

## **The Limits of EU Conditionality: Minority Rights in Slovakia**

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*This article discusses the impact of EU conditionality on minority rights in Slovakia from a legal point of view. The study of the Slovak case demonstrates the visibility and degree of the EU's contribution to the stabilization of the rule of law, democracy and the creation of legislation on the protection of ethnic minorities in one of the most complex of transition states. At the same time, the article argues that despite the propagation of some ambitious laws in Slovakia, the EU's contribution has had a limited effect on shaping the attitude of Slovak society towards minority rights. Both the formulation of 'recommendations' and criticisms by the EU and the 'responses' emanating from Slovakia, in terms of norms and policy, are examined, leading the author to conclude that the role of the EU in monitoring Slovakia's performance in protecting minority rights has suffered both from an unclear strategy and structural deficiencies, which have subsequently become embedded in Slovakia's domestic legal profile on minority issues.*

## I. Introduction

Throughout much of the history of the European Community (EC) and later the European Union (EU), no straightforward solution has been sought by the main European institutional actors to address the need for including human rights provisions in the legislative context. It was not deemed desirable for the European Community to expand its activities, and therefore also its legislation, to any domain that did not pertain to the optimum regulation of the 'open market'. Instead of introducing the relevant legislation directly, the need to include human rights at the European level was therefore inserted into the EC's legal framework by means of often contradictory judicial decisions by the European Court of Justice (ECJ). At the same time, human rights clauses have become increasingly attached to the evolution of the EU's external policy.

The Copenhagen criteria of 1993, introduced for the purposes of enlargement to Central and Eastern Europe (CEE), to a large extent reflected this unorthodox method, insofar as they constituted the first official document explicitly identifying 'respect for the rights of minorities' as a requirement for accession to the EU. The evolution of minority rights protection subsequently became linked to the enlargement agenda, which was an element of the EU's external agenda at that time. Despite this, no corresponding legal foundation for such a development existed within the EU.

The application of the Copenhagen political criterion in each of the candidate states subsequently set in train a common phenomenon: whilst the proliferation of domestic legal texts aimed at guaranteeing the rights of minorities was observed in most cases, the

'responses' tended to be largely asymmetric and cover the issue only superficially. This observation can be explained by two sets of factors: first, the EU failed to provide a clear set of 'demands' on the issue because of its own lack of solid legislation (which it tended to create on an *ad hoc* basis) and policy on minority rights protection; and second, each candidate country perceived these 'demands' differently, thus responding to them according to its own particular circumstances, interests and domestic policies.

Within this framework, Slovakia is a unique case, as it is the only candidate country of CEE to have been explicitly excluded from accession negotiations on the basis of its non-fulfilment of the Copenhagen criteria. In particular, the European Commission noted the country's failure in 1997 to satisfy the political criteria, though it was also observed that this was not due to infringement of minority rights, which had been in principle recognized.<sup>1</sup> More exactly, "The instability of Slovakia's institutions, their lack of rootedness in political life and the shortcomings in the functioning of democracy"<sup>2</sup> were put forward as arguments for the exclusion of Slovakia from the first round of accession negotiations. Nevertheless, the political criteria were also used in another way, as they were hence singled out as a *sine qua non* for the initiation of accession negotiations with a candidate state,<sup>3</sup> thus *ex post facto* introducing a hierarchy among the accession criteria.

The unstable political background in Slovakia between 1990 and 1997, dominated by the distinctive style of Mečiar's politics, had been the real reason why the EU had reacted in this way. Particularly after the 1994 elections, when Mečiar returned to power in alliance with the Slovak National Party (SNS), did it become clear to the EU that Slovakia was moving rapidly from democracy to a form of semi-dictatorship.<sup>4</sup> It was only after the 1998 September elections when Mečiar had lost power and after the shock of exclusion from EU accession negotiations had hit home that new 'European' perspectives were once again made available.

Against this background, the domestic application of the first Copenhagen criterion – the requirement for the respect of the rights of minorities – has become an important issue

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<sup>1</sup> "Agenda 2000: Commission Opinion on Slovakia's Application for Membership of the European Union", 15/07/1997, DOC/97/20, <http://www.europa.eu.int/comm/enlargement/dwn/opinions/slovakia/sk-op-en.pdf> pp.21-22.

<sup>2</sup> European Commission, "Agenda 2000: Commission opinion on Slovakia's application for membership of the European Union", *Bulletin of the European Union*, Supplement 9/97. 77. 1997.

<sup>3</sup> The Commission noted that "the effective functioning of democracy is a primordial question in assessing the application of a country for membership of the Union", see note 2. Supplement 5/97, p. 40.

<sup>4</sup> Most notably through such instances as Mečiar's overzealous opposition to the Slovak President Kováč and the subsequent kidnapping of his son on 31 August 1995. A comprehensive analysis of Mečiar's undemocratic style of rule can be found in Robin H. E. Shepherd, *Czechoslovakia: The Velvet Revolution and Beyond*, Basingstoke: Macmillan, 2000, especially chapter 8.

in the case of Slovakia, the complexity of compliance being duly reflected in the range of attempts to create the most favourable legal apparatus to tackle it. The case of Slovakia is not, however, interesting only to this extent. It also demonstrates more generally the visibility and degree of the EU's contribution to the stabilization of the rule of law and democracy as well as the creation of legislation on the protection of minorities in the transition context. This contribution, it is argued here, has however had limited effects on the implementation of ambitious laws on minority protection and the promotion of a more positive attitude amongst Slovak society towards minority communities. It is this nexus therefore that merits further study and that renders the Slovak case representative of a wider trend in emerging minority standards in relation to EU conditionality.

This article attempts to address this complexity in the form of a 'dialogue' between the 'requirements' on minority protection for the fulfilment of the Copenhagen political criterion as expressed by the EU, and the 'responses' on the legal level, as provided by Slovakia. From the perspective of the EU, the formulation of 'requirements' evolved to a certain extent between 1994 and 2003 towards more targeted demands, although contradictions in the positions adopted by the different EU organs and the various current member states existed throughout this period. At the same time, Slovakia's 'responses' were mixed and covered both the areas of 'non-discrimination' as it is understood within the EU as well as specific measures for the protection of minority rights. Ultimately, this exchange will attempt to reveal and confirm the wide range of criticisms that have been voiced regarding the systemic failures of the process, as well as the legal repercussions of these failures for both parties.

## **II. EU Requirements on Minority Rights**

### **A. The first stages of negotiations with the EU**

As with all EU accession candidates, the formal negotiations with Slovakia were initiated on the basis of a Europe Agreement. This was signed in 1994, after the dissolution of Czechoslovakia,<sup>5</sup> and a parallel process of regular Association Council meetings was initiated six months later.

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<sup>5</sup> Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, *O.J. L359*, 31/12/1994, pp.2-210.

It became clear from the beginning that the respect for democratic procedures was a central concern for the EU in Slovakia.<sup>6</sup> Focus at this stage, however, was placed on the importance of intra-regional cooperation as a basis for stability in Eastern Europe,<sup>7</sup> and its capacity to prevent conflict that would or could arise as a result of minority rights claims. The importance of regional cooperation “as a means of fostering stability and good neighbourly relations”<sup>8</sup> subsequently remained a constant throughout the whole series of meetings between Slovakia and the troika of the EU Council, suggesting a certain attachment to security concerns that nevertheless avoids the mention and discussion of ethnic minorities.

The following year, the Association Council returned to the issue of democracy and the rule of law by reminding Slovakia of “the importance of the criteria for membership set out by the Copenhagen European Council”.<sup>9</sup> It then continued by putting the issue of ethnic minorities into the previously designated context of regional cooperation. References to the importance of the PHARE programme<sup>10</sup> and the wish for ratification by Slovakia of the Basic Treaty on good neighbourly relations that it had signed with Hungary<sup>11</sup> constitute the only references at this point that tackle the issue directly, nevertheless largely with respect to economic development, an area traditionally prioritized by the EU. Interestingly, in this context Slovakia requested that the EU consider “the possibility of preparing a White Paper on the rights of national minorities”.<sup>12</sup> This is the first mention of minorities to have arisen, but elicited no official response from the European side. This lack of response alone points to the unease created within the EU regarding its lack of standards and policy on minority rights.

