. Neither owners of restituted housing nor the tenants are quite satisfied with the Act. From the point of view of owners, the Act has come late and, moreover, it regulates the intervention of the state in the exercise of their ownership rights only partially. The Act enables to increase rents by 20% annually. However, this increase will not ensure market rent and the owners of restituted housing with tenants who have been recognized the entitlement to alternative housing have to "stand" the tenants until the provision of alternative housing. The tenants would welcome the possibility of buying municipal housing. They don´t like the fact

that only those who are in material distress, which must be proved, have the right to alternative housing. Comments on the Act No. 260/2011 Coll. have been formulated also by the citizen association Right to Housing whose objective is to protect the rights and interests of the residents of rental housing in the Slovak Republic. From the stance follows that this citizen association considers the entire philosophy of the Act bad because the Act enables the landlords to terminate existent rental agreements without adequate compensation. The respective provisions of the Act revoke the legal and legitimately acquired rights of tenants and in case of those who don´t meet the property criteria stipulated by the Act, the rental is terminated without any compensation. Besides this the alternative housing defined by the Act is actually social housing. The Act is said to deepen the discrimination against tenants in restituted housing by ignoring the fact that the tenants weren´t able to buy the tenanted housing. Nevertheless, other citizens, comparable to the tenants in restituted housing as for age and social status, had the possibility of buying the housing, strongly supported by the state. They further regard the criteria according to which the entitlement to alternative housing is assessed as discriminatory. The citizen association Right to Housing objects also to the procedure of filing applications, namely the need to file detailed inventory of property, information on property situation of relatives and information on personal finances. Apart from that the tenant may apply for alternative housing only if he or she is given notice by the owner of the housing. However, the owner needn´t be interested in giving notice to the tenant as the rental regulation ends on 1 January, 2016. Simultaneously, the citizen association Right to Housing points out the discrepancy in the deadlines, the rent is regulated till the end of 2015 and municipalities are obliged to provide alternative housing until the end of 2016. Representatives of tenants see other problems in the discrepancy between the Act No. 260/2011 Coll. and, for instance, the Act No. 253/1998 Coll. on the Reporting of Residence of the Slovak Republic Citizens and on the Register of the Slovak Republic Inhabitants as amended. The construction of new rental housing in the given period seems to be unreal as well.

Act No. 261/2011 Coll. on Provision of Subsidies for the Procurement Alternative Rental Housing enables the provision of subsidies for the respective alternative housing on condition that the terms regulated by this Act are met concurrently. The Act solves matter-of-factly and procedurally the procurement of alternative housing via purpose-oriented subsidies for this area as well as basic characteristics and standards of the housing. Subsidies can be granted to the applicants not only for the procurement of alternative rental housing, but also for the

procurement of corresponding technical facilities and the procurement of land for objects with rental housing.

Act on. 443/2010 Coll. on Subsidies for Housing Development and on Social Housing, which defines in Slovak, conditions the beneficiaries for whom the housing is intended as well as social housing itself.

Rental

Supply and demand in the field of housing are local factors. Predominantly the offer of flats on the new housing market and resale market reacts to changes in local demand, namely to the rate of household establishment, incomes of inhabitants, consumer preferences. Local housing policy is therefore a prerequisite for practical realization of state housing policy as well as for the involvement of private sector in the sphere of housing. The primary goal of such conceptions shall be the creation of conditions for the securing of enhanced availability and quality of housing for inhabitants in diverse locations. The conduction of local housing programmes should result in housing offer that is commensurate with the distribution of the income of local inhabitants.

Rental housing in Slovakia is often understood as housing for persons with the lowest income, for marginal groups of people which face various social and personal problems. At present, the construction of rental housing is ensured particularly by towns and municipalities, whose main source of financing comprise state subsidies and credits with low interest rate from SHDF. In spite of state subsidies and affordable housing credits from commercial banks, there is still a group of people with average or lower income for whom the procurement of own housing remains unattainable. Among these are also young educated people who haven´t yet established their background in professional life. It is mainly about small-space flats, the so-called starting flats, for young people which are currently still missing.

Besides privately-owned or state-owned housing, rental housing belongs to important forms of housing in all EU member states and its share ranges from 19% to 62%. In advanced countries there are 3 forms of ownership of rental housing, namely public, cooperative and private ownership. In Slovak Republic, however, the housing is almost exclusively owned by municipalities and constitutes just a tiny fraction of the entire housing stock – less than 3%.

Not only do the municipal rental flats comprise a small share in the total volume of housing stock in the Slovak Republic, they are also regulated by strict conditions of the state for their assignment.

It needs further to be stressed that the non-existence of economic tools in the Slovak Republic causes perpetual lack of interest of development companies in the construction of social housing and therefore these prefer the building of housing intended for ownership.

Social Housing

The support of housing in Slovakia is thus under way mainly on the level of the self-governments of towns and municipalities, whose normative task is to monitor the demand for this type of housing in a territory which comes under the competence of these bodies, while on the state level the target groups that the support should pertain to preferentially are described just in general features.

In Slovakia these groups are defined only perfunctorily and there is no final and legally binding document which would specify precisely who the most endangered people are.

The currently valid definition of social housing may be found in **the Act No. 443/2010 Coll. on Subsidies for Housing Development and on Social Housing**. For the first time social housing is defined here as such a housing which is procured by using public means, intended for adequate and humanely respectable housing of natural persons who aren´t able to procure housing by themselves. Such a kind of housing must meet the basic functions of housing, while it encompasses also the housing provided in terms of care under the Act on Social Service or the Trade Licensing Act. This Act speaks also of other related conditions (from among the most important points: setting of the maximum area of housing which can be used for social housing, terms of the rental, time limits of housing utilization, controversial topic of a key money). The need for such a definition was necessary for several reasons, on the one hand, on the basis of the already said liabilities on the part of EU, but also other reasons. Some of the primary reasons are the possibility of identifying the exact purpose this housing is meant to serve, who and under what conditions can be provided with assistance from public means, minimization of miscellaneous forms of non-transparency of the granting of funds or the need to improve the putting of concrete aid into practice.

According to the housing development programme the municipality can decide to provide 10% of completed housing to persons in charge of social, cultural, medical and economic needs of the municipality. The share for natural persons not meeting the income requirement may even achieve 40% in case that the municipality creates new jobs. Municipal rental flat can be automatically assigned to a person who doesn´t meet the requirements according to this programme (triple of subsistence minimum) only if some other person meeting the criteria for its assignment hasn´t shown interest in this housing.

Though this Act helped to make the legislative tools for the provision of social housing in Slovakia more transparent and efficient, the exact definition of social housing along with various tools for its provision is no magic bullet and there is still room to be found in which the very definition as well as larger legislative amendment may miss its aim. There are still up-to-date problem areas which are regularly linked in various contexts with social housing and which are wider reflected also in the international context. The objective of housing policies shouldn´t be just "to accommodate" or provide housing, but to help individuals, families or communities to create "home". As it doesn´t amount to a housing that is profit-oriented and supported from public budgets, it is necessary to maintain its support by means of various tools in order to prevent negative phenomena and meet the standards of living corresponding to the minimum set for social housing under valid legislation, or rather, so that it isn´t in conflict with international declarations.

Conclusions and Recommendations

As already mentioned, the main problem in the field of housing is the lack of affordable rental housing. The securing of housing affordability must be coped with predominantly in relation to young families with children and marginalized groups of population.

In the sphere of securing housing affordability in the next period it is necessary to uphold through housing policy tools the orientation and flexibility of assistance to the state as well as the self-government in the field of housing and the possibilities of choosing between housing procurement and housing rental. The measures must be aimed at creating conditions for the removal of the imbalance between individual pillars of the housing market as the precondition for the functioning of an efficient housing market.

So far the existent system of housing support hasn´t had sufficiently effective tools for solving the housing of all socially vulnerable groups of inhabitants, including older people unable to cover costs on larger flats or family houses.

One of the primary goals of the policy on the housing of marginalized groups is to contribute to the elimination of social exclusion of persons via housing procurement tools. From the aforementioned follows that the procurement of financial affordability and overall availability of housing in respect to marginalized groups of population, i.e. those who aren´t able to procure on the market adequate housing by themselves, remains the paramount task also in the next period. In order to approach these needs, it is prerequisite that the intensity and support of the construction of mainly affordable (public) rental flats is stepped up because in

spite of the increased number of applicants, still less municipal rental housing is completed. The share of social housing in the total volume of housing in Slovakia is around 4%.

As primary measures we propose:

construction of dwellings intended for ownership in partnership with future owners, the so-called cheap cores, construction material supply

provision of trainings to obtain skills during construction, building of dormitories in partnership with future tenants

building of financially affordable rental housing.

Problems of Social Rental Housing

It is a problem of a stigma which may constitute an integral part of discrimination, segregation and exclusion. This stigma isn´t the consequence of the conception of social rental housing itself, but reflects social values as well as the deficiency in strategic planning on local level. While minimal in the event of young families (many municipalities plan to build social rental housing for the support of young families), the stigma may linger on in cases when the municipal rental housing is considered a tool for helping the poor.

Other problems are also the ethnical segregation upon its construction (in connection with growing migration as well), adjustment of housing policies, possible connection of social housing with crime rate or problem of relationship of the people living in such a type of housing to the given location.

In case of ethnical segregation the social housing is situated in such a location in which the principle of social mix is breached. Its selection may be at odds with acceptable physical availability and in quest of the principle the antidiscrimination legislation, which is very difficult to enforce in reality, may be violated.

The segregation risk is high in housing policy. That´s the case of the support for supply as well as demand. In the event of supply support, the construction of whole blocks of flats, there is the threat of creating socially excluded ghettos, new social inequality. In the event of demand support, the result can be the social exclusion of people living in lower-quality flats.

Support of Supply ("Support per Brick")

It stands for the construction of new social (municipal) housing rented at a price below the market price (interest rate subsidies, qualified credits, non-reimbursable grants to social

housing operators), it often covers just a part of costs, it is deduced either from income or cost rental.

The positives of this offer are the sometimes better flexibility of a municipality compared to market flexibility, the speed of procuring the land by the municipality and the securing of low costs, usefulness in the conditions of economic crisis and low purchasing power of the population, pressure on the reduction of rents in private sector, "crowding effect" of superseding private investors who aren´t interested in providing housing for excluded groups.

As a negative must be deemed the increase of market rents on the part of landlords, patronage and corruption in case of mass support, misuse of assigned social housing by municipality representatives, creation of socially excluded ghettos in case of building whole blocks of flats, decrease in social mobility in case of "imprisonment" in the assigned social housing, threat of artificial deficiency of such a housing (keeping of the housing also when the household exceeds the income limit), limited selection of housing, origin of black market in the event of big differences between demand and supply.

Support of Demand ("Support per Capita")

It is a form of housing benefit - support in the form of increasing income and the purchasing power of customers - provided from state budget or co-financed by the municipality, income-tested benefit, steps up the affordability of housing.

As a positive of this support may be deemed the possibility of public savings, unlimited selection of housing, its efficiency (dependence on the amount of the need), household mobility (it may be applied for any time), prevention of "over-consumption", i.e. the living of a small household in a too spacious flat.

The negative is that the capitalization of support may lead to increased rents, inflation pressures, stigmatization, personal deprivation upon the application for benefit, bureaucracy in terms of application handling.

The threat of benefit misuse is present as well. If it is paid directly, beneficiaries may be trapped into poverty, it has an anti-stimulating effect. Exclusive support of demand may lead to social exclusion in lower-quality housing. Administrative costs linked with benefit payment aren´t negligible either.

Conclusion

Social housing can play an important role in dealing with social problems – it is a tool for improving the quality of living and the standard of living, and the reaction to the need for better affordability of housing for those who cannot afford to procure housing on the housing market in view of their income. It compensates for unwanted impacts of free market and equalizes thus its possible failures. The support of such a housing is set forth in international declarations and documents, which speak of the support of all housing policies for disadvantaged groups, adequate and affordable housing as well as of overall improvement of attitude to housing. When providing it, it is therefore necessary to adhere to the principle of social mix, prevent ethnical segregation and deprivation upon its procurement, comply with the Antidiscrimination Act as regards the access to housing and uphold housing policies that reduce the risks of social exclusion reproduction as much as possible.

Recommendations

For the improvement of bad situation in the sphere of social housing in the Slovak Republic the Centre recommends:

- including and defining the concept "right to housing" in the law of the Slovak Republic as well as in the constitution of the Slovak Republic, where this right will be defined as one of the fundamental human rights and freedoms.
- that self-governments draw up a clear document the part of which will be, among other things, the definition of basic terminology that will be subsequently applied in other hierarchically lower documents (which needn´t necessarily fit in the context). The subject matter is mainly the definition of what the given self-government understands as the municipal rental housing which it offers in terms of housing policy and whether this type of provided housing is identical with social housing in terms of the social policy of the respective self-government. Such a document should give basic information on factors (for example, background of the population, housing stock which is at self-government´s disposal, prospective partners from the state, private and third sector in financing and providing housing, tools of subsidizing social housing) which the self-government takes advantage of in its decision making in the field of social housing, as well as on factors that the given self-government would like to take into account within its decision making, but it lacks exact

information for now (for instance, the amount of subsidy per citizen in social housing). Last but not least, such a document must encompass also practical information on target groups, criteria for applicants, ways of provision and decision etc. Such a document must be continually updated so that it reflects the factual state of situation and serves as an information basis for municipal councillors who work in the given sphere and, last but not least, for the citizens themselves.

- managing the environment of social housing, which means in practice the dealing with technical activities aimed at maintaining housing stocks as well as social activities, like management of neighbourhoods, which is crucial from the point of view of preventing segregations and origin of ghettos.

- another important activity to be defined in extraordinary detail is the setting of two types of criteria. On the one hand, criteria of legitimacy of the applicant for housing, on the other hand criteria for inclusion in a waiting list. The main difference between these criteria (and at the same time the need to define both ones) consists in the fact that whereas the first package of criteria is oriented at the basic conditions to be met so that all legitimate applicants are selected, the other group of criteria serves for a more in-depth analysis of the state of applicants according to which it is conceivable to define the social housing needs concretely.

We recommend including in the first group also the so called criterion of membership of target group which ensures that none of the prospective applicants is omitted, for example, due to low income in spite of his or her needs or situation being deemed as socially unsatisfactory. In terms of the other groups of criteria on the basis of which the concrete waiting list is drawn up we recommend including the so-called point system, where every situation that the applicant may find himself or herself in is awarded certain number of points according to importance and the sum of points moves him or her up or down in the waiting list. Last but not least, it is inevitable to define these rules in the binding legislative document and provide the citizens with clear and comprehensive information, for instance, through reader-friendly information handbooks.