EU requirements on Slovakia started taking more specific shape with the introduction of the law on the use of the state language (Slovak) that was passed in November 1995, in conjunction with a law on the use of minority languages that was declared unnecessary by

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<sup>6</sup> First Meeting of the EU-Slovak Republic Association Council, *Joint Press Release*, 29/05/1995, UE-SK 2003/95, Press 157, point 4 paragraph 3, where it was noted that the Association Council “expressed the wish that the Slovak Republic will increase its efforts to further develop democratic procedures”.

<sup>7</sup> *Ibid*, point 4 paragraph 6.

<sup>8</sup> See for example, Fifth Meeting of the EU-Slovak Republic Association Council, *Joint Press Release*, 27/4/1999, UE-SK, 2007/99, press 125, point 4 paragraph 2.

<sup>9</sup> Second Meeting of the EU-Slovak Republic Association Council, *Joint Press Release*, 27/02/1996, UE-SK 2003/96, Press 34, point 3 paragraphs 5 and 6.

<sup>10</sup> *Ibid*, point 3 paragraph 2 and point 5 paragraph 2 on cross-border cooperation.

<sup>11</sup> *Ibid*, point 3 paragraph 6.

<sup>12</sup> *Ibid*, point 3 paragraph 7.

Mečiar's government in November 1997.<sup>13</sup> In addition to a number of worrying developments at the political level, such as the efforts of the prime minister to have members of the opposition expelled from the parliament or the abduction of president Kováč's son, this series of legal moves towards institutionalizing ethnic dominance triggered the reaction of the European Parliament. In the form of a resolution,<sup>14</sup> the European Parliament subsequently threatened that the EU would have to reconsider its assistance programmes, if the Slovak Republic "continues to follow policies which show insufficient respect for democracy, human and minority rights and the rule of law."<sup>15</sup>

The approach of the European Parliament is clearly one that stresses the need to ensure the adequate protection of human rights, including minority rights, within the wider scope of democracy and the rule of law. This move also contradicted the approach thus far adopted in the Association Council meetings that sought to enhance the macro-regional component of ethnic minority issues. The early contradiction in approaches that were adopted by the two main EU institutional actors can easily be explained by the lack of a coherent and standardized approach to minority rights.

This trend was reversed only in part in the Association Council meeting in 1997. While encouraging recent developments in Slovakia with regard to democratization,<sup>16</sup> the EU also expressed a more specific requirement for additional legislation on the use of minority languages. Regional cooperation through the medium of bilateral treaties was also mentioned, as Slovakia ratified the treaty with Hungary in 1997.<sup>17</sup> The European Parliament at the same time adopted a stricter tone in its resolution towards Slovakia. In this way, respect for human rights, the rights of minorities, democracy and the rule of law were considered "a condition for entering into and developing cooperation with the EU", especially in cases that demonstrate gross violations of these values, as was the case with the removal of the parliamentary mandate of Frantisek Gaulieder.<sup>18</sup>

It appears that during the period 1994 to 1997, the EU had genuine difficulty in putting forward concrete requirements in view of accession with regard to the rights of

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<sup>13</sup> Karen Henderson, "Slovakia and the democratic criteria for EU accession" in Karen Henderson (ed.) *Back to Europe: Central and Eastern Europe and the EU*, London: UCL Press, 1999. p.230.

<sup>14</sup> European Parliament Resolution on the need to respect human and democratic rights in the Slovak Republic, *O.J. C 323*, 04/12/1995, p.116.

<sup>15</sup> *Ibid*, point E paragraph 4.

<sup>16</sup> Third Meeting of the EU-Slovak Republic Association Council, *Joint Press Release*, 25/02/1997, UE-SK 2003/97, Press 56, point 5 paragraph 1.

<sup>17</sup> *Ibid*, point 6.

<sup>18</sup> European Parliament Resolution on the case of Frantisek Gaulieder, Member of the Slovak Parliament, *O.J. C020*, 20/01/1997, p.145, especially point 5.

minorities in Slovakia. Several factors might have contributed to this state of affairs. Among them were the EU's growing maturity in conducting the process combined with the subsequent removal of Mečiar's government from power in 1998.

## **B. Minority rights and EU negotiations in the post-Mečiar era: New opportunities?**

Progress was not so clear-cut in the next Association Council meetings in 1998 and 1999. Here it was repeated that Slovakia needed "to enhance its efforts to strengthen, by lasting measures, its democratic structures and practices in line with the Copenhagen criteria and according to the Accession Partnership".<sup>19</sup> Furthermore, the importance of regional cooperation "as a means of fostering stability and good neighbourly relations"<sup>20</sup> remained a constant element.

Again, in stark contradiction to the above, the European Parliament began, in its resolution on the Slovak Republic, to encourage a change of regime, requesting "the Slovak Republic to give absolute priority to ... human rights and the rights of minorities, democracy and the rule of law."<sup>21</sup> The Parliament pushed at the same time for "a fundamental re-assessment of the EU's position towards Slovakia"<sup>22</sup> and "flexibility in the process of screening and drawing up" Slovakia's report.<sup>23</sup>

The 1998 Accession Partnership identified the need for the adoption of minority language-use legislation and implementation measures, as a short-term priority<sup>24</sup> and set the development of policies and institutions protecting the rights of minorities.<sup>25</sup> In its information document forwarded to the Council, prior to the adoption of decision 98/262, the Commission also provided a more detailed evaluation of the steps required for the effective protection of minorities in Slovakia. It identified the treatment of the Hungarian minority and the situation of the Roma as two sources of issues that required the attention

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<sup>19</sup> Fourth Meeting of the EU-Slovak Republic Association Council, *Joint Press Release*, 22/4/1998, UE-SK, 2003/98, Press 123, point 4 paragraph 3.

<sup>20</sup> Fifth Meeting of the EU-Slovak Republic Association Council, *Joint Press Release*, 27/4/1999, UE-SK, 2007/99, press 125, point 4 paragraph 2.

<sup>21</sup> European Parliament Resolution on the Slovak Republic, *O.J. C328*, 26/10/1998, p.190.

<sup>22</sup> *Ibid*, point 5.

<sup>23</sup> *Ibid*.

<sup>24</sup> Council Decision 98/262/EC of 30 March 1998 on the principles, priorities, intermediate objectives and conditions contained in the accession partnership with the Slovak Republic, *O.J. L121*, 23/04/1998, pp.16-20, point 3.1.

<sup>25</sup> *Ibid*, point 3.2.

of the Slovak authorities,<sup>26</sup> as well as the more general need for institutions and policies protecting the rights of minorities that was included in the text of the decision already mentioned.

The level of detail in the document still remained arguably low but a slight improvement was noticeable in the formulation of criticism. In the 1999 Accession Partnership, the treatment of the Hungarian minority was removed as an issue of concern from the Commission's evaluation list. The situation of the Roma and their discrimination in various sectors remained the only item in need of political resolution in the short-term.<sup>27</sup> This shift of focus can be explained by multiple criteria and justifications. One possible explanation and perhaps the most obvious one, is that the Roma as a group continued to be disadvantaged and segregated in numerous sectors of socio-economic and political life, while the Hungarians had achieved a higher degree of political mobilization as a group and a higher profile in the advocacy of their rights.