- the last stage in which social housing and the target group are connected is the assignment, or rather, decision on assignment. In this context it is momentous to adjust the system of assignment correctly so that possible corruption practices are eliminated as much as possible and emphasis is laid on justice and transparency. Today, there are shortcomings in this area in Slovakia and plentiful opinion polls attest to that.

Main role within the decision making is played mostly by one elected representative, mostly the mayor. We perceive that this requires a change so that the decision making is collective,

ideally in attendance of the representatives of target groups. In situations when instant solutions and decisions are inevitable, preparation in the form of earmarking the housing units intended concretely and exclusively for crisis situations is inevitable. In other standard situations, the using of innovative ways of assignment must be carried on, e.g. by lot, auction and so on.

- provision of appendant social services and monitoring as a continuous activity. It is very important to realize that by assigning a flat the problem of the target groups of social housing is not solved definitely, although in certain cases this is true. Notwithstanding that, there are much more cases when apart from the roof over head, the target groups of social housing need also other types of services, for instance, advice on the possibilities of finding a job, instruction on the methods of money management, in some cases advice on basic hygienic habits and care for assigned housing etc. We suggest establishing and providing these services in all cases when social housing is secured. Simultaneously, regular monitoring of the situation and state of social housing is thus ensured.

Illegal Settlements

The right to housing encompasses further mutually related human rights, like right to adequate housing, safe and healthy environment, right of the child to an environment suitable for physical and mental development, access to services, protection against forced eviction, destruction or demolition of dwelling, right to access to housing without discrimination on the basis of membership of an ethnic group. According to the international regulation of human rights it is possible to assess the adequacy of housing, for example, from the perspective of the certainty of the legal form of housing (often absent in segregated conditions), availability of services, materials, facilities and infrastructure, habitability of the housing (dwellings shouldn´t be built in dangerous areas posing threat to health and hygiene), accessibility, location (protection against health hazards and structural risks) etc. In this connection it is extremely important to accept the principle of human dignity and non-discrimination. A significant role of towns and municipalities is also the securing of social housing regulation. Without the aforementioned, room for discrimination, corruption and patronage is created to the detriment of marginalized groups. Towns and municipalities are obliged to respect the right to equal treatment also in the context of the distribution of finances intended for housing.

The groups suffering multiple exclusions are the marginalized Roma communities. In the framework of socio-geographic survey 1,575 settlements have been identified out of which 149 ones (120 to 150 thousand inhabitants) are regarded as segregated settlements, i.e. settlements located on the margin of a town or municipality without access to water main and where the share of illegal dwellings is higher than 20%.

Resettlement of the Roma in Plavecký Štvrtok

The Roma settlement in Plavecký Štvrtok was founded several decades ago. Construction of houses and huts isn´t controlled, houses are built without building permits on uncleared land. There are 2,320 inhabitants living in the municipality out of which 534 inhabitants of the Roma settlement are registered for permanent residence, and there are about 100 houses. Legalization of buildings isn´t conceivable owing to uncleared relations to land and also because the buildings are situated in security zones of gas facilities.

According to the mayor of the village the issue is predominantly the breach of the Act No. 50/1976 Coll. as amended (Construction Act); in the past, controversial real estate were built illegally in the so-called critical dangerous one of gas pipeline, although just a few real estate are built that way.

The Centre monitored the situation in Plavecký Štvrtok minutely. It at the same time asked the mayor of the village to provide information on solution to the situation arisen. The mayor assured the Centre that he would cope with the situation arisen fully in accordance with valid legal regulations, either in terms of legal proceedings or in terms of court or criminal proceedings, complying at the same time with international legal standards and respecting completely the right to protection of life and health of citizens as well as legal regulations related to nature conservation. The procurement of housing for persons who have right to compensations will be fully in line with valid legal regulations according to the mayor.

Nonetheless, the Centre points out that in the Plan of Economic and Social Development of the Municipality of Plavecký Štvrtok for the period 2009-2015, chapter Civil Infrastructure, there is no mention of the construction of flats with regard to the resettlement of the inhabitants of the Roma settlement from the dangerous zone of universal risk. This Plan contains the intention to resettle the inhabitants of the Roma settlement already in 2009 using estimated volume of funds equivalent to euro 2 million. It doesn´t follow clearly from the intention what the funds are to be spent for, However, it can be proved that the resettlement

shall be carried out beyond the municipality of Plavecký Štvrtok as "there is no vacant location in the municipality".

The Centre points out and finds it astonishing that in this plan the municipality intends to build rental flats and houses for young families, which causes legitimate worries among local Roma inhabitants about non-complex and discriminatory solution on the part of the municipality.

On one level, the municipality affirms that it hasn´t a free location for the resettlement of the Roma settlement, i.e. for the construction of flats for resettled Roma, on another level it plans to build flats or even houses for young families (probably non-Roma ones) using the means of SHDF.

That´s why the Centre assumes that there could be a violation of the principle of equal treatment under Article 2, par. 1 and 2 of the Act No.365/2004 Coll. on the part of the municipality, which hadn´t taken into consideration moral standards for the purpose of enlarging the protection against discrimination and also as regards the adoption of measures for protection against discrimination.

Therefore the Centre inclines to the proposal of the Office of the Plenipotentiary of the Slovak Republic Government for Roma Communities on the solution to problems in the Roma settlement Plavecký Štvrtok:

- the municipality Plavecký Štvrtok has to struggle to obtain - buy building sites and prepare project documentation for the construction of lower-standard municipal rental flats intended for the housing of citizens in material distress (Programme of the Ministry of Construction and Regional Development),
- to remove the current Roma settlement afterwards,
- 18 houses whose condition is critical and which are situated in the gas pipeline protection zone must be dealt with urgently,
- the municipality has to launch the application of the project of field social work,
- to carry out the construction of a community centre which is in the pipeline of economic and social development of the municipality,
- to apply the programme of health education community workers,
- to apply the programme of teacher assistant at the elementary school,
- to cooperate with the District Directorate of Police Force Malacky in conducting the programme of police specialists in the work with Roma community,
- to apply the institution of a special beneficiary for the allowance of people in material distress where possible.

Forced Eviction

Despite overall reduction of illegal evictions on the part of towns and municipalities, cases of eviction were registered during the assessment period. The alleged interest of the town or municipality in repairing or reconstructing the given object has remained a reason for eviction. Certain hints, however, point out their broader intention, namely profiting from the matter (object sale) and, simultaneously, "getting rid of" nonpayers (also to the detriment of persons who are able to make the payments). The practice refers also to the abuse of insufficient legal knowledge of affected persons, usually coming from socially disadvantaged environment. The proof is, for example, that after the assumption of legal representation in the matter by an institution renowned in the field of human rights protection, the scope and implication of the solution and conclusion changed significantly – in a positive way for the represented citizens.

A crucial precedent, which occurred in 2009 in the area of the right to housing, is the decision of the District Court Prešov. The Court decided that the town of Sabinov as well as the Ministry of Construction and Regional Development of the Slovak Republic had breached the principle of equal treatment. Also the Long-Term Conception of Housing for Marginalized Groups of Population and the model of its financing speaks of tools for ensuring adequate standard housing for socially excluded Roma communities. This at the same time prohibits segregation, which may manifest itself, for instance, in the form of construction deepening spatial and social segregation.

Construction of Walls in the Proximity of the Dwellings of Members of Roma Nationality

New tendencies in the form of construction of walls near the dwellings of the citizens of Roma nationality emerged in the period 2009-2010 and lingered on in 2011. The case most promoted in the media was the construction of the wall in the municipality Ostrovany. An event which drew general attention was also the building in the town of Michalovce. Subsequently, the message appeared that there were more such buildings in Slovakia, they only hadn´t been spoken of publicly. Every third month, on average, one anti-Roma wall, of which the Centre learned, was built in Slovakia. The average four-year increase in the building of walls separating groups of population over the monitored period wasn´t a sporadic and sad event but a striking warning trend in Slovakia. Barriers, walls and obstacles against

the Roma were built instead of removing barriers, stairs, thresholds and demolishing obstacles impairing the quality of life of persons with disability.

The long-term conception of housing for marginalized groups of population in the Slovak Republic prohibits spatial segregation. Localization of construction mustn´t deepen spatial and social segregation but it has to be the means of integration of the inhabitants of the affected Roma community. The issue is mainly the distance from the municipality and access to public services used jointly by Roma as well as non-Roma community in the municipality. A small construction (pursuant to the Construction Act) representing, for example, a physical barrier - a wall, may be regarded as such a construction. The governmental conception of housing of marginalized group of population includes the concept of segregation pursuant to spatial separation of Roma and non-Roma settlement through physical distance or physical barrier.

Segregation construed in relation to housing, called also residential or seat segregation, may be generally defined as unproportional deployment of certain groups of population in residential zones of towns and municipalities. In other words, it is spatial depiction of social inequalities because the rate of segregation reflects the rate of social inequality in the society.

Fundamental argument for the construction of walls is that the walls are supposed to protect the property of non-Roma inhabitants living in the neighbourhood of Roma settlement, ensure the protection of public policy etc. and not to separate (segregate) the Roma from non-Roma population, minority one in this case. Besides the declared function of preventing the trespassing of persons on someone else´s land, however, the walls may become permanent physical obstacle to everyday verbal and non-verbal communication among people.

Generally, if the situation in municipality reaches the condition when the protection of the property and life of citizens or the protection of public policy requires extraordinary and resolute measures, then it is necessary to weigh up which measures will be most effective. Respective conception materials of the Government of the Slovak Republic oriented at groups of inhabitants in the Slovak Republic with disadvantaged status (National Action Plan of the Slovak Republic on the Decade of Integration of Roma Population 2005 – 2015; Long-Term Conception of Housing for Marginalized Groups of Inhabitants) say that the placement of buildings cannot deepen spatial and social segregation, but it has to be the means of integration of the inhabitants of the affected Roma community. Measurable value is the distance of the buildings positioned in municipalities as well as the access of both units of population to public services. In case that the need is proved, the municipality is entitled to

use resolute, effective and interim measures in close cooperation with responsible national institutions.

Involuntary segregation is linked with the risk of creation of socially vulnerable racial and ethnical minorities not integrated into the labour market. It is the expression of social differences and social inequality of the society. Within majority society animosity to the segregated group of inhabitants may grow and this may result in their stigmatization.

Unfortunately, no system solution is perceptible in practice as regards the inclusion of Roma community in majority society.

In 2010, in the town of Michalovce a second wall following up on the construction built in 2009 was built. The newly built wall prevented the inhabitants of the settlement Angi mlyn from cutting short their way to the town (across the lawn between blocks of flats). The wall was meant to be built at the expenses of the community of owners on Leningradská ulica according to information released in the media.

According to the town´s statement the wall was built at the expenses of flat owners. The town was the owner of the land. Construction of the wall was said to have prevented the pollution in the surroundings of the block of flats. The town at the same time added that it conducted field social work and it had informed of the endorsement of the Local Strategy of Complex Approach to Marginalized Groups of Inhabitants.

In 2010, information on the planned construction of fence in Trebišov was released in the media. The statement of the town of Trebišov about the construction was in the meaning that the owners and tenants of the block of flats had asked for the construction of the fence on town´s land. The construction was meant to be composed of the fence, made partly of mesh and partly of bricks, behind the block of flats in the area of greenery and garages. The wall and the fence were supposed to be financed at applicants´ expenses. According to the town´s statement the reason for construction was the devastation and pollution of greenery. By that time the area had been used by inadaptable youth for activities contrary to the public policy of the town. The town has also drawn up and endorsed the Local Strategy of Complex Approach of the Town the aim of which is complex solution to Roma settlement in the form of combination and concentration of diverse areas individual partial projects. Several integration programmes have been conducted as well.

Also the inhabitants on Čičarovská ulica in Veľké Kapušany want to cope with the coexistence with Roma community radically according to media news. The inhabitants were said to have signed a petition with an application for separation of their land from the Roma

settlement by a wall addressed to the town. In its statement (dated 4 April 2011) the town dissociated itself completely from the existence or plan of wall construction.

The wall is the factual symbol of segregation of people and has a negative impact on the forming of attitudes of the public. The Centre was interested in the stance of the municipality of Ostrovany on the matter in question after one year, what it was like, which measures were taken on the level of municipality during 2010 for the stabilization or improvement of the situation, also with regard to municipality´s ambitions declared in the letter of 25 November, 2009. From the answer of the municipality of Ostrovany dated 17 March, 2011, follows that the municipal council insists on its decision that by building the concrete fence it hasn´t violated legal norms of the Slovak Republic. Conclusions and recommendations set forth in the expert opinion of the Centre were taken into account by the municipal council.

The town of Prešov too has its own, approximately one year long experience of wall construction. In its statement (dated 17 March, 2011) the town reminded that the barrier met just the function of a traffic barrier in a blind alley. It didn´t function as an obstacle to passage from the street to Stará teheľňa to the streets Veselá and Muránska. Passage for pedestrians was accessible through the gate and was used daily by those who wanted to cut short their way from one part of the town to some other part. It at the same time pointed out the realization of field social work, the conduction of the institution of special beneficiary, the construction of a community centre, office of social consultancy etc.

Unfortunately, it is not possible to assess on the basis of the statement of the municipality of Ostrovany and the town of Prešov whether the construction of the wall and barriers (not even after one year of their existence) has met the expectations of towns, inhabitants and the purpose of their construction and if they have removed or eliminated thus the declared problem. Thus from the aforementioned is not conceivable to assess objectively the purposefulness and objective of the construction.

Analysis of the state of facts and synthesis of obtained information on the part of the Centre follows from numerous respective questions and answers from individual towns and municipalities. Current practice refers to the fact that the constructions often affect the Roma population directly or indirectly.

That´s why the Centre insists on its stance that this is a phenomenon and the goal is to secure the separation of ethnical settlement of the Roma from the dwellings of the non-Roma by means of a construction barrier. This procedure causes factually their social separation as well.

Not even after one year does the entire situation contribute to the improvement of relations between non-Roma and Roma inhabitants and it doesn´t lay foundations for the integration of the Roma into the majority society either. On the contrary, it diminishes social cohesion among the people.

The centre expresses deep concern about the decision of self-governments on the construction of public fences in Slovak towns and municipalities. The task of the walls is to separate the inhabitants from allegedly inadaptable citizens. Controversial is the isolation function of walls which is meant to be a successful recipe for solving abundant complaints about vandalism, offences and other anti-social activity.