In the medium term, policies and budgetary means were again recommended to improve the situation of the Roma. The adoption of minority language legislation and its implementation in education, culture and the media were identified as goals.<sup>28</sup> In the same document, it was noted that adoption of the relevant legislation was so far insufficient and further implementation was required to reach "the same standards as those which apply within the Union".<sup>29</sup> Such observations naturally beg the question as to what exactly were the standards referred to in relation to the Roma and indeed other ethnic minorities in the EU. It still remains unclear how these standards could or should apply to member states, since EU legislation on the matter is limited and any EU standards which applied to the existing fifteen member states were implemented in an *à la carte* fashion at best. Given that the EU largely employs 'borrowed' standards from other international organizations to establish its benchmarks and, more significantly, given that these select standards are applied without following a homogenous pattern across the current member states, this particular requirement towards Slovakia, as well as other candidate states appears, at best, fuzzy.<sup>30</sup>

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<sup>26</sup> Information from the Commission-Slovakia: Accession Partnership, *O.J.C202*, 29/06/1998, pp.83-87, Annex, point 1.

<sup>27</sup> Council Decision 1999/853EC of 6 December 1999 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Slovak Republic, *O.J. L335*, 28/12/1999, pp.22-28, Annex, point 3.1.

<sup>28</sup> *Ibid*, Annex, point 3.2.

<sup>29</sup> *Ibid*, Annex, point 3.

Nevertheless, as of 1999 Slovakia was considered to have met the Copenhagen criteria.<sup>31</sup> This certainty is reflected in the 2000 and 2001 Association Council meetings, where progress was noted in the area of minority rights although the situation of the Roma remained critical.<sup>32</sup> Despite this optimism, it is still possible to question the validity of the European Commission's general evaluation on Slovakia's meeting the political criteria. On a theoretical level, the legal foundation of the criterion *per se* appears ill defined, but more importantly its implications have not been consistently measured by the EU, in terms of both obligations and standards. In other words, it is still unclear what the adequate levels of protection should be for a minority within any state, at least in legal terms, as the selective standards chosen from among other international agents deal with specific issues in different ways.

### C. Evolution and final formulation of EU minority rights requirements

The regular Commission reports after 1999 have nevertheless been more detailed as to the unresolved matters in Slovakia with respect to minority rights protection. The 2000 regular Commission report, for example, identified one major area requiring action by the Slovak authorities. This revolved around the situation of the Roma in Slovakia, pointing out four elements of policy in particular.<sup>33</sup> Minority access to education and, more specifically, the fact that a great regarding the 1999 Slovak Law on the Use of Minority Languages number of Roma children attended schools for the mentally retarded, was one of the aspects identified as a more generalised discriminatory trend against the Roma. *De facto* segregation of the group in some cities and towns was another aspect, mostly with respect to housing rights.<sup>34</sup> On a stricter legal basis, the implementation of the 1999 Slovak nationality law appeared to apply disproportionately to the Roma, in a way that they could not benefit from the favourable disposition of the law towards ethnic/national minorities. Finally, as the basis for good policy formulation, the European Commission

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<sup>30</sup> James Hughes and Gwendolyn Sasse, "Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs", *Journal on Ethnopolitics and Minority Issues in Europe*, Issue 1/2003, [http://www.ecmi.de/comm/jemie/download/Focus1-2003\\_Hughes\\_Sasse.pdf](http://www.ecmi.de/comm/jemie/download/Focus1-2003_Hughes_Sasse.pdf) p.6.

<sup>31</sup> European Commission, *1999 Regular Report on Slovakia's Progress Towards Accession*, [http://www.europa.eu.int/comm/enlargement/report\\_10\\_99/pdf/en/slovakia\\_en.pdf](http://www.europa.eu.int/comm/enlargement/report_10_99/pdf/en/slovakia_en.pdf) p.18.

<sup>32</sup> Sixth Meeting of the EU-Slovak Republic Association Council, *Joint Press Release*, 14/06/2000, UE-SK 2009/00, Press 208, point 2 paragraph 2 and Seventh Meeting of the EU-Slovak Republic Association Council, *Joint Press Release*, 26/06/2001, UE-SK 2015/01, Press 270, point 2 paragraph 2.

<sup>33</sup> European Commission, *2000 Regular Report on Slovakia's Progress Towards Accession*, [http://www.europa.eu.int/enlargement/report\\_11\\_00/pdf/en/sk\\_en.pdf](http://www.europa.eu.int/enlargement/report_11_00/pdf/en/sk_en.pdf) pp.20-22.

<sup>34</sup> *Ibid.*

requested that Slovakia make an effort to compile more accurate figures in the 2001 census on Roma population.

The Commission report the following year reiterated for the most part the requirements on minority rights already formulated in 2000.<sup>35</sup> Under-representation in education and over-representation in schools for retarded children continued to exist for the Roma. The existence of separate classrooms for Roma students was also reported. Housing conditions remained precarious, with access to public utilities and social services often obstructed. Racially motivated violence against the Roma was also mentioned as a phenomenon requiring action.

In addition to its concern for the Roma population, the Commission also picked up again on the 1999 Slovak Law on the Use of Minority Languages, remarking as it did in 2000<sup>36</sup> that its: “impression ...that in many areas national minorities do not make use of the rights granted under the law due to lack of information remains valid.”<sup>37</sup> A final point of concern was the establishment of a faculty for Hungarian teachers at the University of Nitra, although in this case it should be noted that whilst the Slovak government had been willing to provide funds, the autonomous administrative bodies of the university had shown some reluctance in actually following the agreement reached.<sup>38</sup>

The Commission’s concerns were subsequently included in the Accession Partnership agreement, which conspicuously focused on the improvement of the situation of the Roma, the fight against discrimination, and the implementation of minority language legislation. Adding however the need for channels of redress on police misconduct in cases of racially motivated violence,<sup>39</sup> an element that had not appeared in the 2001 regular report. The 2002 regular report to a large extent put forward the same list of requirements.<sup>40</sup> The novelty of this report, however, was its focus on the need to provide adequate funding from the state budget to support such reforms<sup>41</sup> as well as on the lack of coordination amongst the competent bodies dealing with Roma issues,<sup>42</sup> which had

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<sup>35</sup> European Commission, *2001 Regular Report on Slovakia’s Progress Towards Accession*, [http://www.europa.eu.int/comm/enlargement/report2001/sk\\_en.pdf](http://www.europa.eu.int/comm/enlargement/report2001/sk_en.pdf) at p.22.

<sup>36</sup> See note 33, at p.20.

<sup>37</sup> See note 35, pp.23-24.

<sup>38</sup> *Ibid*, p.22.

<sup>39</sup> Council Decision 2002/93/EC of 28/01/2002 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Slovakia, *O.J. L044*, 14/02/2002, pp.92-100, Annex, point 4 (political criteria).

<sup>40</sup> European Commission, *2002 Regular Report on Slovakia’s Progress Towards Accession*, COM (2002) 700 final, [http://www.europa.eu.int/comm/enlargement/report2002/sk\\_en.pdf](http://www.europa.eu.int/comm/enlargement/report2002/sk_en.pdf), at pp.30-32.

<sup>41</sup> *Ibid*, at p.32.

<sup>42</sup> *Ibid*, at p.31.

resulted in weak implementation and a conspicuous divergence between strategy, law and enforcement. The reluctance of local authorities and regional governments to implement the relevant policies and legislation also contributed to the more general problem, particularly as the 2001 reform of public administration in Slovakia had delegated competencies on ethnic issues to the local and regional levels e.g. regional development, education, social protection.<sup>43</sup>

The recurring themes in the Commission reports over the period, however, suggest a slow improvement in the areas designated. Despite the rapid introduction of relevant legislation, as will be discussed below, the situation with respect to minority rights has nevertheless changed at a slow pace. Results have therefore not appeared spectacular. Yet, the paradox remains: while Slovakia nominally fulfils the Copenhagen criteria and has thus been invited to join the EU in 2004, the actual improvement in the situation of minorities is small.

#### *Main minority group concerns in Slovakia*

The remaining parts of this section try to shed more light on the most important areas where progress has been identified by the Commission, namely the Roma and the situation with other minorities, with the aim of preparing the ground for a closer study of Slovakia's performance and evaluating the EU's actual contribution to this progress.

##### **a. The Roma**

According to the official 2001 census, the Roma are the second largest minority in Slovakia numbering 90,000 and making up 1.7 per cent of the population. It must, however, be pointed out that these figures are contested, with independent bodies claiming the true figure to be between 480,000 and 520,000 i.e. roughly corresponding to about 10 per cent of the total population.<sup>44</sup> As has been noted in all of the Regular Reports, the Roma in the domestic context deserve particular attention. Since 1999, the Commission has consistently listed the need to "improve the situation of the Roma through strengthened implementation ... of measures aimed, notably, at fighting

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<sup>43</sup> Ibid, p.31.

<sup>44</sup> ERRC, *Written Comments of ERRC for consideration by the UN committee on Economic, Social and Cultural Rights*, 29<sup>th</sup> Session, 11-29 November 2002, p.3.

discrimination (including within the public administration)”<sup>45</sup> as one of the priorities of Slovakia. Despite this, public opinion polls over the same period have noted a tendency to see the Roma living separately from the majority population.<sup>46</sup> The mass media has also reflected this attitude, often linking the Roma to incidences of thefts and other crimes.<sup>47</sup> While the Roma certainly face informal discrimination in every day life, NGOs have further claimed that institutionalized protection, such as is offered through the Framework Convention on the Protection of National Minorities is often applied and interpreted in various ways but usually not adhered to when it comes to the Roma.<sup>48</sup>

Moreover, the Roma continue to face inappropriate treatment in law enforcement, with the police being accused of inaction in cases of racially motivated violence. Often faced with discrimination, the Roma have faced a disproportionate amount of physical violence.<sup>49</sup> Of the 35 racially motivated crimes in 2000, for instance, the victims were most commonly reported to be of Roma origin.<sup>50</sup> Demonstrating the EU’s dependency on external sources for its monitoring, this state of affairs was included in the 2001 Regular Report.<sup>51</sup>

Furthermore, high unemployment rates, low levels of education and bad living conditions have more often than not contributed to increased societal tensions.<sup>52</sup> Often, politicians have contributed to this by demonstrating unacceptably negative attitudes of racial intolerance.<sup>53</sup> As a consequence, public opinion has remained unfavourable towards the Roma and a lack of systematic official policy to tackle racial prejudice<sup>54</sup> has allowed consistent discriminatory attitudes to go unchecked. Responses to the sudden wave of migration by Slovak Roma to EU member states in 2000 is revealing of this attitude. In

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<sup>45</sup> European Commission, *1999 Accession Partnership for Slovakia*, [http://europa.eu.int/comm/enlargement/dwn/ap\\_02\\_00/en/ap\\_sk\\_99.pdf](http://europa.eu.int/comm/enlargement/dwn/ap_02_00/en/ap_sk_99.pdf) p.4.

<sup>46</sup> *Narodna Obroda*, 28.12.99, p.2 and *SME*, 28.12.99, p.2 as quoted in *Minority Protection in Slovakia: EU Monitoring Program*, Open Society Institute, 2001, pp.430-492, p.433.

<sup>47</sup> See for example the report on [www.mma.ro/database/message/slovakia.htm](http://www.mma.ro/database/message/slovakia.htm).

<sup>48</sup> Ibid.

<sup>49</sup> International Helsinki Foundation, *Human Rights in OSCE Region: The Balkans, the Caucasus, Europe, Central Asia and North America*, Report 2001, <http://www.ihf-hr.org/reports/ar01/Country%20Issues/Countries/Slovakia.pdf> p.266.

<sup>50</sup> Ibid, at p.267.

<sup>51</sup> See note 35, p.22.

<sup>52</sup> A typical example of such tension is that of the village of Pore, where people started a petition to prevent Roma from living in their neighbourhood as a result of fear for their lives, property and health. Ibid, p.268.

<sup>53</sup> On 4/08/00, in a press conference of the Slovak National Party, MP Vitázoslav Móric proposed the creation of reservation for ‘unadaptable’ Roma citizens and added that most mentally handicapped children were born into Roma communities. Ibid, at p.268. He was subsequently stripped of his parliamentary immunity to facilitate legal proceedings (see European Commission Regular Report, 2000, note 33, at p.21)

<sup>54</sup> EUMAP, *Monitoring the EU Accession Process: Minority Protection in Slovakia*, 2001 Report, [http://www.eumap.org/content/10/703/html/200/index\\_html?print=1](http://www.eumap.org/content/10/703/html/200/index_html?print=1) in II. Background.

April 2001, for example, the Slovak Foreign Minister Eduard Kukan declared that “we would consider it very unfair if the Iron Curtain fell on Slovakia because of 90 Romany asylum applicants”.<sup>55</sup> The following month, the Slovak government approved the introduction of stricter passport controls issuing conditions to “citizens suspected of trying to emigrate”.<sup>56</sup> The breach of Article 5(d)(i) and (ii) of the International Convention on the Elimination of All Forms of Racial Discrimination, particularly the freedom of movement within the border of a state and the right to leave one’s country should be particularly noted here. The possibility that the Roma were in fact driven to emigrate by the widespread racist and discriminatory attitudes in their home country has, nevertheless, only recently been considered at the political and legal level despite the fact that the Commission had hinted at this as the real reason for the exodus in its Report of 2001.<sup>57</sup>

On the same subject, the European Council issued a declaration on 15 October 2002,<sup>58</sup> stating that the ten accession countries (including Slovakia) would, from the date of signature of their respective accession treaties, be considered ‘safe countries of origin’,<sup>59</sup> despite the fact that some of them have problematic human rights records with regard to Roma.<sup>60</sup> As a consequence, the EU approach began to reveal an unrealistic tendency in its interests, at worst pointing to the lack of clear and firmly applied criteria for evaluating the actual performance of candidate states, and at best, of introducing an unsuccessful pecking order to these criteria despite declarations to the opposite.

## **b. The Hungarian minority**

Officially, Slovakia’s biggest minority is the Hungarians. At about 10 per cent of the total population, they constitute a group that has achieved genuine progress in protecting their communal rights and, as a consequence, were no longer considered in the Commission’s reports as an issue of concern after 1999.

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<sup>55</sup> Ibid.

<sup>56</sup> Decision 464 of the Slovak Government of 23/05/2001 and see also ERRC, “Slovakia moves to prevent Roma from leaving”, *Roma Rights*, No.2-3, 2001, [http://www.errc.org/rr\\_nr2-3\\_2001/snap10.shtml](http://www.errc.org/rr_nr2-3_2001/snap10.shtml) .

<sup>57</sup> See note 33, p.21.

<sup>58</sup> Press Release of the 2455<sup>th</sup> Council meeting – Justice, Home affairs and Civil Protection, Luxembourg, 14/15 October 2002, 12894/02 Presse 308.

<sup>59</sup> Any application for asylum of a national of a candidate state will be dealt on the presumption that it is manifestly unfounded.

<sup>60</sup> ERRC, “Collective Expulsions of Roma Around Europe ... And Again the ECHR rules the practice illegal”, No.3-4, 2002, [http://www.errc.org/rr\\_nr3-4\\_2002/snap1.shtml](http://www.errc.org/rr_nr3-4_2002/snap1.shtml) .

This has not always been the case. After the collapse of communism in 1989, the legal status of ethnic Hungarians in Slovakia did not improve although they managed to take advantage of the new system at least in political and institutional terms. The situation of the Hungarian minority, however, deteriorated drastically between 1994 and 1998, particularly under the leadership of Mečiar. The gradual restriction of the group's political rights (e.g. confiscation of land, based on the Beneš Decrees) was accompanied by the expulsion of members of the Hungarian minority from positions of state administration.<sup>61</sup>

After the change of government in 1998, two major grievances could then be identified. The first concerned the administrative reform that took place in 2001,<sup>62</sup> establishing self-government and a decentralization of power, and the second concerned the law on the use of minority languages, a grievance which still has some resonance today.