The centre, referring to the examples of existent negative practice in Ostrovany, Michalovce, Trebišov, Sečovce, Lomnička and Prešov, expresses severe worries that self-government bodies have been establishing systematically and a long time an unacceptable social trend in the field of human rights in Slovakia that reminds of a return to the past. The Centre evaluates critically that it is the area of human rights where the self-government chooses outdated methods and resorts to cheap one-off measures on a more primitive level of social development instead of efficient application of modern legal means. Building of walls is the expression of authoritative physical separation of the people living in one social room and amounts to a factual confirmation of inequality of citizens in everyday life. Concurrently, it is a manifestation of lacking prevention of discrimination. The walls substitute the helplessness of towns and municipalities, which failed and resigned themselves to their active mission. Where the towns and municipalities don´t adapt system measures there is the absence of active communication about burning issues of coexistence and legal prevention means aren´t used.

Such acts of segregation that deepen social intolerance diminish social cohesion among people and have a negative impact on the formation of attitudes within the society. That´s why the Centre warns of social harm of the concrete measures taken for the construction of isolating walls as well as of the trend in the development of attitudes of self-government. It at the same time expresses the wish calling for the re-assessment of measures and reversal of the nascent negative social phenomenon.

In our society the need for public discussion on existent social differences, their tolerability, separation and incipient segregation of certain groups of inhabitants, level of tolerance towards them and the conditions of acceptance of such inhabitants lingers on.

Recommendations

For a purposeful and real solution to this serious problem the Centre recommends:
The bodies of regional self-government to:
- Build long-term strategy of coexistence in the municipality in terms of the process of Roma inclusion concurrently with mutual active non-confrontational communication about solutions to acute problems of coexistence.
- If the persistent criminality is the problem and municipal police, e.g. due to lack of staff they aren´t capable of removing the problem, the municipality should find a system solution in cooperation with the competent institution, i.e. local unit of the Police Force of the Slovak Republic.
- Place public constructions in the municipality so that there is no spatial and social exclusion of Roma community inhabitants. This recommendation pertains also to possible completion of the wall in Ostrovany if the closure of the passage used by Roma inhabitants prevented the entry into the municipality on the side of the Roma settlement.
- To use more intensively the established supportive tools, e.g. the institution of special beneficiary, in cooperation with the labour office in relation to Roma population.

The Plenipotentiary of the Slovak Republic Government for Roma Communities to:
- Monitor prepared zoning plans of municipalities whether these meet the criteria reflecting the real state of ethnic composition of inhabitants and if they are based on the needs of all the inhabitants of the municipalities and if they can ensure the creation of equal living conditions.
- Monitor via their regional offices the construction o buildings that should serve all inhabitants in towns and municipalities (e.g. services, health care, education, traffic connection) with the aim of identifying possible segregation character of their placement in time

Public authorities to:
Define in all relevant provisions of the construction law of the Slovak Republic the explicit prohibition of spatial and social segregation with respect to the distance of and access to public services and proportionality of the deployment of population groups in residential parts of municipalities or towns through construction. The goal of the recommendation is to uplift the protection against any segregation from the level of conception materials to the level of

the Construction Act and related regulations which regulate the construction industry legally and determine the approval and control mechanisms along with statutory sanctions.

National Roma Integration Strategy up to 2020 and the Area of Housing

On 4 April, 2011, the European Commission (hereinafter referred to as "the EC") adopted the EU Framework for National Roma Integration Strategies up to 2020 (hereinafter referred to as "the Framework"). The member states (including the Slovak Republic) are supposed to secure the removal of the discrimination of the Roma and their exclusion, as well as to ensure the equality of treatment approach compared to other EU citizens. Apart from that the Roma are supposed to be secured the same access to fundamental rights enshrined in the Charter of Fundamental Rights of EU. According to EU objectives Roma integration should be under way in four main areas of education, employment, health care and housing.

On 11 January, 2012, the Slovak Republic Government passed the Roma Integration Strategy of the Slovak Republic up to 2020 (hereinafter referred to as "the Strategy"). Steps of the Government followed from the Communication of the EC to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions designated as the EU Framework.

It is a conception material which defines the cornerstones, principles of approach, implementation and long-term objectives. It at the same time implies the way of implementation, monitoring and evaluation.

The goal of the strategy is to form basic cornerstones for action plans, set the tasks for preparation of measures, policies and legal standards on all levels of state administration in the Slovak Republic in **the period 2012 – 2020.** One of the primary intentions of the strategy is to stop the segregation of Roma communities.

The area of housing is one of the paramount areas of the Strategy. Global objective is focused on the need to uphold the removal of segregation within housing. In view of the fact that the current antidiscrimination legislation doesn´t define the concept segregation (although it is considered a form of broad-spectrum disadvantagedness of the Roma), it is possible to understand the aforementioned, as a partial definition of the principle of non-discrimination. In the field of housing the global aim is defined as follows: "To improve access to housing with particular emphasis on social housing and the need to support the removal of segregation in housing, and full utilization of the funds that have been made available recently in the

context of the European Regional development Fund. To reduce the difference between the majority population and the Roma in the proportion of access to housing and infrastructure (like water, electricity and gas) and cut the share of huts and illegal dwellings by 25%."
Repeatedly, it is worth considering whether to include the principle of non-discrimination in the sentence or define the universal principle of non-discrimination taking into account a specific area. Also in this field the question of modifying legislative conditions in the given area arises. In this context the room for the involvement of competent subjects in the field of the creation and enforcement of the principle of non-discrimination in Slovak legislation is created.

Recommendations

- Conducting policies and projects aimed at prevention of segregation of Roma communities in the field of housing.
- Involving Roma communities in partnership in projects of social housing construction, also in the restoration and maintenance of suitable flats with emphasis on personal responsibility for one´s own actions.
- Preventing the eviction of the representatives of marginalized groups just for intolerance or prejudice against them.
- Consulting civic society organizations working in the area of fight against race discrimination on the processing of strategic plans with focus on change in attitudes.

Conclusion

Because own housing is unaffordable for many groups, the primary objective of the state in the field of housing is the support of housing stability which would be trustworthy and which would function healthily.
The question of social housing may play a crucial role in dealing with social problems – it is a tool how to improve the quality of life and the standard of living and it amounts to a response to the need for better affordability of housing for those who cannot afford to procure housing on the housing market in view of their income. It compensates for undesired implications of free market and equalizes thus its possible failures. The support of such a housing is set forth in international declarations and documents, which speak of the support

of all housing policies for disadvantaged groups, adequate and affordable housing as well as of overall improvement of access to housing. Hence, when providing housing, it is necessary to abide by the principle of social mix, prevent possible ethnic segregation and deprivation upon its procurement, comply with the Antidiscrimination Act upon approach to housing and support such housing policies that reduce the risk of social exclusion reproduction as much as possible. It is also necessary to avoid thus the situations when people become homeless through no fault of their own. Political measures should follow from the principle of respect for human rights, among which is also the right to affordable and adequate housing.

Article 13

Legal Framework and Definition of the Right to Education

Right to education in accordance with the International Covenant on Economic, Social and Cultural Rights is guaranteed by the Slovak Republic directly in the Constitution of the Slovak Republic in Article 42 under which everyone has the right to education and school attendance is compulsory. Citizens have the right to free education at elementary schools and secondary schools, and, in dependence on citizen´s abilities and possibilities of the society, also at universities. The Constitution recognizes the right to establish also schools different from state ones. However, their establishment is conditional on the obligation to carry out the education solely under terms and conditions stipulated by the law. In such schools the provision of education may be subject to tuition fees. In terms of the study the citizens are recognized the right to state assistance, concrete terms are regulated by a special act.[21]

It is at the same time necessary to interpret the right of **everyone** to education in the context of the provision of Article 12, par. 2 of the Constitution of the Slovak Republic under which "fundamental rights and freedoms are guaranteed in the territory of the Slovak Republic to everyone irrespective of sex, race, colour of skin, language, belief and religion, political or another opinion, national or social origin, membership of a nationality or ethnic group, property, gender or **any other status. Nobody can be damaged, favoured or disadvantaged for these reasons**".

As regards the constitutional definition of the right of everyone to education, under Article 34, par. 2 letter a) of the Constitution of the Slovak Republic the citizens belonging to national or ethnic minorities are guaranteed the right to education in their language under conditions stipulated by law. Apart from the International Covenant on Economic, Social and Cultural Rights, the Slovak Republic is also bound by several international legal standards as to the exercise of this right.[22]

[21] Constitution of the Slovak Republic Article 42, par. 2

[22] International Covenant on Economic, Social and Cultural Rights and Article 2 of Additional Protocol to the Covenant for the Protection of Human Rights and Fundamental Freedoms (the Council of Europe),
International Convention on the Elimination of All Forms of Racial Discrimination – Article 5 letter e) Clause IV. (UN),
Convention on the Elimination of All Forms of Discrimination against Women – Article 10 (UN),
Convention on the Rights of the Child – Article 28 and 29 (UN),
Framework Convention for the Protection of National Minorities – Article 12, 13 and 14 (Council of Europe),
Charter of Fundamental Rights of the European Union – Article 14 (EU),
Convention on the Rights of Persons with Disabilities – Article 24 and Article 9 (UN).

Details of the exercise and organization of the right to education are regulated by several legal regulations on the national level[23].

Individual provisions of acts are further elaborated and specified predominantly in the decrees of the Ministry of Education, Science and Development. Key decrees are mainly the implementing rules to the Act No. 245/2008 Coll. on Upbringing and Education (the School Act)[24]

In the description of national legislation regulating the exercise of the right to education the Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination and on Amendment to Certain Acts (the Antidiscrimination Act) must be set forth as well. Education is one of five protected areas in which the Antidiscrimination Act

- ⇨ **in connection with the rights of persons laid down by special acts in the fields of access to and provision of education prohibits discrimination against persons** due to sex, religion or belief, race, membership of a nationality or ethnic group, disablement, age, sexual orientation, marital and family status, colour of skin, language, political or another opinion, national or social origin, property, gender or another status (Article 5). **In connection with the rights of persons laid down by special acts obliges everyone to respect the principle of equal treatment** in education, while as for the assessment whether or not discrimination

[23] Among the most important acts are, for instance,:
- Act No. 245/2008 Coll. on Upbringing and Education (the School Act) and on Amendment to Certain Acts as amended,
- Act No. 131/2002 Coll. on Higher Education and on Amendment to Certain Acts as amended,
- Act No. 596/2003 Coll. on State Administration in School System and School Self-Government and on Amendment to Certain Acts as amended,
- Act No. 597/2003 Coll. on the Financing of Elementary Schools, Secondary Schools and School Facilities as amended,
- Act No. 568/2009 Coll. on Further Education and on Amendment to Certain Acts as amended,
- Act No. 317/2009 Coll. on Pedagogical Employees and Specialist Employees and on Amendment to Certain Acts as amended,
- Act No. 184/2009 Coll. on Professional Education and Training and on Amendment to Certain Acts as amended.

[24] Mainly the decrees number:
- 282/2009 Coll. on Secondary Schools
- 236/2009 Coll. on School Dormitory
- 231/2009 Coll. on Particulars of School Year Organization on Elementary Schools, Secondary Schools, Elementary Schools of Art, Practical Schools, Vocational Schools and Language Schools
- 649/2008 Coll. on the Purpose of the Use of Benefit for Students from Socially Disadvantaged Environment
- 323/2008 Coll. on Special Educational Facilities
- 322/2008 Coll. on Special Schools
- 320/2008 Coll. on Elementary School
- 307/2008 Coll. on Upbringing and Education of Students with Intellectual Giftedness
- 306/2008 Coll. on Kindergarten.

occurs, it shall not be taken into account if the reasons leading to discrimination have been based on reality or false assumption. (Article 3)

The concept of **respect for the principle of equal treatment** must be perceived as superordinated to the concept of discrimination ban as besides the ban itself, it consists also in the adoption of measures for protection against discrimination.

System of Schools in the Slovak Republic

Fundamental condition for the establishment and operation of a school or school facility in the Slovak Republic is its incorporation into the network of schools and school facilities. As follows from Article 27 of the Act No. 245/2008 Coll. on Upbringing and Education (the School Act), the system of schools is composed of schools incorporated into the network of schools and school facilities according to special regulation[25] which ensure upbringing and education under this Act through training programmes of education departments providing levels of education following up on each other.

The system of schools is comprised of these types of schools: a) kindergarten, b) elementary school, c) grammar school, d) vocational school, e) conservatory, f) schools for children and students with special educational needs, g) elementary school of art, h) language school. A school, school facility, centre of practical education or practical schooling establishment may be established by the municipality, self-government region, regional education authority, church recognized by the state or religious society, another legal entity or natural person (in this case a private school or school facility)[26]. The establishment and dissolution of certain departmental schools comes under the competence of ministries (e.g. the Ministry of Interior of the Slovak Republic[27], the Ministry of Defence of the Slovak Republic, and the Ministry of Health of the Slovak Republic etc.).

In general, we may say that the state school system is free of charge. Education at church and private schools may be subject to tuition fees, while the education achieved at these schools is equal to the education achieved at other schools.

[25] For example, Article 19 of the Act No. 596/2003 Coll. on State Administration in School System and School Self-Government and on Amendment to Certain Acts as amended, Article 19 of the Act No. 314/2001 Coll. on Fire Protection as amended, Article 142, par. 3 of the Act No. 73/1998 Coll. on the Civil Service of the Members of Police Corps, the Slovak Intelligence Service, the Corps of Prison and Court Guards of the Slovak Republic and the Railway Police as amended.

[26] Article 19, par. 2 of the Act No. 596/2003 Coll. on State Administration in School System and School Self-Government and on Amendment to Certain Acts as amended

[27] Article 19, of the Act No. 314/2001 Coll. on Fire Protection as amended

As follows from Table 3, in the school year 2010/2011 there were 6,681 active schools in total incorporated into the network of schools and school facilities in the territory of the Slovak Republic, out of which state schools represented 90.2%, church schools represented 5.8% and private schools stood for 4%. After deducting the students of elementary schools of art and language schools (who overlap with registered students of other types of schools), we get the total number of 1,036,182 pupils and students in the school year 2010/2011 (out of which 515,679 are girls, which represents a share of 49.8%).

Table 3 – System of Schools (full-time form) including the Overview of the Number of Schools and Students in the School Year 2010/2011. (source: IIPE[28])

Type of facility		State		Private		Church		Total		
		schools	children, pupils, students total	schools	children, pupils, students total	schools	children, pupils, students total	schools	children, pupils, students total	girls
Kindergartens		2,754	134,335	67	2,549	48	2,355	**2,869**	**139,239**	67,216
Elementary schools		2,063	413,718	39	3,782	114	22,175	**2,216**	**439,675**	214,492
Elementary schools of art		193	100,984	86	29,650	11	4,097	**290**	**134,731**	92,224
Language schools		25	19,372	17	4,487	1	147	**43**	**24,006**	X
Grammar schools		156	71,182	39	3,961	55	14,193	**250**	**89,336**	52,221
Conservatories		5	1453	8	656	1	203	**14**	**2,312**	1,398
Vocational schools		379	160,413	88	15,482	19	3,895	**486**	**179,790**	81,669
Secondary schools of other ministries		3	1554	0	0	0	0	**3**	**1,554**	183
Special schools in total		372	34,689	28	732	17	585	**417**	**36,006**	15,139
Out of which	**Kindergartens**	38	868	9	94	3	31	**50**	**993**	375
	Elementary schools and special elementary schools	219	27,851	16	610	9	487	**244**	**28,948**	12,149
	Grammar schools	1	392	0	0	0	0	**1**	**392**	148
	Vocational schools	14	921	0	0	1	30	**15**	**951**	455
	Professional schools	46	3,847	0	0	0	0	**46**	**3,847**	1,616
	Practical schools	54	810	3	28	4	37	**61**	**875**	396
Besides that schools at medical facilities.		52	1,942	9	341	0	0	**61**	**2,283**	1,104
Universities level I and II		20	128,892	9	9,156	0	0	**29**	**138,048**	78,092
Universities level III (PhD.)		x	6,151	x	85	x	0	**x**	**6,236**	3,153
Universities of other ministries level I and II		3	1,668	0	0	0	0	**3**	**1,668**	992
Universities of other ministries level III		x	35	x	0	x	0	**x**	**35**	20
Total		6,025	1,076,388	390	70,881	266	47,650	**6,681**	**1,194,919**	**607,903**

[28] Quoted on 28 February 2012 <http://www.uips.sk/sub/uips.sk/images/JC/ROCENKA/SUH/suh_1.xls>

Education Reform since 1 September 2008

The key and decisive legal regulation for the definition of education in the Slovak Republic is the Act No. 245/2008 Coll. on Upbringing and Education (the School Act) effective from 1 September, 2008, which introduced several changes and pursuit of the modernization of educational process, however, with respect to the traditional organization of the educational system. The Act regulates and stipulates the principles, objectives, conditions, scope, forms and organization of upbringing and education at schools and school facilities, levels of education, acceptation for upbringing and education, termination of upbringing and education, provision of professional educational and consultancy care as well as therapeutic and training care. Furthermore, it lays down the length and fulfilment of compulsory education, training programmes on state level and educational programmes on school level, the system of schools and school facilities as well as the rights and obligations of schools and school facilities, children, students or legal representatives etc.[29]

Upbringing and education under Article 3 of the School Act are based on the principles of:

- no payments for education at kindergartens one year prior to the fulfilment of compulsory education as well as at state elementary schools and state secondary school,
- equality of approach to upbringing and education with regard to the educational needs of an individual and his or her shared responsibility for education, ban on all forms of discrimination and especially segregation,
- free choice of education with regard to expectations and qualifications of children and students in line with the possibilities of the educational system,
- preparation for responsible life in a free society in the spirit of understanding and broad-mindedness, equality of man and woman, friendship among nations, national and ethnic minorities and religious tolerance,
- control and evaluation of the quality of upbringing and education and the quality of educational system,
- reinforcement of the training aspect of the educational process through all school subjects as well as by specific educational occupations aimed at the development of feelings and emotions, motivations and interests, socialization and communication, self-control and self-management, moral values and creativity,

[29] Article 1 of the Act No. 245/2008 Coll. on Upbringing and Education (the School Act)

- prohibition of all forms of corporal punishments and sanctions in terms of upbringing and education.

The objectives of upbringing and education guaranteed by law (under Article 4) is to enable the child or student to

- achieve education as well as competences mainly in the field of communication abilities, oral competences and writing competences, utilization of information and communication technologies, communication in national language, mother language and foreign language, mathematical literacy and competence in the area of technical natural sciences and technologies, to lifelong learning, social competences and civil competences, entrepreneurial capabilities and cultural competences,
- have command of the English language and at least one other foreign language and be able to use them,
- learn to identify and analyse problems correctly and suggest their solutions and to know how to solve them, develop manual skills, creative, artistic, psychomotoric abilities, current knowledge as well as how to work with them,
- strengthen the esteem for parents and other persons, cultural and national values and traditions of the state he or she is the citizen of, national language, mother language and own culture,
- obtain and strengthen the respect for human rights and fundamental freedoms and prepare for responsible life in free society, in the spirit of understanding and broad-mindedness, equality of man and woman, friendship among nations, national and ethnic minorities and religious tolerance,
- learn to develop and cultivate own personality and pursue his or her education during lifetime, work in group and take responsibility, learn to control and regulate own behaviour, take care of and protect own health, including healthy diet, and the environment and respect panhuman values,
- gain all the information on the rights of the child and qualification for their exercise.

The reform introduced several changes in the school year 2008/2009:

- double level model of educational programmes was implemented – on the level of all schools the state determines the binding part of the content of education via state educational programmes and the profiling of individual schools is facilitated parallels by projecting school educational,
- education levels are reconciled with the international classification ISCED,

- vocational schools are internally differentiated and cover professional education and preparation, which was ensured individually in the past in terms of vocational schools and professional schools,
- schools for children and students with special socio-educational needs were renamed, however, no significant changes were conducted within the organization of special education system.

The school reform was under way in several stages.

In connection with the reform of education system several problems, which culminated in the school year 2010/2011 and linger up to now, arose. The teachers and pedagogical workers themselves and other specialist public often reproach the reform for unpreparedness and, in view of its quick implementation, inconsistency as to the preparation of conditions for the implementation of substantial changes. Problems marked the creation of state educational programmes, methodically unprepared teachers of schools were confronted with the requirement of rapid preparation of school educational programmes without the necessary knowledge, which, of course, impaired programme quality. The binding part of the education content is defined too bindingly. Compulsory subjects are determined for the schools, including the prescribed time, to an extent which, in the final analysis, prevents and curbs the processes declared by the reform that were meant to lead to a more autonomous status of schools. The teachers would welcome if new and modern didactic models, textbooks and didactic materials appeared on the market, they expect sufficient, timely and not deficient material and finance supply. An asset to and alleviation of the conduction of the newly-defined educational process would be the provision of high-quality methodical aid and the offer of further education for pedagogues taking into account new trends.

Lack of New Textbooks at Schools

One of the problems that the school reform has brought is the persistent lack of textbooks at elementary and secondary schools[30]. Although the exercise of the right to education isn´t linked only with textbooks, their deficiency may affect negatively the quality of education process. The procurement of textbooks is regulated by the education department. The very process of textbook creation, their approval, publishing and subsequent distribution to schools

[30] Today, a textbook isn´t just a book in printed form, but also a concept subsuming a whole range of materials – textbooks, methodologies for teachers, worksheets, materials on CD and DVD mediums, interactive textbooks, on-line internet support

is subject to central regulation. This process is too complicated and lengthy in the long term. At present, the departmentally regulated system of textbook provision isn´t able to guarantee their timely distribution to students. The Ministry of Education, Science and Sport of the Slovak Republic assured the teachers that it would release the list of reform textbooks which they will be supplied in September or October 2011. Analysis of the Ministry in February 2011 showed that out of 302 books 170 were missing, which stands for 56.29% of missing books. Instead of the fulfilment of the fundamental obligation of the Ministry of Education, the public only learned that according to the Minister more reform textbooks were procured in the school year 2011/2012 than in the last year, however, not all. Lack of textbooks in Slovakia causes that teachers, if they want to maintain the basic continuity of the educational process, are forced absurdly to violate copyrights by copying didactic texts, publications, worksheets etc. and spreading and downloading them via internet. Dissatisfied teachers have to print the necessary documents and materials constantly by themselves, like students who were printing and spreading samizdat before 1989. But today, dissatisfied parents of students, who care about the education of their children, have to share the costs. The extremely bad situation could be probably solved by gradual decentralization of textbook creation and distribution system by securing open market of textbooks and enabling free choice and purchase of textbooks on the part of the schools. The education department, however, should retain the competence of expert surveillance and a supervisor of the content of textbooks (e.g. with the aim of preventing the leak of socially incorrect, extremist connotations, influence of cognitive and emotional development of students through pernicious cults and sects etc.).
In September 2011, the project Planet of Knowledge, through which the Ministry pushed through interactive education, was supposed to be launched at schools. Digital boards and digital curriculum are meant to be an alternative partially solving the problem of deficiency in new textbooks.

Access of the Members of National Minorities to Education and Ethnic Education System

The upbringing and education of pupils and students who profess membership of any of the national minorities are secured at the schools included in the overall system of schools. Apart from that the Slovak Republic enables a standard education of members of national minorities in their mother language. For these purposes (state, private, church) schools at which the language of teaching is the language of Hungarian, Ukrainian, Rusyn, German or Bulgarian

national minority or schools which teach these languages have been established. A part of the upbringing and education at elementary schools and secondary schools with a language of teaching different from the national language is also the compulsory school subject Slovak Language and Literature in the scope of teaching necessary for its command.

Analysing publicly available statistical data of the education department, we ascertain that in the school year 2011/2012, from the perspective of nationality, the most numerously represented nationality is the Slovak one (926,624 pupils and students, which stands for a 92.26%-share in the total number of pupils and students). Pupils and students of Hungarian nationality (70,583) represent a 7.03% share in all pupils and students, the schools are attended by 3,025 pupils and students with registered Roma nationality (a 0.3%-share in the total number), more abundantly represented is the Czech (0.14%), Ukrainian (0,05%) and Rusyn (0.05%) nationality. As regards the registration of the nationality of a student, it must be said that the student determines the membership of a nationality (membership of a nation or ethnic group) according to own decision or the decision of his or her parents. The decision is often influenced by many factors (consequences of assimilation and segregation attitudes to national, ethnic or religious minorities in the era before 1989, prejudices, fear, shame, etc.) on the basis of which a nationality different from the genealogically derived one is made. In the Slovak Republic this phenomenon pertains predominantly to the Roma national minority (mainly in favour of the choice of Slovak or Hungarian nationality) as well as Hungarian (in favour of Slovak one), Ukrainian and Rusyn one. Further information on the nationality of pupils and students attending the school in the school year 2011/2012 are quoted in Tables 4 and 5.

Table 4 – Overview of the Number of Students according to Nationality in the System of Schools of the Slovak Republic in the School Year 2011/2012 (aggregate data – state, private and church schools), Source: IIPE

School type	total	Nationality								
		Slovak	Czech	Hungarian	Ukrainian	Rusyn	Polish	German	Roma	other
Total kindergartens	143,781	132,657	84	10,088	45	53	5	21	588	240
Total special kindergartens	1,022	989	1	30	0	0	0	0	1	1
In the system of kindergartens	144,803	133,646	85	10,118	45	53	5	21	589	241
Total elementary schools	433,465	394,923	434	35,397	154	171	37	101	1,611	637
Total spec. ed. elementary schools	6,189	6,075	12	70	2	2	2	3	9	14
Total special elementary schools	22,614	20,155	14	1,751	0	4	0	0	686	4
In the system of elementary schools	462,268	421,153	460	37,218	156	177	39	104	2,306	655
Total special secondary schools	6,094	5,759	51	236	0	0	1	1	38	8
Total grammar schools	84,832	79,259	98	5018	68	77	16	26	14	256
Total conservatories	2,831	2,690	31	90	4	3	0	5	1	7
Total vocational schools	168,777	156,263	183	11,979	94	46	9	20	68	115
In the system of secondary schools	262,534	243,971	363	17,323	166	126	26	52	121	386
Total universities	134,747	127,878	466	5,924	115	110	15	37	9	193
Total pupils and students	1,004,352	926,648	1374	70,583	482	466	85	214	3,025	1,475

From the point of view of the comparison of individual percentage shares of the registered nationality of students, it is necessary to point out interesting deviations from the average on the level of schools for children and students with special educational needs. As follows from Table 5, the percentage share of individual nationalities of students in the entire system of elementary schools discloses a 91.11%-share of Slovak nationality, 8.05%-share of Hungarian nationality and 0.50%-share of Roma nationality. This stratification is similar to the share of nationalities of students at elementary schools. Nevertheless, schools for children and students with special socio-educational needs belong to the system of elementary schools as well.[31] In Table 5 in the line "Total spec. ed. elementary schools" there are percentage shares of nationalities at schools for students with a disability different from the mental one (i.e. for students with hearing, visual, physical etc. impairment). Comparing the data with the data on percentage shares of individual nationalities of students in the entire system of elementary schools, we find a deviation by +7 percentage points in favour of Slovak nationality and to the

[31] Schools for children and students with special socio-educational needs may be simply divided into schools for students with diagnosed mental disturbance (predominantly moderate and severe degree), which were called "special schools" in the past, and schools specialized for students with other than mental disturbance (hearing, physical disability, disturbed communication skill, autism, ill and medically weakened students, students with multiple impairment) as well as students with behavioural disturbances, developmental learning disorders or intellectual giftedness. In case of multiple impairment, if mental disturbance is diagnosed as well, schools specialized in such impairment combinations have been created too.

detriment of Hungarian nationality. This phenomenon indicates clear orientation of the schools for children and students with special socio-educational needs in the aftermath of hearing, visual, physical disability or impaired communication skill at the students of Slovak nationality. This probably follows from the absence of special pedagogues (pedagogues for the visually impaired, pedagogues for the aurally impaired, speech therapists, therapeutic pedagogues etc.) capable of conducting the upbringing and education in a language other than the Slovak one. Probably such specialist pedagogues aren´t prepared for practice by our higher education system either. Another problem is also the absence of specific didactic aids, textbooks and other didactic materials in the languages of national minorities. In Table 5 in the line "Total special elementary schools" there are percentage shares of nationalities at schools for students with mental disturbance (including combinations with another mental disturbance). Comparing the data with the data on percentage shares of individual nationalities of students in the entire system of elementary schools, we find a deviation by +2.5 percentage points in favour of Roma nationality and to the detriment of Slovak and Hungarian one. High concentration of Roma children at special schools for the mentally disturbed is a phenomenon that the specialist public has been pointing out for several years. Deviation shown in our table is all the more interesting because the very number of students with registered Roma nationality doesn´t reflect all Roma children visiting this type of school.