The discrepancy between the Hungarians and the Roma of Slovakia, particularly in terms of their respective enjoyment of human and minority rights, has been wide. After 1998, this discrepancy became even wider when the Hungarian minority managed to gain representation at the political level, guaranteeing that their voice would in future be heard. Yet the case of the 1999 Language Law constitutes a case where the limits of both their rights was all too evident. Ethnic Hungarian leaders at the time complained that the 20 per cent threshold for the allocation of language rights would exclude 158 municipalities with a combined minority population of over 100,000 being effectively placed outside the sphere of protection that the law offered.<sup>63</sup> All amendments proposed by the Hungarian parties were rejected in parliament, and although the law was adopted, it “ended up only satisfying European officials”.<sup>64</sup> In its present form, it is claimed that the law is not in full compliance with the requirements of the Hungarian-Slovak treaty and other international documents (e.g. the law does not take into consideration customary rights on language use in areas where Hungarians constitute the majority).<sup>65</sup>

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<sup>61</sup> Hungarian Human Rights Foundation, *The Situation of Hungarians in Slovakia*, <http://www.htmh.hu/reports2001/slovakia2001.htm> pp.8-9.

<sup>62</sup> Ibid.

<sup>63</sup> For a comprehensive account of the politics behind the adoption of the law, see Greg Nieuwsma, “Lessons in Democracy: Slovakia, its Minorities and the European Union”, *Central Europe Review*, Vol.1, No.20, 8/11/1999, <http://www.ce-review.org/99/20/nieuwsma20.html>.

<sup>64</sup> See note 31, at p.17.

<sup>65</sup> See note 61, at p.12.

Finally, as mentioned above the creation of an adequate institutional framework for local higher education combined with the issue of the faculty of Nitra University<sup>66</sup> complete a list of considerable shortcomings in the protection of the rights as identified by ethnic Hungarians.

#### **D. Slovakia's Responses to EU monitoring**

Almost 80 per cent of Slovak citizens see their future prospects in Slovakia's accession to the European Union.<sup>67</sup> Such overwhelming support for the EU suggests a readiness to comply with EU legal standards, including those concerning the rights of minorities. The Slovak reactions to the comments of the European Commission, however, illustrate the asymmetry of responses that have been evident towards the CEE candidates. Although the current legislative EU framework is strictly based on the notion of non-discrimination, the real needs of groups in countries like Slovakia clearly point to the need for special minority measures. The paradox becomes all the more obvious when it is remembered that the EU has formulated its criticisms and pressed for legislative and other forms of action based on normative principles of group rights, such as special measures and affirmative actions, that it has not been prepared to embrace itself.

An examination of the discrepancy between 'responses' dealing with minority rights and those based on non-discrimination therefore appears salient if one wishes to cover the whole range of measures introduced as a result of EU conditionality, and is the subject of the following section.

### **1. Minority Rights**

#### **a. A laconic constitutional framework for the protection of rights of minorities**

The Slovak constitution,<sup>68</sup> adopted in 1992, contains a number of provisions relevant to minorities although neither a definition of the term 'minority' is provided nor any formal mechanism for legal recognition. Article 12 of the Constitution establishes the principle

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<sup>66</sup> Ibid, at p.26.

<sup>67</sup> Presentation by Mikuláš Dzurinda, Prime Minister of the Slovak Republic, *The Debate on the European Constitution- A Slovak View*, Humbolt University, Berlin, 19 February 2002, p.1.

<sup>68</sup> For an English version of the Slovak constitution, see <http://www.slovensko.com/docs/const> .

of equality in the enjoyment of basic rights and liberties for all, regardless of “affiliation to a nation or ethnic group”.<sup>69</sup> Key to the debate on minorities are Articles 33 and 34. Article 33 recognizes the right of membership to any minority or ethnic group as an element that cannot be utilized to one’s detriment while Article 34 establishes a right for the general development of one’s culture, to receive and disseminate information in one’s mother tongue, the right of association, the right to establish and maintain educational and cultural institutions within a set legal framework. Further to language rights, Article 34 also guarantees a right for education in the mother tongue, a right to use the mother tongue in official communications and the right to participate in the administration of public affairs related to national minorities and ethnic groups.<sup>70</sup>

Combined, the above list indeed sets a favourable context for the promotion of the rights of minorities insofar as they guarantee fundamental rights. As the date for the adoption of the Constitution indicates, however, these cannot be directly attributed to the influence of the EU, as the Copenhagen criteria had not yet officially been set. Instead, drawing inspiration from the text alone, it is possible to put the articles mentioned in context. As follows from Article 34(1) and Article 6(2), establishing the official language of the state,<sup>71</sup> the content of both articles pertaining to the way they exercise the allocation of rights, point to separate laws. This indicates that although constitutional guarantees exist, one can only gain a proper picture of the actual content of the rights in question and how they are exercised by looking at the respective law. In the case of the right to use of the mother tongue for national minorities (Article 34), where no need for enacting legislation is expressed, the Constitutional Court subsequently decided that the National Assembly of the Slovak Republic should adopt a special law on the language of national minorities in order to guarantee the right effectively.<sup>72</sup>

Despite these guarantees, the preamble of the Slovak Constitution proclaims: “ We, the Slovak nation, mindful of the political and cultural heritage of our forebears, and of the centuries of experience from the struggle for national existence and our own

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<sup>69</sup> Article 12(2) reads: “Basic rights and liberties on the territory of the Slovak Republic are guaranteed to everyone regardless of sex, race, colour of skin, language, creed and religion, political or other beliefs, national or social origin, affiliation to a nation or ethnic group, property, descent or another status. No one must be harmed, preferred or discriminated against on these grounds.”

[http://www.minelres.lv/NationalLegislation/Slovakia/Slovakia\\_Const\\_excerpts\\_English.htm](http://www.minelres.lv/NationalLegislation/Slovakia/Slovakia_Const_excerpts_English.htm)

<sup>70</sup> See note 68, for the content of Articles 33 and 34.

<sup>71</sup> Article 6 disposes: “(1) Slovak is the state language on the territory of the Slovak Republic. (2) The use of other languages in dealings with the authorities will be regulated by law.”

<sup>72</sup> Center for Legal Analyses/Kalligram Foundation, *Memorandum: Law on Minorities*, January 2003, [http://www.cla.sk/projects/project.php?melyik=financing\\_of\\_the\\_minority\\_culture&nyelv=en](http://www.cla.sk/projects/project.php?melyik=financing_of_the_minority_culture&nyelv=en) .

statehood, in the sense of the spiritual heritage of Cyril and Methodius and the historical legacy of the Great Moravian Empire, proceeding from the natural right of nations to self-determination, together with members of national minorities and ethnic groups living on the territory of the Slovak Republic ... adopt through our representatives the following constitution". While the tone of the preamble is quite patriotic, it assumes a hierarchy of ethnic groups between the Slovak nation and the other groups. In addition, it constitutes a strong and awkward message of ethnic homogeneity for non-Slovaks in Slovakia demonstrating implicitly assimilatory tendencies. Despite this obvious disparity, the point in question has never been considered by the Commission as a potential source of friction. Finally, it is worth noting that Article 12 (2) of the constitution also prohibits positive discrimination or any kind of affirmative action, which could theoretically block the way to any special measures in favour of ethnic minorities.