Table 5 – Overview of the Percentage Share of Students according to Nationality in the System of Schools of the Slovak Republic in the School Year 2011/2012 (aggregate data – state, private and church schools), Source: IIPE

School type	Total	Nationality %								
		Slovak	Czech	Hungarian	Ukrainian	Rusyn	Polish	German	Roma	Other
Total kindergartens	100.0	92.26	0.06	7.02	0.03	0.04	0.00	0.01	0.41	0.17
Total special kindergartens	100.0	96.77	0.10	2.94	0.00	0.00	0.00	0.00	0.10	0.10
In the system of kindergartens	100.0	92.30	0.06	6.99	0.03	0.04	0.00	0.01	0.41	0.17
Total elementary schools	100.0	91.11	0.10	8.17	0.04	0.04	0.01	0.02	0.37	0.15
Total spec. ed. elementary schools	100.0	**98.16**	0.19	**1.13**	0.03	0.03	0.03	0.05	0.15	0.23
Total special elementary schools	100.0	**89.13**	0.06	7.74	0.00	0.02	0.00	0.00	**3.03**	0.02
In the system of elementary schools	100.0	91.11	0.10	8.05	0.03	0.04	0.01	0.02	0.50	0.14
Total special secondary schools	100.0	94.50	0.84	3.87	0.00	0.00	0.02	0.02	**0.62**	0.13
Total grammar schools	100.0	93.43	0.12	5.92	0.08	0.09	0.02	0.03	0.02	0.30
Total conservatories	100.0	95.02	1.10	3.18	0.14	0.11	0.00	0.18	0.04	0.25
Total vocational schools	100.0	92.59	0.11	7.10	0.06	0.03	0.01	0.01	0.04	0.07
In the system of secondary schools	100.0	92.93	0.14	6.60	0.06	0.05	0.01	0.02	0.05	0.15
Total universities	100.0	94.90	0.35	4.40	0.09	0.08	0.01	0.03	0.01	0.14
Total pupils and students	100.0	92.26	0.14	7.03	0.05	0.05	0.01	0.02	0.30	0.15

Following the Article 34, par. 2 letter a) of the Constitution of the Slovak Republic, under which the citizens belonging to national minorities or ethnic groups are guaranteed the right to education in their language under the terms laid down by law, the exercise of this right guarantees:

- at schools and in classes where the upbringing and education is carried out in the language of the respective national minority,
- at schools and in classes where one of the school subjects is the language of the national minority and the language of teaching of other school subjects is the national language; at these schools and in these classes certain subjects may be taught in the language of the national minority, mainly art lessons, music lessons, physical education,
- at school facilities conducting the education in the language of national minority.[32]

By way of illustration, in the school year 2010/2011 there were 2,204 elementary schools in Slovakia at 35 of which the language of teaching was Slovak and Hungarian and at 236 elementary schools the language of teaching was Hungarian, which accounted for

[32] For further reference see Article 12, par. 3 and 5 of the Act No. 245/2008 Coll. on Upbringing and Education (the School Act).

approximately 12.296% of the total number of schools. The Ukrainian national minority has 1 elementary school, which stands for 0.272% of the total number of schools. Furthermore, there is 1 school with Rusyn language of teaching and 1 school with Slovak and Rusyn language of teaching in Slovakia, which stands for around 0.091% of the total number of schools. At 2 elementary schools with Slovak and German language of teaching and 2 elementary schools with German language of teaching the education of the students of German national minority is conducted. The Bulgarian national minority has 1 elementary school with Bulgarian language of teaching at its disposal.[33] For the sake of comparison with the current state in Table 6 we quote the overview of ethnic schools in the school year 2011/2012. In Table 7 there is the overview of the number of pupils and students at schools and in classes where one of the school subjects is the language of national minority and the language of teaching of other school subjects is the national language. In order to complement the information on schools at which education in a language different from Slovak one is conducted, we show also Table 8 in which the overview of bilingual schools in the school year 2011/2012 is given.

Table 6 – Overview of Ethnic Schools in the School Year 2011/2012 (aggregate data – state, private and church schools), Source: IIPE

School type	Total	Number of schools with the language of teaching				
		Slovak-Hungarian	Slovak-Ukrainian	Hungarian	Ukrainian	Other
Kindergartens	**360**	78	3	269	5	5
Elementary schools	**281**	28	1	240	5	7
Grammar schools	**31**	7	0	19	1	4
Conservatories	**0**	0	0	0	0	0
Vocational schools	**40**	30	0	10	0	0
Total	**712**	143	4	538	11	16

Table 7 – Overview of the Number of Students at Schools and in Classes where One of the School Subjects is the Language of National Minority and the Language of Teaching of other School Subjects is the National Language in the School Year 2011/2012 (aggregate data – state, private and church schools), Source: IIPE

[33] <http://www.uips.sk/registre/vyber-skol-podla-kriterii>, quoted on 27 February 2012

School type	Students according to language of teaching								
	Hungarian	Ukrainian	Other	German	Rusyn	English	Bulgarian	Slovak and English	Total other than Slovak
Kindergartens	8,813	192	154	82	0	0	0	0	**9,241**
Elementary schools	30,522	327	0	106	27	404	37	159	**31,582**
Grammar schools	4,067	120	341	0	0	0	0	0	**4,528**
Conservatories	0	0	0	0	0	0	0	0	**0**
Vocational schools	7,719	0	0	0	0	0	0	0	**7,719**
Total	51,121	639	495	188	27	404	37	159	**53,070**

Table 8 – Overview of the Number of Bilingual Schools in the School Year 2011/2012 (aggregate data – state, private and church schools), Source: IIPE

School type	Number of schools with bilingual language							
	Total	English	French	German	Russian	Spanish	Italian	Other
Kindergartens	2,865	0	0	1	0	0	0	5
Elementary schools	2,202	0	0	0	0	0	0	7
Grammar schools	248	26	4	4	2	6	1	4
Conservatories	16	0	0	0	0	0	0	0
Vocational schools	474	6	0	2	0	0	0	0
Total	5,805	32	4	7	2	6	1	16

Upbringing and Education of Roma Children and Students

Among the most flagrant problems of the exercise of the right to education in the Slovak Republic is the education of the Roma. The upbringing and education of the members of the Roma community and children from socially disadvantaged environment is under way in terms of the system of schools and school facilities. Notwithstanding that, in the school year 2011/2012 not a single elementary school with Roma language of teaching has been established in Slovakia, although the Roma nationality comprises approximately 2% of the population according to statistical data.

The exercise of the right to education in mother language is still problematic in the event of the Roma. It was not until 2008 that the Roma language was standardized. In practice it means that the minority the membership of which was officially professed by almost 90,000 people according to the 2001 Population and Housing Census (according to the data of the Statistical Office of the Slovak Republic from 2001)[34], has been hitherto represented just by one school with Slovak and Roma language of teaching in the network of schools in the

[34] The 2011 Census data aren´t available yet.

Slovak Republic, namely the eight-grade Private Grammar School of Z. J. Malla in Kremnica[35]. Statistical data, however, don´t reflect the real number of inhabitants of Roma origin. The number of the Roma in the Slovak Republic in 2001 was estimated at 380,000 and the share of children up to 14 years was estimated at 43.6% in that period.[36] Overwhelming majority of the Roma is educated at schools with education in national language and they don´t have access to education in mother language. Although the Roma language and literature under the Decree of the Ministry of Education of the Slovak Republic No. 318/2008 Coll. on Completion of Study at Secondary Schools, Article 12 par. 5 aa) is among possible subjects of the school-leaving examination, the problem with acute deficiency in qualified pedagogues and lack of textbooks, didactic texts and material for these subjects has persisted.

Another problem is the fact that Roma students belong mostly to the socially most vulnerable and underdeveloped classes of the population – the term used in this context is *students from marginalized Roma communities* (hereinafter referred to as "MRC") or students from "socially disadvantaged environment" (hereinafter referred to as "SDE")[37]. Ambiguous usage of this definition in practice has remained a problem. The definition of a child or student from SDE serves for diagnosing his or hers special socio-educational needs. For the improvement of conditions for the upbringing and education of students from SDE the school organizers are provided with an allowance pursuant to the School Act. One of the purposes for which this allowance can be used is, under the Decree of the Ministry of Education of the Slovak Republic. 649/2008 Coll. on the Purpose of Using the Allowance for Students from Socially Disadvantaged Environment, as the salary of a pedagogue assistant. The original intention of this institution was that a Roma teacher assistant, preferably somebody from the given community who speaks the Roma language and local dialect, was meant to work with students from SDE/MRC. Nowadays, however, out of the total number of more than 700 teacher assistants (pedagogical assistants) just a minimum number of assistants speak the Roma language.[38] According to Zdenka Demeterová of the Council of Non-Governmental Organizations of Roma Communities the creation of teacher assistants was a good project that

[35] The Slovak Republic Roma Integration Strategy up to 2020, p. 26.

[36] Demographic characteristic of Roma population in the Slovak Republic, INFOSTAT, Research Demographic Centre,
Bratislava, July 2001

[37] Definition under the School Act No. 245/2008 tries to define this marginalized group as precisely as possible: *"A child from socially disadvantaged environment or a student from socially disadvantaged environment is also a child or a student living in an environment which, in view of social, family, economic and cultural conditions, stimulates the development of mental, will-related and emotional qualities of the child or the student insufficiently, which doesn´t support its socialization and doesn´t provide him or her with enough adequate stimuli for the development of his or her personality."*

[38] The Slovak Republic Roma Integration Strategy up to 2020, p. 26.

made sense, but in view of the fact that currently the assistants are mostly "white" teachers who should have retired, the sense of the project has gone awry. Another institution which was to help the students from SDE to integrate them into the educational process are the zero grades. These grades are attended overwhelmingly by Roma students. The problem is that in practice the students of the zero grades comprise usually a homogenous class also in next grades, which de facto results in their segregation.

According to the study by the Roma Education Fund (hereinafter referred to as "REF") "School as Ghetto" from 2009[39] as many as 60% of all students in special schools are Roma students from MRC and in special classes at ordinary elementary schools even more than 86% of all students come from MRC.

Among the students who continue their studies at special secondary schools, the Roma constitute around one third. Among the students of special elementary schools who completed compulsory education in ninth grade, the Roma comprised a half. Among the students of special elementary schools who completed compulsory education in a grade lower than the ninth one, the Roma constitute 80%.[40] There are several reasons why such a share of the Roma among students at special schools is so large. Among the primary reasons is the fact that the tests used within the diagnostics of children are in Slovak. Roma children, who often don´t understand the concepts used, are thus disadvantaged. The pictures used in terms of diagnostic tests often depict objects (or object fragments) that come children from SDE don´t know because these simply don´t occur in their surroundings (e.g. they label the black and white outline of a reflex camera fragment mistakenly as a tractor mudguard...). These tests aren´t able to distinguish for certain between mental disturbance and social neglect of the child. This is so also owing to the language barrier. In many cases for Roma children the test is the first experience of school environment. Besides that, many parents want to place their children at a special school as they aren´t informed enough, give little weight to education and have the feeling that at a special school their child will be better off. In this context it would be suitable to change the tests used for diagnosing children in Slovakia for the sake of their incorporation to special education. Although in the Manifesto of the Government of the Slovak Republic for the period 2010-2014 it is said that *the Slovak Republic Government will re-evaluate the importance of special schools, take measures for prevention of segregation on the basis of ethnic membership (including the tests of school maturity in Roma...),* the practice has been radically different so far.

[39] http://www. diskriminacia. sk/?q=node/959
[40] Report from the study School as Ghetto

The current situation of the placement of Roma children into individual types of schools (in the school year 2011/2012) may be outlined by means of the analysis of publicly available statistical data of the education department which are released by the Institution of Information and Prognoses of Education on its website www.uips.sk. Building on Table 4, Table 5 and related commentary, at schools for students with mental disturbance (including combinations of other disorders with mental disturbance) we have detected, by comparing data with the data on percentage shares of individual nationalities of students in the entire system of elementary schools, a deviation of nearly +2.5 of percentage points in favour of the Roma nationality (to the detriment of Slovak and Hungarian nationality), in Graph 6 we illustrate the vertical stratification of the students of individual nationalities on individual levels in terms of the system of schools. Detailed information is shown in Table 9. By expressing the stratification, first we get the information that out of 100% of all children, pupils and students visiting any school in the school year 2011/2012 14.4% percent of pupils visits a kindergarten, 46.0% of students any of the elementary schools (including schools for children and students with special socio-educational needs), 26.1% students any of the secondary schools (including special ones) and 13.4% students are undergraduates. Comparing this stratification according to nationality we see that apart from students of Roma and Czech nationality, there is no significant deviation from the stratification of the total of students in the event of Slovak, Hungarian and other nationalities.

In case of students of Roma nationality, practically no occurrence at universities (0.3%) and an extremely low occurrence at secondary schools (4.0%) have been registered. All of that in favour of massive concentration at elementary schools (76.2%) and increased share at kindergartens (19.5%). Although from the point of view of notorious problems of insufficient education of the Roma, their feeble assertion on the labour market etc., it is conceivable to refer to the presence of barriers preventing the Roma from achieving secondary and higher education, but it is unacceptable to state that just their own demotivation, life in disadvantaged environment or high frequency of mental disturbance are to blame for practical absence of the Roma on secondary and higher level of education. The arguments referring to bad results, frequent absences, problematic participation in at least compulsory education won´t hold water. On the other hand, we realize that the registered data on the number of students of Roma nationality is distorted and probably a large part of Roma children is hidden in the group of students of Slovak nationality. We may assume that a large group of children of Roma origin, particularly those who don´t live in socially disadvantaged environment, are to a large extent included (though rather assimilated in the conditions of the Slovak Republic)

in the majority society, aren´t affected by exclusion or personal failure and aren´t thus confronted with barriers they couldn´t get over.