#### **b. The restrictive transposition of constitutional principles in legal acts**

The most prominent and relevant legal acts cover four main areas: language rights; media; education and remedies to racially motivated violence. The Law on State Language<sup>73</sup> and the Law on the Use of Minority Languages<sup>74</sup> constitute an evolution in the position that Slovakia has adopted on the first issue as a result both of internal and external pressure. In September 1997, and prior to the existence of the current Law on the Use of National Minority languages, the Slovak Constitutional Court ruled that one provision of the 1995 law on the state language violated the constitutional rights of minorities and ethnic groups to use their own languages in official contacts (Article 34 of the Constitution).<sup>75</sup>

The 1995 Act, however, adopts a nationalist stance in its preamble, perhaps also as a reaction to previous domination under the Czechs. Accordingly the Slovak language is considered "the most important feature of the individuality of the Slovak nation, the most precious value of its cultural heritage and the expression of sovereignty of the Slovak

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<sup>73</sup> *Law of the National Council of the Slovak Republic on the State Language of the Slovak Republic*, Act No. 270/1995, 15/11/1995, for an English version

[http://www.minelres.lv/NationalLegislation/Slovakia/Slovakia\\_MinorLang\\_English.htm](http://www.minelres.lv/NationalLegislation/Slovakia/Slovakia_MinorLang_English.htm) .

<sup>74</sup> *Law on the Use of Minority Languages*, Act No.184/1999, Coll. Laws, 10/07/1999,

[http://minelres.lv/NationalLegislation/Slovakia/Slovakia\\_MinorLang\\_English.htm](http://minelres.lv/NationalLegislation/Slovakia/Slovakia_MinorLang_English.htm) .

<sup>75</sup> ECRI, *Second Report on Slovakia*, adopted on 10/12/1999, Strasbourg 27/06/2000. [http://www.coe.int/T/E/human\\_rights/Ecri/1-ECRI/2-Country-by-country-approach/Slovakia/CBC2%20Slovakia.pdf](http://www.coe.int/T/E/human_rights/Ecri/1-ECRI/2-Country-by-country-approach/Slovakia/CBC2%20Slovakia.pdf), CRI(2000)35, p.5.

Republic”, founding its provisions on the disposition of paragraph 1(2), according to which “the state language has preference over other languages used on the territory of the Slovak Republic”. Subsequently, and as a result of consultation with international organizations, the Law on the Use of National Minority Languages came into force to re-establish balance. The new law granted all minority languages equal status with the official language in all localities where minority populations account for more than 20 per cent of the population (Article 2(i)). Minorities can use their mother tongue in all their official transactions. The Hungarian Coalition party (SMK) has argued nonetheless that the law was drafted with the aim of pleasing EU officials rather than ethnic minorities, particularly given that it was purposefully rushed through parliament in order to meet the deadlines for EU entry negotiations which were to commence at the Helsinki Summit.<sup>76</sup> The dynamics of domestic politics should be noted here. The Slovak government was keen to regain its position in the list of candidate states and consequently had an even greater incentive to take the appropriate steps needed to prove its willingness to accord with the EU’s comments.<sup>77</sup>

From a legal point of view, the law covers only a specific area of minority language use while neglecting other areas that should normally be encouraged.<sup>78</sup> More specifically, the applicability of the law is dependent on the fulfilment of two conditions: it applies to municipalities in which national minorities constitute a proportion greater than the 20 per cent threshold of inhabitants (Article 2.1); and, its use was restricted only to those municipalities listed in a separate decree that met the first requirement (Article 2.2). Furthermore, the text of the law is self-contradictory in several areas, the most striking example being Article 7, whose second paragraph provides for the obligation of local administrative bodies to foster the use of minority languages but whose first paragraph stresses that the state language must be used in official contacts and *only* in circumstances which have been set by the law will the use of a minority language be allowed.<sup>79</sup> The legal ambiguity of the situation is further increased by the non-cancellation of the 1995 State Language Law and the lack of clarity as to which of the two acts takes legal precedence in case of contradiction.<sup>80</sup>

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<sup>76</sup> Michael J. Kopanic Jr., “The New Minority Language Law in Slovakia”, *Central Europe Review*, Vol.1, No.2, 5/07/1999, <http://www.ce-review.org/99/2/kopanic2.html>.

<sup>77</sup> Hughes and Sasse, see note 30, p.21.

<sup>78</sup> See note 75, p.6.

<sup>79</sup> Cf. Daftary and Gál, “The New Slovak language Law: Internal or External Politics?”, ECMI Working Paper #8, September 2000, Flensburg, p.44.

<sup>80</sup> *Ibid*, p.46.

However, there are some difficulties in enjoying the rights that derive from the 1999 Law. A weakness that the Commission itself identified in its 2000 Regular Report, concerned the particular situation of the Roma,<sup>81</sup> who do not exercise their right in any of the 57 villages where they officially constitute more than 20 per cent of the population.<sup>82</sup>

In relation to the media, under the Law on Slovak Radio<sup>83</sup> and in particular Article 6(d), the Slovak national radio is under the obligation to contribute to the promotion of national culture and the cultures of minorities living in the Slovak Republic.<sup>84</sup> Similarly, the Law on Slovak Television,<sup>85</sup> under paragraphs 3.3 and 6(j) is obliged to broadcast programmes promoting minority cultures in their tongues.<sup>86</sup> In practice, circumstances have been less than favourable, as relatively little time has been devoted to radio programmes in the Roma language, for example, and when air time has been provided, this has often resulted in negative coverage.<sup>87</sup> Minorities like the Czechs, Ukrainians or Ruthenians have received no coverage at all. The modalities of national funding are, furthermore, such that it is becoming increasingly difficult to achieve long-term results in both attempts to address negative majority opinion about the Roma and to mainstream minority languages programmes in the media.<sup>88</sup>

The right to minority education is covered by Article 34 paragraph 2 of the Constitution, which recognizes the right for national minorities to be educated in their mother tongue. The 1984 School Act, as amended, limits this right to specific minorities only, excluding the Roma whose language is not recognized as one that is suitable for being used in primary and secondary education.<sup>89</sup> Instead, Romani can currently only be used as a supporting language despite the fact that many Roma children have poor Slovak language skills.<sup>90</sup>

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<sup>81</sup> See note 33, p.20.

<sup>82</sup> See note 54, point C3.Language,

[http://www.eumap.org/reports/content/10/703/html/300/index\\_html?print=1](http://www.eumap.org/reports/content/10/703/html/300/index_html?print=1) .

<sup>83</sup> *Law 255/1991 on Slovak Radio*, as amended by Act No. 335/1998 Coll., in force since 9/11/1998.

<sup>84</sup> For extracts of the law in English, see

[http://www.minelres.lv/NationalLegislation/Slovakia/Slovakia\\_Radio\\_excerpts\\_English.htm](http://www.minelres.lv/NationalLegislation/Slovakia/Slovakia_Radio_excerpts_English.htm) .

<sup>85</sup> *Law No. 254/1991 on Slovak Television*, as amended by Act No.21/1996.

<sup>86</sup> For extracts of the law in English, see

[http://www.minelres.lv/NationalLegislation/Slovakia/Slovakia\\_TV\\_excerpts\\_English.htm](http://www.minelres.lv/NationalLegislation/Slovakia/Slovakia_TV_excerpts_English.htm) .

<sup>87</sup> See note 54, point C4.Media,

[http://www.eumap.org/reports/content/10/703/html/300/index\\_html?print=1](http://www.eumap.org/reports/content/10/703/html/300/index_html?print=1) .

<sup>88</sup> EU Accession Monitoring Program, *Monitoring the EU Accession Process: Minority Protection*, Volume 1, 2002, Slovakia, pp.527-588, pp.581-582.

<sup>89</sup> *Law 29/1984 Coll. on the Network of Primary and Secondary Schools*, as amended. The minority languages recognized were Czech, Hungarian, German, Polish and Ukrainian

<sup>90</sup> See note 54, point C.4 Media.

Nevertheless, the establishment of a School of Art in Kosiče, especially for Roma students, constitutes some sign of official support. A department of Romani Culture has also been in operation in Nitra University since 1992, with a specialization in teaching Roma children since 1999.<sup>91</sup>

Finally in criminal law, an amendment to the Criminal Code in 2000 introduced enhanced sentences for violent crimes committed with a racial motive.<sup>92</sup> Slovak authorities, including courts, appear to be still reluctant to acknowledge and punish such crimes, and Roma victims are equally reluctant to report them for fear of retaliation.<sup>93</sup> In spite of allegations to the opposite, the government has maintained that there were no cases of police authorities “refusing to take a witness’s testimony, urging a victim to withdraw the charges, or refusing to disclose a concrete description of the victim’s injuries,” or even cases of a “passive attitude” that has been claimed of judicial bodies in other cases.<sup>94</sup>

The 57th session of the UN Committee on the Elimination of Racial discrimination in August 2000, however, drew particular attention to the persistence of violent acts “by groups, particularly skinheads, directed towards Roma and other ethnic minorities: and about allegations that the police and prosecutors had failed to investigate acts of racially-motivated violence promptly and effectively, and had been reluctant to identify racial motive behind attacks.”<sup>95</sup> Indeed, a particular form of racially motivated violence was identified as being constituted by harassment and violence that is committed against Roma by police officers themselves.<sup>96</sup> Again Roma prefer not to report such incidents for fear of retaliation. As a rule, disciplinary proceedings against policemen who are at fault

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<sup>91</sup> Ibid.

<sup>92</sup> Law 140/1961 Coll. Criminal Code as amended.

<sup>93</sup> For relevant cases, see for example: ERRC, “More attacks by skinheads in Slovakia”, *Roma Rights*, No.1, 2000, [http://www.errc.org/rr\\_nr1\\_2000/snap3.shtml](http://www.errc.org/rr_nr1_2000/snap3.shtml); “Slovak court decides racially motivated crime by Slovaks against Roma impossible”, *Roma Rights*, No.2, 1999 [http://www.errc.org/rr\\_nr2\\_1999/snap14.shtml](http://www.errc.org/rr_nr2_1999/snap14.shtml), “Slovak investigators decide that two killings of Roma not racially motivated”, *Roma Rights*, Autumn 1997, [http://www.errc.org/rr\\_aut1997/snap21.shtml](http://www.errc.org/rr_aut1997/snap21.shtml).

<sup>94</sup> The Government of the Slovak Republic, “Reports submitted by State Parties under Article 9 of the Convention”, 3rd Periodic Reports of States Parties due in 1998-Addendum: Slovakia, CERD/C/328/Add.1, 14/12/1999, paragraphs 204 and 205 respectively, as quoted in EUMAP Monitoring Report 2001, see note 54, point B. Racially Motivated Violence, [http://www.eumap.org/reports/content/10/703/html/300/index\\_html?print=1](http://www.eumap.org/reports/content/10/703/html/300/index_html?print=1).

<sup>95</sup> ERRC, “UN and Council of Europe express concern about Roma Rights in Slovakia”, *Roma Rights*, No.3, 2000, [http://www.errc.org/rr\\_nr3\\_2000/snap3.shtml](http://www.errc.org/rr_nr3_2000/snap3.shtml).

<sup>96</sup> See for example, ERRC, “Slovak officials kill another Rom”, *Roma Rights*, No.2-3, 2001, [http://www.errc.org/rr\\_nr2-3\\_2001/snap3.shtml](http://www.errc.org/rr_nr2-3_2001/snap3.shtml), “Police abuse in Slovakia”, *Roma Rights*, No.1, 2000, [http://www.errc.org/rr\\_nr1\\_2000/snap12.shtml](http://www.errc.org/rr_nr1_2000/snap12.shtml), “Abuse of Roma by officials in Slovakia”, *Roma Rights*, No.1, 1999 [http://www.errc.org/rr\\_nr1\\_1999/snap08.shtml](http://www.errc.org/rr_nr1_1999/snap08.shtml), “Police Brutality in Slovakia”, *Roma Rights*, No.2, 2002, [http://www.errc.org/rr\\_nr2\\_2002/snap41.shtml](http://www.errc.org/rr_nr2_2002/snap41.shtml) for a summary of 2001 cases of police abuse against Roma.

are more often than not ‘non-transparent’, only notorious cases being publicized.<sup>97</sup> The issue of racially motivated violence therefore clearly constitutes one of the failures to respond to EU requirements.<sup>98</sup>

**b. The limited impact of Slovakia’s international obligations on the protection of minority rights**

From an analysis of the international legal obligations that Slovakia has already undertaken, it can be seen that although Slovakia is party to many human rights treaties, it has so far not been able to secure a coherent set of rights for its national minorities. In some cases, the EU has even pressed for Slovakia’s adherence to certain of these treaties, yet despite this a solid basis for international legal guarantees for minorities is still not sufficiently established.

The legal value of international treaties in domestic law is determined in the Constitution. According to Article 11 of the Slovak Constitution, international treaties on human rights and basic liberties that were ratified by the Slovak Republic and promulgated in a manner determined by law take precedence over domestic laws, provided that they secure a greater extent of constitutional rights and liberties. In other words, those international agreements on human rights ratified and promulgated before July 2001 and guaranteeing a wider range of rights and freedoms than Slovak law, and similar agreements ratified and declared after July 2002 have a legal force that is lower than the Constitution but higher than law.<sup>99</sup> As a result, Article 3 of the Framework Convention, for example, concerning the enjoyment of the rights of minorities individually and in community with others is not guaranteed in Slovak law as it is not deemed superior to the Constitution. As a consequence, it cannot be included in a law without the amendment of the Constitution.<sup>100</sup> This also applies to issues of positive discrimination in Article 4(2) and 4(3) of the Framework Convention, which happens to be in contradiction to Article 12(2) of the Slovak Constitution.<sup>101</sup>

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<sup>97</sup> See note 54, point B. Racially Motivated Violence.

<sup>98</sup> See note 35, at p.22.

<sup>99</sup> See note 72.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

Slovakia has been a member of the Council of Europe since 1993 and a party to the European Convention for the protection of Human Rights and its protocols since 1992.<sup>102</sup> In 1995, Slovakia also ratified the Council of Europe's Framework Convention for the Protection of National Minorities<sup>103</sup> but significantly has not subscribed to Recommendation 1201 of the Parliamentary Assembly of the Council of Europe on the collective rights of minorities.<sup>104</sup> As it does not address Roma issues directly, one of the most significant in the case of Slovakia, the Framework Convention therefore appears insufficient to the circumstances prevailing in Slovakia, although it is the most advanced tool currently available in international law.

Slovakia has also complied with the recommendations of the Council of Europe concerning the names of minorities that need not be translated into Slovak, as well as the use of minority languages alongside Slovak on road signs, particularly where minorities constitute more than 20 per cent of the population.<sup>105</sup> Furthermore, the European Charter on Regional and Minority Languages was ratified in June 2001, and its adoption was noted with satisfaction during the EU-Slovakia Association Council in 2001 and in the 2001 Regular report of the European Commission.<sup>106</sup> Protocol No.12 to the European Convention on Human Rights adopted on 26 June 2000 by the Committee of Ministers of the Council of Europe was also signed by Slovakia. This protocol aims to broaden the scope of Article 14 of the ECHR and constitutes the precondition for the adoption of the first non-discriminatory law in Slovakia.

On the bilateral level, in March 1995, Slovakia signed a treaty on good neighbourly relations and friendly cooperation with Hungary.<sup>107</sup> It was subsequently ratified by the Slovak parliament in March 1996 accompanied by two declarations denying the recognition of collective rights for minorities and any possibility for the establishment of ethnic autonomous administrative structures. As we saw in the previous section, the signing of this treaty was widely acclaimed by the EU but there was no reaction to the

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<sup>102</sup> *Agenda 2000*, Commission Opinion on Slovakia's Application for membership of the European Union, <http://www.europa.eu.int/comm/enlargement/dwn/opinions/slovakia/ek-op-en.pdf>, point 1.2 'Human Rights and the protection of minorities'.