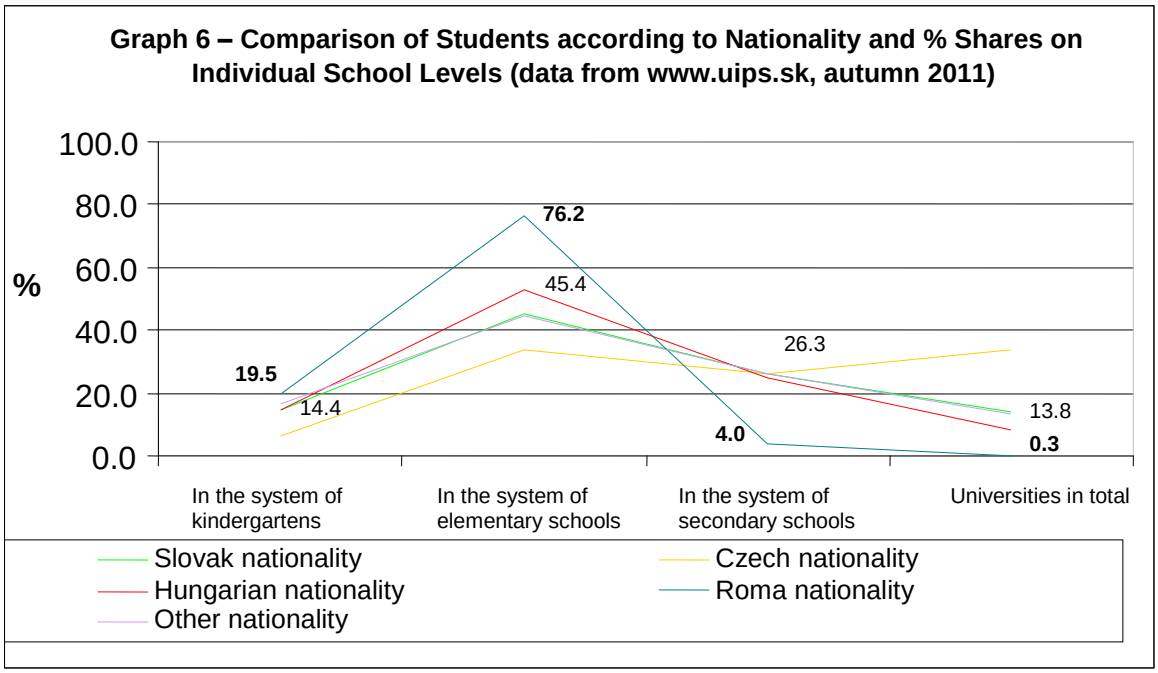


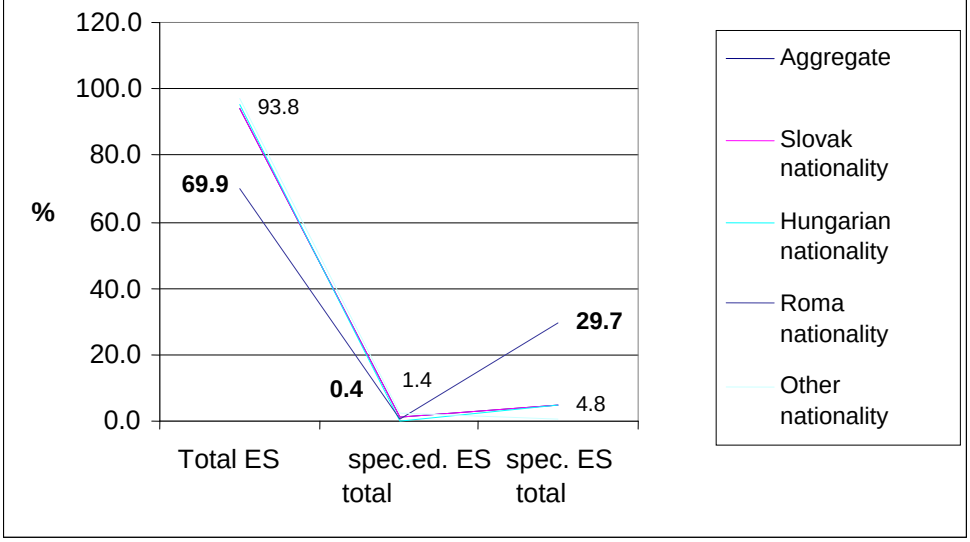
Table 9 – Overview of the Percentage Share of Placement of Students according to Nationality into Individual Levels in terms of the System of Schools of the Slovak Republic in the School Year 2011/2012 (aggregate data – state, private and church schools), Source: IIPE

School type	Total	Nationality %								
		Slovak	Czech	Hungarian	Ukrainian	Rusyn	Polish	German	Roma	Other
In the system of kindergartens	14.4	14.4	6.2	14.3	9.3	11.4	5.9	9.8	19.5	16.3
In the system of elementary schools	46.0	45.4	33.5	52.7	32.4	38.0	45.9	48.6	76.2	44.4
In the system of secondary schools	26.1	26.3	26.4	24.5	34.4	27.0	30.6	24.3	4.0	26.2
Universities in total	13.4	13.8	33.9	8.4	23.9	23.6	17.6	17.3	0.3	13.1
Total pupils and students	100	100	100	100	100	100	100	100	100	100

Based on Graph 6, we provide information on the body of students attending some of the types of elementary schools according to nationality. In Graph, the sign “ES” expresses an ordinary elementary school, the sign “spec. ed. ES” expresses schools for students with other than mental disturbance (i.e. for students with hearing, visual, physical and similar impairment), finally, the sign “spec. ES” is the sign for schools for students with mental disturbance (including combinations of other disorders with mental disturbance). Again do we witness uniform stratification (93.8% elementary schools : 1.4% schools for other than the

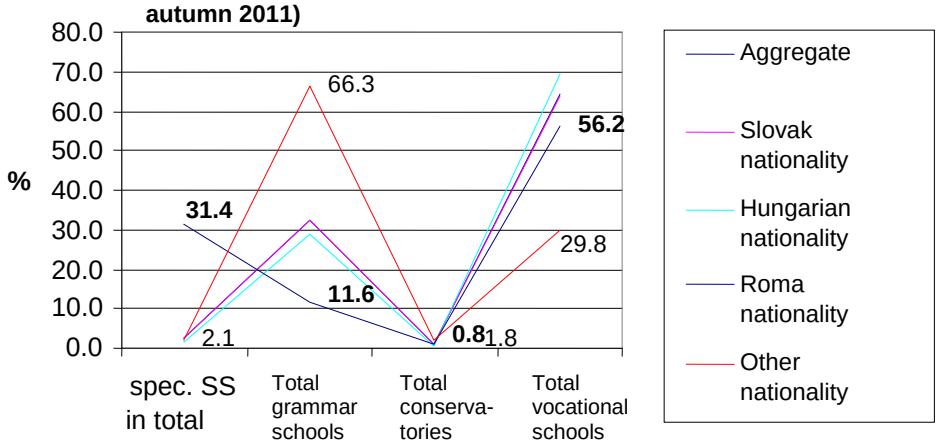
mentally disturbed : 4.8% schools for the mentally disturbed) of students of all nationalities with the exception of the students of Roma nationality out of whom only 69.9% attend ordinary elementary school, while as many as 29.7% attend a school for the mentally disturbed.

Graph 7 – Comparison of Students according to Nationality and % Shares on the Level of Elementary Schools Types (data from www.uips.sk, autumn 2011)



A very similar, if not the same, result has been brought by Graph 8, in which we provide information on the body of students visiting some of the types of secondary schools according to nationality. Marked deviations in the event of Roma students may be noticed mainly as for high concentration (31.4%) at special secondary schools and visibly lower shares of their representation at other types of secondary schools.

Graph 8 – Comparison of Students according to Nationality and % Shares on the Level of Secondary Schools Types (data from www.uips.sk, autumn 2011)



In Table 10 we yet bring the comparison of groups of students of individual nationalities visiting some of the schools for children and students with special socio-educational needs out of the total number of students visiting schools in the current school year. Out of 100% of all students special schools are attended solely by 3.47% of students. In this case too, the only exception are the students of Roma nationality – while the share of other groups is similar to the Slovakia-wide group of all students, out of 100% of students of Roma nationality as many as one fourth attend a special school.

Table 10 – Overview of the Percentage Share of Placement of Students according to Nationality on Individual Levels in terms of the System of Schools of the Slovak Republic in the School Year 2011/2012 (aggregate data – state, private and church schools), Source: IIPE

School type	Students according to Nationality									
	Total Slovak nationality	Nationality								
		Slovak	Czech	Hungarian	Ukrainian	Rusyn	Polish	German	Roma	Other
Total special elementary schools	2.25	2.18	1.02	2.48	0.00	0.86	0.00	0.00	22.68	0.27
Total spec. ed. elementary schools	0.62	0.66	0.87	0.10	0.41	0.43	2.35	1.40	0.30	0.95
Total special secondary schools	0.61	0.62	3.71	0.33	0.00	0.00	1.18	0.47	1.26	0.54
Total pupils and students of special schools	3.47	3.45	5.60	2.91	0.41	1.29	3.53	1.87	24.23	1.76
Total pupils and students in 2011	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00

In order to finish the most complete overview of students of Roma nationality at schools in the current school year 2011/2012, by means of statistical reporting (source: IIPE) of preschool facilities we keep record of 2,146 individually integrated children from socially disadvantages environment at kindergartens. Unfortunately, these data are currently monitored just on the level of kindergartens.

Seemingly satisfactory is that the upbringing and education are based under the Act No. 245/2008 Coll. on Upbringing and Education and on Amendment to Certain Acts (hereinafter referred to as the School Act), among other things, also on the principle of the ban on all forms of discrimination, especially segregation.

Repeated research studies conducted by non-governmental organizations as well as experts from state institutions, however, point out the presence of segregation of Roma children and students within education.

Nonetheless, neither the definition of segregation nor any elaboration of the concept in relation to the area of education isn´t included in the School Act or successive legal regulations. These don´t specify the indicators and criteria of their measurement and strategies to prevent and eliminate segregation either.

As regards the unequal treatment of Roma students, the Centre carried out a monitoring at the elementary school in Krivany at the instigation of the State School Inspection. From the conclusions of the monitoring follows that the school management has exerted efforts to eliminate segregation methods on the school grounds. The problem with the securing of equal boarding conditions was caused by the granting of subsidies for the support of guidance of a child endangered by social exclusion to eating habits. As a consequence, the number of student boarders exceeded the capacity of the canteen. The biggest problem is the cooperation with parents of children from disadvantaged environment who don´t show enough interest in the upbringing and education of their children, although the school supplies through the Act on Subsidies the students with teaching aids, hygienic aids and training clothes. Likewise, it ensures their washing and cleaning since it happened again and again that after carrying home, the students didn´t return them. Field work is absent and so are community workers whose task would be to interconnect the school and home environment in favour of the children.

Some cases of alleged segregation are linked with the stipulation of school districts[41] on the basis of which schools attended by Roma children are created and with the refusal of principals of other schools to enrol a Roma child in their school.

In connection with the problem of segregation of Roma children as to access to education, the judgement of the District Court in Prešov dated 5 December, 2011, is worth mentioning. It is the first decision of Slovak courts ascertaining the breach of the principle of equal treatment of and discrimination against Roma children owing to their ethnic membership. This judgement hasn´t taken effect yet as the defendant lodged an appeal. In the given case the elementary school in Šarišské Michaľany, which had created special separated classes attended exclusively by students of Roma ethnic membership, was sued. From the reasoning of the judgement follows that these special classes are even placed on a separate floor inside the building of the elementary school, namely on the ground floor, while the children from minority and majority have just a minimal possibility of contact during the breaks. According to the statement of the defendant the creation of special classes had a special balancing character. The classes were created in pursuit of ensuring individual approach for children from socially disadvantaged environment who had bigger problems with the curriculum. Parents of these children agree with the placement of the children into special classes and in case that the child can be integrated into an ordinary class, the parents often disapprove. According to their statement the division is better for the children, they don´t feel bad and are satisfied when among their own. The school adopted measures on the basis of which it had created special classes that are separated from ordinary ones because of the outflow of non-Roma children. The parents of non-Roma children re-enrolled their non-Roma children in elementary schools which hadn´t been attended by single child of Roma ethnic membership. In the meantime, the school has taken measures based on which the classes for Roma students aren´t in a separate part of the building any longer, but they are mixed with other classes. However, it hasn´t acceded to their dissolution for now. According to the school principal, who was convinced of the correctness of the school´s measure, the Court made the said decision despite the fact that it had been provided with arguments that the attendance in separate classes had been improved; less children stayed down and completed thus the school

[41] School district stands for a territory / catchment area from which a school is obliged to accept a child with permanent residence in this district. If the legal representative decides so, the student may fulfil compulsory education at an elementary school outside the school district in which he or she has permanent residence with the consent of the principal of this school. Every elementary school must belong to a school district. Under Article 8, par. 1 of the Act No. 596/2003 Coll. on State Administration in School System and School Self-Government and on Amendment to Certain Acts as amended the school district of an elementary school comprises the territory of a municipality or a part of it. If the municipality is the organizer of several elementary schools, the municipality shall determine school districts for individual elementary schools through a generally binding regulation.

in lower grades.[42] This case triggered a wave of feedback also in the media. The Centre considers it a severe mistake that the suit doesn´t deal with the different attitude to children´s boarding. Because in the said school Roma children receive food in bags while non-Roma children are dining comfortably in the canteen and get cooked diet. Simply – dry food.[43] Simultaneously, opinions have emerged that the court decision and the direction that this decision has set may lead, in the final analysis, to the creation of purely Roma schools.[44]

With respect to the right to education, the Centre observes with great concern and assesses extraordinarily critically the established practice of preferring unqualified pedagogues to qualified ones due to lack of funds on the part of the school.

Education of the Disabled

The 2008 school reform touched also the upbringing and education of students with disability. New principles challenging respect, acceptance, dignity and integration had the ambition to be the accelerator of changes that would help the disabled to integrate themselves into the society. Several critics of the reform, however, say that just a change in names was achieved in practice...

In the centre of attention of special education system there is the child or student with special socio-educational needs. That means a child or student who was diagnosed special socio-educational needs by an education consultancy and prevention facility. It is a child or student[45]with medical disadvantagedness, with medical disability, sick or medically weakened, with development disorders, behavioural disturbance, from socially disadvantages environment, with giftedness.

Upbringing and education of children and students with medical disadvantagedness is carried out[46]

- at schools for children or students with medical disadvantagedness – these schools are labelled as special schools,
- at other schools under the School Act, namely

[42] OBŠATNÍKOVÁ, D.: The Tip of the Iceberg, or the Exclusion of Roma Students at Slovak Schools. *New Roma Letter-independent socio-cultural newspaper of the Roma in Slovakia* 1/2012, p. 2

[43] OBŠATNÍKOVÁ, D.: The Tip of the Iceberg, or the Exclusion of Roma Students at Slovak Schools. *New Roma Letter-independent socio-cultural newspaper of the Roma in Slovakia* 1/2012, p. 1

[44] For further reference see: ČONKA, R.: The elementary school in Š. Michaľany segregates Roma children. *New Roma Letter-independent socio-cultural newspaper of the Roma in Slovakia 1/2012,* p.3

[45] Article 2, letter j-q) of the Act No. 245/2008 Coll. on Upbringing and Education (the School Act).

[46] Article 94 of the Act No. 245/2008 Coll. on Upbringing and Education (the School Act).

- in special classes organized usually for children and students with identical kind of medical disadvantagedness; a part of the socio-educational process can be conducted in the class together with other children or students of the school; the child or student may complete school subjects or activities outside the special class,
- in classes or education groups together with other children or students of the school; if necessary, such a child or student is educated according to individual educational programme drawn up by the school in cooperation with a school facility of educational prevention and consultancy; the legal representative of the child or student has the right to get acquainted with this programme.

Following the School Act, the Decree No. 322/2008 Coll. on Special Schools regulates the particulars of the organization, internal differentiation and duration of upbringing and education at special schools, procedure of the acceptance of children and students in these schools, details on the peculiarities of upbringing and education, the evaluation and classification of the results and behaviour of students, the number of children and students in special school classes, the form and content of the report on the upbringing and education of the student and the designation of schools and stipulates the system of pedagogical courses and specializations of pedagogical courses at vocational schools.[47]

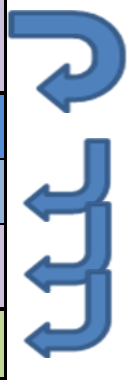
Organization of special schools is based on the nature of disability or the combination of disabilities. For a better illustration, in Picture 1we show the scheme of individual types of special schools defined by the Decree.

Particulars of internal differentiation of education at schools for children with medical disadvantagedness according to the level of disability is regulated by Article 3 of the said Decree. In general, it is about opening classes into which the students are placed according to the level of disability.

[47] Article 1 of the Decree No. 322/2008 Coll. on Special Schools

Picture 1 – Scheme of School Types according to the Types of Medical Disability[48]

Who is the school intended for	Elementary level	Secondary level
Students with hearing impairment	Elementary school for students with hearing impairment	Vocational school for students with hearing impairment
		Grammar school for students with hearing impairment
Students with visual impairment	Elementary school for students with visual impairment	Vocational school for students with visual impairment
		Grammar school for students with visual impairment
		Conservatory for students with visual impairment
Students with visual impairment in combination with hearing impairment	Special elementary school for the deafblind	
Students with impaired communication skill	Elementary school for students with impaired communication skill	
Students with physical disability	Elementary school for students with physical disability	Vocational school for students with physical disability
Sick and medically weakened students		Grammar school for students with physical disability
Students with autism or another pervasive development disorder	Elementary school for students with autism	
Students with mental disturbance	Special elementary school for students with mental disturbance	Practical school
		Vocational school
Students with multiple impairment in combination with mental disturbance		Practical school
Students with hearing impairment and mental disturbance	Special elementary school for students with hearing impairment	Vocational school for students with hearing impairment
Students with visual impairment and mental disturbance	Special elementary school for students with visual impairment	Vocational school for students with visual impairment
Students with impaired communication skill and mental disturbance	Special elementary school for students with impaired communication skill	
Students with physical disability, with mental disturbance	Special elementary school for students with physical disability	Vocational school for students with physical disability
Sick and medically weakened students in a medical facility	Elementary school at a medical facility	
Sick and medically weakened students in a medical facility suffering from medical disturbance	Special elementary school at a medical facility	
Students with multiple impairment in combination with mental disturbance		



As follows from Table 11 and Table 12, in the school year 2011/2012 in the Slovak Republic there are altogether 415 special schools and 353 special classes at ordinary schools. Special schools are attended by 25,248 students and 10,698 students take part in the education in terms of special classes at ordinary schools.

[48] Processed under Article 2 of the Decree č. 322/2008 Z Coll. on Special Schools

Table 11 – Overview of Schools for Students with Special Socio-Educational Needs including Special Classes at Ordinary Schools in the School Year 2011/2012 (aggregate data – state, private and church schools), Source: IIPE

Territory / **Defect**	**Number of schools**							
	Total	**KG**	**ES**	**SES**	**VS**	**Practical**	**Grammar schools**	**Vocational schools**
Autism syndrome	15	5	0	10	0	0	0	0
Mental	289	26	0	166	36	61	0	0
Hearing	19	5	6	3	2	0	0	3
Visual	9	3	2	2	1	0	0	1
Impaired communication skill	15	4	9	2	0	0	0	0
Physical	26	4	4	8	3	2	0	5
Multiple	1	0	0	1	0	0	0	0
Behavioural disturbances	35	3	14	7	5	0	0	6
Developmental learning disorder	1	0	1	0	0	0	0	0
Intellectually gifted	5	0	4	0	0	0	1	0
Total special schools	415	50	40	199	47	63	1	15
Autism syndrome	3	1	0	2	0	0	0	0
Mental	254	7	0	247	0	0	0	0
Hearing	1	0	1	0	0	0	0	0
Visual	6	5	0	0	0	0	0	1
Impaired communication skill	9	1	7	1	0	0	0	0
Physical	6	2	1	3	0	0	0	0
Developmental learning disorder	43	0	43	0	0	0	0	0
Intellectually gifted	31	0	28	0	0	0	3	0
Special classes at ordinary schools in total	353	16	80	253	0	0	3	1
Special schools and special classes in total	768	66	120	452	47	63	4	16

If we accept the total number of students at schools[49] quoted in Table 4, the share of students of special schools is 2.5% and the share of students in special classes at ordinary schools is 1.1% of the total number. In all, students placed so in terms of the system of schools account for a 3.6%-share in the total number of students at schools in this school year.

[49] 1,004,352 students

Table 12 – Overview of Schools for Students with Special Socio-Educational Needs including Special Classes at Ordinary Schools in the School Year 2011/2012 (aggregate data – state, private and church schools), Source: IIPE

Territory / **Defect**	**Students at schools**							
	Total	**KG**	**ES**	**SES**	**VS**	**Practical**	**Grammar schools**	**Vocational schools**
Autism syndrome	621	61	0	560	0	0	0	0
Mental	19,165	350	0	14,551	3,422	842	0	0
Hearing	638	112	235	64	16	0	0	211
Visual	344	58	130	59	30	0	0	67
Impaired communication skill	870	136	643	91	0	0	0	0
Physical	1,403	49	166	503	233	60	0	392
Multiple	10	0	0	10	0	0	0	0
Behavioural disturbances	1,160	72	481	202	156	0	0	249
Developmental learning disorder	84	0	84	0	0	0	0	0
Intellectually gifted	953	0	609	0	0	0	344	0
Total special schools	**25,248**	**838**	**2,348**	**16,040**	**3,857**	**902**	**344**	**919**
Autism syndrome	21	13	0	8	0	0	0	0
Mental	6,596	63	0	6533	0	0	0	0
Hearing	5	0	5	0	0	0	0	0
Visual	76	68	0	0	0	0	0	8
Impaired communication skill	318	9	289	20	0	0	0	0
Physical	144	32	87	25	0	0	0	0
Developmental learning disorder	834	0	834	0	0	0	0	0
Intellectually gifted	2,704	0	2,639	0	0	0	65	0
Special classes at ordinary schools in total	**10,698**	**185**	**3,854**	**6,586**	**0**	**0**	**65**	**8**
Special schools and special classes in total	**35,946**	**1,023**	**6,202**	**22,626**	**3,857**	**902**	**409**	**927**

Apart from students with special socio-educational needs visiting a special school or a special class at ordinary school, where rather students with moderate and severe level of disability are currently placed, students with mild level disability use the possibility of individual educational programmes and therefore visit an ordinary school in terms of individual integration. In the school year 2011/2012 there are 26,630 (2.7% of the total number of students) individually registered integrated students. This number, however, doesn´t express the number of students with medical disability since it encompasses also the number of intellectually gifted students, students with behavioural disturbances but mainly students with developmental learning disorders who represent as many as 62.9% of all individually integrated students. Such students (behavioural disturbances and developmental teaching disorders) are labelled under the School Act as students with medical disadvantagedness. Further information on the number of individually integrated students is quoted in Table 13.

Table 13 – Overview of the Number of Individually Integrated Students with Special Socio-Educational Needs in the School Year 2011/2012 (aggregate data – state, private and church schools), Source: IIPE

Territory / School type	Number of individually integrated children and students										
	Aggregate		Disability and intellectually gifted students								
			Autism syndrome	Mental	Hearing	Visual	ICS	Physical	Behavioural disturbances	Developmental learning disorders	Intellectually gifted
	Total	Girls	Total	Total	Total	Total	Total	Total	Total	Total	Total
Kindergartens	518	171	44	117	34	36	116	116	39	11	5
Elementary schools	20,534	6,770	189	3,743	330	244	906	930	1,488	12,057	647
Grammar schools	729	229	11	0	37	30	0	77	26	447	101
Conservatories	43	18	3	0	1	3	0	0	2	34	0
Vocational schools	4,806	1,366	27	0	106	74	0	265	119	4,213	2
Slovak Republic	**26,630**	8,554	274	3,860	508	387	1,022	1,388	1,674	**16,762**	755

According to the results of the research conducted by the Institute for Labour and Family Research in 2010[50], out of approximately 47 thousand children and students with disability from the preschool level to secondary school the majority (58%) is educated in terms of the system of special education, mainly on the preschool level (70%:30%). The most balanced representation (56%:44%) of both models is at special and integrated schools of the elementary level of education.

The upbringing and education of children and students with medical disadvantegedness (MD) is carried out according to Educational Programmes for Children and Students with Mental Disturbance, Children and Students with Hearing Impairment, Children and Students with Visual Impairment, Children and Students with Physical Disability, Children and Students with Impaired Communication Skill, Children and Students with Autism or Other Pervasive Developmental Disorders, Sick and Medically Weakened Children and Students, Deafblind Children and Students, Students with Activity an Concentration Disorders, Children and Students with Multiple Impairment, Students with Behavioural Disturbances.

Educational programmes for children and students with MD are meant for the education of students with individual types of impairment or disturbance at special schools, in special classes of elementary schools and students educated within school integration (integrated) at

[50] REPKOVÁ, K., SEDLÁKOVÁ, D.: Disability – Selected Facts, Figures and Research Findings in International and National Context. World Health Organization Regional Office in Slovakia. Bratislava 2012. ISBN: 978-80-970993-9-8. page 16

an elementary or secondary school. Educational programmes for children and students with MD constitute a part of the state educational programme and are released on the website of the National Institute for Education.[51] If the medical disadvantegedness prevents the child or student of a special class or special school from being educated according to any of the aforementioned educational programme, the child or student shall be educated according to own individual educational programme that respect his or hers special socio-educational needs.

For persons with disability, however, the ratification of the UN Convention on the Rights of Persons with Disabilities, including its Optional Protocol, is of significantly higher importance compared to the School Act reform. In the Slovak Republic, both documents took effect on 25 June, 2010, in line with Article 45, par. 2 of the Convention[52] and Article 13, par. 2 of the Optional Protocol[53]. In the Collection of Laws both documents were published as the Communication of the Ministry of Foreign Affairs of the Slovak Republic No. 317/2010 Coll. - Convention on the Rights of Persons with Disabilities and the Communication of the Ministry of Foreign Affairs of the Slovak Republic No. 318/2010 Coll. - Optional Protocol to Convention on the Rights of Persons with Disabilities.

From the aspect of education, in the context of Article 24 of the Convention all children and adults with disability have the right to access to education on the same basis as the others. That includes all levels and types of education beginning with preschool one and ending with university and lifelong one. Besides that, all persons with disability should have the right to inclusive education with adequate individualized support necessary for the participation in education. Article 24 gives special attention to blind, deaf and deafblind children.

The state is thus obliged to create conditions for the improvement of the education of children and young people with special socio-educational needs and in increase of availability of tools of their support (e.g. higher financial rules, special educational programmes, aids, procedures, teacher assistants, school facilities of educational consultancy and prevention).

[51] < http://www.statpedu.sk/sk/Statny-vzdelavaci-programme/VP-pre-deti-a-ziakov-so-zdravotnym-znevyhodnenim.alej>, quoted on 1 March 2012

[52] "For every state or every regional integration organization that ratified the Convention, confirmed it officially or acceded to it after the deposition of the instrument of ratification or instrument of accession, the Convention takes effect on the thirtieth day after the deposition of their own instrument of ratification or instrument of accession."

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Education systems have to adopt approaches oriented more towards the student that encompass changes in the teaching plan, didactic methods and materials, evaluations and testing systems. Many countries have adopted individual education plans as a tool for the support of the integration of children with MD in education facilities. Although lots of physical barriers that the children with MD encounter in education can be overcome by means of simple measures, for example, in the form of changes in class equipment, it is evident that to provide the children with disability with a level of education equal to that of their contemporaries will require increased financing on the part of state as well as self-government bodies. Come children will need also supplementary supportive service, including special pedagogues, class assistants and therapeutic services.

Conclusions and Recommendations

The School Act effective from 1 September, 2008 introduced several changes and pursuit of the modernization of educational process, however, with respect to the traditional organization of the educational system.

Upbringing and education are based on the principles[54] of:

- no payments for education at kindergartens one year prior to the fulfilment of compulsory education as well as at state elementary schools and state secondary school,
- equality of approach to upbringing and education with regard to the educational needs of an individual and his or her shared responsibility for education, ban on all forms of discrimination and especially segregation,
- free choice of education with regard to expectations and qualifications of children and students in line with the possibilities of the educational system,
- preparation for responsible life in a free society in the spirit of understanding and broad-mindedness, equality of man and woman, friendship among nations, national and ethnic minorities and religious tolerance,
- control and evaluation of the quality of upbringing and education and the quality of educational system,
- reinforcement of the training aspect of the educational process through all school subjects as well as by specific educational occupations aimed at the development of

[54] Article 3 of the Act No. 245/2008 Coll. on Upbringing and Education (the School Act)

feelings and emotions, motivations and interests, socialization and communication, self-control and self-management, moral values and creativity,

- prohibition of all forms of corporal punishments and sanctions in terms of upbringing and education.

The reform introduced several changes in the school year 2008/2009:

- double level model of educational programmes was implemented – on the level of all schools the state determines the binding part of the content of education via state educational programmes and the profiling of individual schools is facilitated parallels by projecting school educational,
- education levels are reconciled with the international classification ISCED,
- vocational schools are internally differentiated and cover professional education and preparation, which was ensured individually in the past in terms of vocational schools and professional schools,
- schools for children and students with special socio-educational needs were renamed; however, no significant changes were conducted within the organization of special education system.

The school reform was under way in several stages.

In connection with the reform of education system several problems, which culminated in the school year 2010/2011 and linger up to now, arose. The teachers and pedagogical workers themselves and other specialist public often reproach the reform for unpreparedness and, in view of its quick implementation, inconsistency as to the preparation of conditions for the implementation of substantial changes. Problems marked the creation of state educational programmes, methodically unprepared teachers of schools were confronted with the requirement of rapid preparation of school educational programmes without the necessary knowledge, which, of course, impaired programme quality. The binding part of the education content is defined too bindingly. Compulsory subjects are determined for the schools, including the prescribed time, to an extent which, in the final analysis, prevents and curbs the processes declared by the reform that were meant to lead to a more autonomous status of schools.

The next one of the problems that the school reform has brought is the persistent lack of textbooks at elementary and secondary schools. The procurement of textbooks is regulated by the education department. The very process of textbook creation, their approval, publishing and subsequent distribution to schools is subject to central regulation. This process is too

complicated and lengthy in the long term. Lack of textbooks in Slovakia causes that teachers, if they want to maintain the basic continuity of the educational process, are forced absurdly to violate copyrights by copying didactic texts, publications, worksheets etc. and spreading and downloading them via internet. The teachers have to print the necessary documents and materials constantly by themselves, and also today, dissatisfied parents of students, who care about the education of their children, have to share the costs.

Following the Article 34, par. 2 letter a) of the Constitution of the Slovak Republic, under which the citizens belonging to national minorities or ethnic groups are guaranteed the right to education in their language under the terms laid down by law, the exercise of this right guarantees:

- at schools and in classes where the upbringing and education is carried out in the language of the respective national minority,
- at schools and in classes where one of the school subjects is the language of the national minority and the language of teaching of other school subjects is the national language; at these schools and in these classes certain subjects may be taught in the language of the national minority, mainly art lessons, music lessons, physical education,
- at school facilities conducting the education in the language of national minority.[55]

Among the most flagrant problems of the exercise of the right to education in the Slovak Republic is the education of the Roma. The upbringing and education of the members of the Roma community and children from socially disadvantaged environment is under way in terms of the system of schools and school facilities. Notwithstanding that, in the school year 2011/2012 not a single elementary school with Roma language of teaching has been established in Slovakia, although the Roma nationality comprises approximately 2% of the population according to statistical data.

The exercise of the right to education in mother language is still problematic in the event of the Roma. It was not until 2008 that the Roma language was standardized. In practice it means that the minority the membership of which was officially professed by almost 90,000 people according to the 2001 Population and Housing Census (according to the data of the

[55] For further reference see Article 12, par. 3 and 5 of the Act No. 245/2008 Coll. on Upbringing and Education (the School Act).

Statistical Office of the Slovak Republic from 2001)[56], has been hitherto represented just by one school with Slovak and Roma language of teaching in the network of schools in the Slovak Republic, namely the eight-grade Private Grammar School of Z. J. Malla in Kremnica[57]. Although the school is highlighted by the professional public as one of the few examples of positive practice in inclusive education, it is still perceived as a pilot experiment, because a total of 43 students are studying in her third year, and thus the school will have first graduates up to five years.

Although the Roma language and literature under the Decree of the Ministry of Education of the Slovak Republic No. 318/2008 Coll. on Completion of Study at Secondary Schools, Article 12 par. 5 aa) is among possible subjects of the school-leaving examination, the problem with acute deficiency in qualified pedagogues and lack of textbooks, didactic texts and material for these subjects has persisted.

In case of 3025 students of Roma nationality, practically no occurrence at universities (0.3%) and an extremely low occurrence at secondary schools (4.0%) have been registered. All of that in favour of massive concentration at elementary schools (2306 - 76.2%) and increased share at kindergartens (19.5%). From the group of 2306 pupils of Roma nationality only 69.9% attend ordinary elementary school, while as many as 29.7% attend a school for the mentally disturbed.

As regards the unequal treatment of Roma students, the Centre carried out a monitoring at the elementary school in Krivany at the instigation of the State School Inspection. From the conclusions of the monitoring follows that the school management has exerted efforts to eliminate segregation methods on the school grounds. The problem with the securing of equal boarding conditions was caused by the granting of subsidies for the support of guidance of a child endangered by social exclusion to eating habits. As a consequence, the number of student boarders exceeded the capacity of the canteen.

Some cases of alleged segregation are linked with the stipulation of school districts[58] on the basis of which schools attended by Roma children are created and with the refusal of principals of other schools to enrol a Roma child in their school.

[56] The 2011 Census data aren´t available yet.

[57] The Slovak Republic Roma Integration Strategy up to 2020, p. 26.

[58] School district stands for a territory / catchment area from which a school is obliged to accept a child with permanent residence in this district. If the legal representative decides so, the student may fulfil compulsory education at an elementary school outside the school district in which he or she has permanent residence with the

In connection with the problem of segregation of Roma children as to access to education, the judgement of the District Court in Prešov dated 5 December, 2011, is worth mentioning. It is the first decision of Slovak courts ascertaining the breach of the principle of equal treatment of and discrimination against Roma children owing to their ethnic membership. This judgement hasn´t taken effect yet as the defendant lodged an appeal.

The 2008 school reform touched also the upbringing and education of students with disability. New principles challenging respect, acceptance, dignity and integration had the ambition to be the accelerator of changes that would help the disabled to integrate themselves into the society. Several critics of the reform, however, say that just a change in names was achieved in practice...

Upbringing and education of children and students with medical disadvantagedness is carried out[59]

- at schools for children or students with medical disadvantagedness – these schools are labelled as special schools,
- at other schools under the School Act, namely
    - in special classes organized usually for children and students with identical kind of medical disadvantagedness; a part of the socio-educational process can be conducted in the class together with other children or students of the school; the child or student may complete school subjects or activities outside the special class,
    - in classes or education groups together with other children or students of the school; if necessary, such a child or student is educated according to individual educational programme drawn up by the school in cooperation with a school facility of educational prevention and consultancy; the legal representative of the child or student has the right to get acquainted with this programme.

For persons with disabilities, however, the ratification of the UN Convention on the Rights of Persons with Disabilities, including its Optional Protocol, is of significantly higher

consent of the principal of this school. Every elementary school must belong to a school district. Under Article 8, par. 1 of the Act No. 596/2003 Coll. on State Administration in School System and School Self-Government and on Amendment to Certain Acts as amended the school district of an elementary school comprises the territory of a municipality or a part of it. If the municipality is the organizer of several elementary schools, the municipality shall determine school districts for individual elementary schools through a generally binding regulation.

[59] Article 94 of the Act No. 245/2008 Coll. on Upbringing and Education (the School Act).

importance compared to the School Act reform. In the Slovak Republic, both documents took effect on 25 June, 2010, in line with Article 45, par. 2 of the Convention and Article 13, par. 2 of the Optional Protocol[60]. In the Collection of Laws both documents were published as the Communication of the Ministry of Foreign Affairs of the Slovak Republic No. 317/2010 Coll. - Convention on the Rights of Persons with Disabilities and the Communication of the Ministry of Foreign Affairs of the Slovak Republic No. 318/2010 Coll. - Optional Protocol to Convention on the Rights of Persons with Disabilities.

As a result of implementation steps that are necessary in relation to implement the Convention, by the amendment (Act n. 37/2011 Coll.) with effect from March 1st 2011, the Slovak Republic added the obligation of the Ministry of Education to provide to schools approved textbooks and workbooks transcribed into Braille or other appropriate forms of transcripts for free. The School Act also provides to deaf children and students the right to education in sign language, to blind children and students are guaranteed the right to education and training using Braille and to children and students with impaired communication skills are guaranteed the right to education and training through the replacement ways of communicating.
In addition, in connection with the request for introduction of standards and conditions for the implementation of inclusive education of disabled persons, since May 2011 Task Force for the area of inclusive education has been established in the framework of the Government Council for Human Rights, Minorities and Gender Equality. Its task will be to prepare recommendations for practice and to act in the direction of desegregation of disabled persons from socially disadvantaged communities.

Recommendations

It remains to be said that within the exercise of the right to education, problems that haven´t been dealt with a long time and that cannot be solved in the short term still occur. The Centre recommends adopting several measures. Some measures may be adopted in the foreseeable future; other ones require further discussion and gradual putting into practice. Collaboration of all persons involved will be needed for their implementation. Without the cooperation of

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parents showing interest in the education of their children these measures will never be sufficient. The Centre reminds of and points out the fact that the segregation, as an undesired phenomenon, cannot be accepted in any shape and for any reasons. This holds true especially in the event of children since they are protected by the Convention on the Rights of the Child that the Slovak Republic is bound by. The Centre recommends:

1. Improving the quality of education by means of essential new and modern crucial textbooks and didactic materials. Ensuring sufficient, timely and not deficient materials and financing.
2. Securing the facilitation of the conduction of the newly-defined socio-educational process by providing high-quality methodical assistance as well as the offer of further education for pedagogues, taking into account new trends.
3. Preparing gradual decentralization of the creation of textbooks and distribution system by ensuring an open market of textbooks and enabling free choice and purchase of textbooks by schools. Anyway, the education department should retain the competence of expert surveillance and supervisor of the textbook content (e.g. with the aim of preventing the leak of socially incorrect, extremist connotations, influence of cognitive and emotional development of students through pernicious cults and sects etc.).
4. Preparing the change in qualification preconditions which a teacher assistant has to meet so that this institution fulfils its mission which is the participation in the conduction of school educational programme, particularly by creating the equality of chances in upbringing and education, overcoming architectonic, information, language, medical, social and cultural barriers.[61]
5. Defining the segregation in Slovak law.
6. Incorporating the strict limitation of measures which enable temporary or permanent segregation of disadvantaged groups into the Antidiscrimination Act.
7. Monitoring and sanctioning unambiguous segregation procedures of the organizers of kindergartens and elementary schools.
8. Imposing measures for the removal of segregation in school system, gradual integration of students who complete zero grades among other students.
9. Changing the tests used for diagnosing school maturity so that they are comprehensible also for Roma children.
10. Imposing uniform standards of opinions as to child diagnostics.

[61] Mission of a pedagogic assistant follows from Article 16, par. 1 of the Act No. 317/2009 Coll. Pedagogical Employees and Specialist Employees and on Amendment to Certain Acts as amended

11. Cutting the number of Roma children visiting special elementary schools and integrating them into ordinary schools.
12. Stimulating the organizers of special schools to take measures for de-segregation of these schools.
13. Integrating children / students with disability into ordinary schools.
14. Creating all preconditions for gradual but timely transformation of the school system from the segregation/integration model into integration/inclusive model.
15. Acceding without delay to the implementation of the UN Convention on the Rights of Persons with Disabilities, establishing a control and monitoring mechanism under Article 33, par. 1 of the Convention.
16. Starting the inclusion process by removal of barriers from the school system (rooms, textbooks, methodology).
17. Intensifying systematic and compulsory human rights education aimed at the suppression of discrimination and promotion of the principle of equal treatment at elementary and secondary schools and universities.
18. Fighting more efficiently on the level of pedagogical board (principals and teachers) against prejudices and discrimination in school environment and cooperating with the parents from majority population in education aimed at the suppression of the manifestations of animosity and intolerance to otherness and in guidance to diversity.
19. Altering the established practice of preferring unqualified pedagogues to qualified ones due to lack of funds on the part of schools.

C o n c l u s i o n

As regards the assessment of the progress attained in respecting the rights recognized in the Covenant and the level of fulfilment of the obligations under this Covenant, the Centre states that:

1. In spite of the Slovak Republic being a longstanding State Party to the Covenant, problems with the implementation of certain Articles of the Covenant into the law of the Slovak Republic, predominantly with their practical conduction, still persist.

2. With regard to the antidiscrimination standards, it is necessary to state that certain special regulations regulating social relations in individual areas which the Antidiscrimination Act has amended don´t contain a provision that would expressly regulate discrimination.

In the field of judicature and evaluation of antidiscrimination suits it is necessary to point out the fact that justice is inactive in this area and discrimination suits are mostly dismissed due to lack of proofs on the part of plaintiffs, while the courts reject to accept the fact that in case of antidiscrimination suits, it is necessary to apply the principle of reversed burden of proof.

2. The securing of the right to housing is guaranteed neither in the Constitution of the Slovak Republic nor explicitly in any act of the Slovak Republic. Since some of EU member states have already implemented the aforementioned into their constitutions, it would be appropriate for our country to join this standard also in view of persistent problems with the housing of citizens.

It is necessary to inform that the attention in the Slovak Republic is focused solely on diverse possibilities of enhancing the access to housing for those who are on the margins of the society and not for ordinary active citizens.

3. In the field of gender equality there are still big differences in the remuneration of women and men, approach to employment and the participation of women in public affairs administration. Even despite the markedly worse situation of women on the labour market yet prior to the crisis, political measures weren´t been aimed at the prevention of the reduction of employment of women.

Despite the Slovak Republic incorporating all important international and European documents in the given area into its law, as for the part pertaining to the labour law protection of employees with parental responsibilities, we may say that certain control mechanisms are absent.

4. Ensuring of the right to adequate standard of living for “himself and his family” is illusory. We cannot forget about the increasing number of people threatened by poverty

representing approximately 12% of the population, while out of these 12% most threatened are children (especially of the unemployed), women and old people.

5. According to official data of the statistical office abrupt growth of prices and unemployment rate caused that the quality of living in 2011 had been "most miserable" since 2006.

Although legal regulations regulating discrimination ban in employment relationships and antidiscrimination legislative in Slovakia meet the criteria of complexity on the level of the European standard, problems occur upon their real application. Here it can be stated that they don´t function, referring primarily to discrimination practices on the labour market particularly in connection with recruitment as well as dismissal from work due to age, sex, ethnicity, disability and others.

6. In the field of the right to "the maximum level of physical and mental health achieved" the physicians themselves and health insurance companies admit that the level of health care and availability of certain medical performances and medicines aren´t ensured promptly and flawlessly.

7. It remains to be said that as to the exercise of the right to education, problems that haven´t been coped with for a long time and cannot be solved in the short term still appear. With regard to the exercise of the right to education the relentless and most severe issue is the education of Roma children.

8. Questionable is also the exercise of the right "to participate in cultural life of the society". In view of the growing number of persons threatened by poverty, record-breaking unemployment rate and low retirement pensions of "old age pensioners", this sizable part of the society cannot afford participating in cultural life.

The Centre believes that upon the negotiations on the Report of the Slovak Republic on the Progress Attained in Respecting the Rights Recognized in the Covenant, the comments of the Centre will be accepted with such good intentions with which the Centre presents them and that the UN Economic and Social Council will recommend that the Slovak Republic deal with the comments as soon as possible and adopt effective measures for their removal.