<sup>103</sup> Its ratification by the President of the Slovak Republic in July 1995 was proclaimed in Law 160/1998 Coll.

<sup>104</sup> See note 76.

<sup>105</sup> *Ibid.*

<sup>106</sup> EU-Slovakia Association Council, *Bulletin EU 6-2001*, page 5/10, point 1.5.5, <http://europa.eu.int/abc/doc/off/bull/en/200106/p105005.htm> and European Commission Regular Report 2001, p.22.

<sup>107</sup> *Ibid.*

content of either declaration, mainly since the EU itself has not addressed the theoretical underpinnings pertaining to minority rights.<sup>108</sup>

**a. Non-discrimination**

There is, however, also a juxtaposition between the principles included in the EU Race Directive 2000/43, that form part of the *acquis*, and the existing provisions in Slovak law, as a result of the EU directive. On a conceptual basis, with the exception of the new Labour code, there has been no definition of direct and indirect discrimination, similar to those included in Articles 2(2)(a) and 2(2)(b) of the Directive. No other legal instruments give the definition of the concept of ‘discrimination’ either. In concrete terms, the non-discrimination clause of Article 12(2) of the Slovak constitution is only a general clause and furthermore presupposes the implementation of individual rights, as laid out in the Constitution.<sup>109</sup> In each case, as a result of discrimination, victims have to connect the act of discrimination with the breach of another statutory provision of the Constitution.

The principle of non-discrimination has been applied in different areas of legislation, mainly as a result of increasing racial hatred incidents the last years. The amendment of the Criminal Code<sup>110</sup> and in particular its article 198 on defamation of a nation, race or belief illustrates this point well. Article 198(a) also applies the same principle for incitement to ethnic and racial hatred. Both provisions correspond closely to the kind of harassment and the legal actions that accompany them, mentioned in Article 2 paragraph 3 of the Directive.<sup>111</sup> The implementation of the articles in question and the recognition of racial motivation by the public authorities are more difficult in practice. Indeed, there are very few cases of this kind.<sup>112</sup>

As far as the scope of application of non-discrimination is concerned, Article 3 of the Directive stipulates a wide application to the private and public sector. In Slovakia, there are still problems with respect to the application of the principle in the private sector for the Roma. The new Labour Code that came into force after 1 April 2001 is expected to

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<sup>108</sup> For a fuller theoretical analysis of this point, see Hughes and Sasse, note 30, p.9 and pp.12-13.

<sup>109</sup> See case US 19/98, US 34/96 and US 14/98 of the Slovak constitutional court as quoted in Ján Hrubala, *Legal Analysis of national and European anti-discrimination legislation-Slovakia*, ERRC, Interrights, MPG, September 2001, <http://www.migpolgroup.com/uploadstore/Slovakia%20electronic.pdf> p.9.

<sup>110</sup> *Criminal Code No.140/1961 Coll.* as amended in sections 196, 198 and 259.

<sup>111</sup> See Hrubala Ján, note 109, p.12.

<sup>112</sup> *Ibid*, p.12.

reverse the situation as it allows for easier access to courts and its section 13 defines direct and indirect discrimination.<sup>113</sup>

The reversal of the burden of proof in cases of discrimination as stipulated in Article 8 of the Directive has only recently been included in Slovakia in the above-mentioned Labour Code. Prior to this, Slovak law did not provide such a reversal in favour of the plaintiff.<sup>114</sup> Efforts to pass general anti-discrimination legislation mainly as a result of NGO pressure failed as the item was repeatedly excluded from the Slovak parliamentary agenda in 2002.<sup>115</sup> Consequently, failure to act has provoked questions as to the real intentions of the Slovak authorities with respect to minority rights, raising the suspicion that such provisions are rather aimed at the formal satisfaction of the *acquis* than the actual improvement of the situation of minorities in Slovakia.<sup>116</sup>

The proposed draft of an Act on Equal Treatment was not discussed on the basis of the argument put forward by the Christian Democratic Movement (KDH) that such legislation does not exist in EU member states and is not required by the EU.<sup>117</sup> Yet the Race Directive 2000/43/EC and the Employment Directive 2000/78/EC serve the exact legal purpose. Moreover, the draft proposed to the Slovak Parliament was prepared with the input of the OSCE High Commissioner on National Minorities<sup>118</sup> and included definitions of all forms of discrimination based on an open list of grounds inspired by the EU directives themselves and the Council of Europe Protocol to the ECHR No.12.<sup>119</sup> It also proposed the creation of an ombudsman for the public and a centre for Equal Treatment for the private sector, which was deemed not necessary by the Legislative Council of the Government, as similar organs already existed.<sup>120</sup> More implementing strategies, mirroring the EU 2000-2006 Action Plan to Combat Discrimination and addressing criticisms raised with respect to the situation of the Roma in Slovakia were put forward from 2000 onwards to raise the profile of minority protection.

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<sup>113</sup> Ibid, p.17.

<sup>114</sup> Ibid, p.26.

<sup>115</sup> See note 44, p.4.

<sup>116</sup> Ibid.

<sup>117</sup> CLA, "Update on the Anti-discrimination legislation in Slovakia", [http://www.cla.sk/projects/anti\\_discrimination/cla\\_analysis/anti\\_discrimination\\_memo\\_july\\_02.htm](http://www.cla.sk/projects/anti_discrimination/cla_analysis/anti_discrimination_memo_july_02.htm).

<sup>118</sup> Ibid.

<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

**a. The Action Plan Against Discrimination, Racism and Xenophobia and other forms of Intolerance 2000-2001<sup>121</sup>**

In an initiative to increase international awareness of tolerance and quell criticism, the Slovak government introduced an Action Plan Against Discrimination. It was introduced as a means of combating prejudice while promoting respect for ‘otherness’, and sought to provide support for tolerance in education and for similar training amongst the professions (in particular judges, policemen, prosecutors, healthcare and social workers, as well as the army). Generally, it introduced a public awareness programme, while creating a coordination committee tasked to monitor implementation. The committee was placed under the auspices of the Slovak Deputy Minister for Human and Minority Rights and Development, with a remit that involved various ministries, the public and private sectors, and NGOs.

The influence of international organizations on instigating this initiative can be identified in at least two instances. First, the Action Plan establishes a Monitoring Centre on Racism and Xenophobia, under the Ministry of Labour, Social Affairs and Family, which bears a distinct similarity to the activities of the EU’s own Monitoring Centre in Vienna, particularly since both bodies operate with very similar missions. The creation of such a body is nevertheless a requirement of the Race Directive (Article 13 (1)) that Slovakia was quick to implement, though so far without spectacular results. Second, within the Plan in itself, the Slovak authorities acknowledged the inspiration of the UN’s Decade of Human Rights Education (1/01/1995 to 31/12/2004).<sup>122</sup> Naturally, these examples demonstrate the value of exchanging good practices and must be appreciated as such, but they also depict a certain ‘mimesis’ that could be attributed to the lack of clear ‘instructions’ and standards deriving from the EU.

The general perception that can be obtained from the Action Plan, however, is that it provides detailed measures for education at the school level<sup>123</sup> but remains more laconic with respect to the measures of awareness aimed at professional bodies.<sup>124</sup> Its major shortcoming is that it does not provide for any budget allocation.<sup>125</sup>

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<sup>121</sup> *Action Plan to Combat All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and other forms of Intolerance for the period 2000-2001*,

<http://www.foreign.gov.sk/En/files/add.php3?text=Human%20rights&file=208.shtml> .

<sup>122</sup> Ibid, point 2.3.

<sup>123</sup> Ibid, at points 2.3.1 to 2.3.5.

<sup>124</sup> Ibid at points 2.4.1 to 2.4.6.

<sup>125</sup> See note 33, p.20.

A new plan for 2002-2003 along similar lines was announced in the 2002 Slovak government priority tasks.<sup>126</sup> The 2002-2003 Plan is more thorough and contains proposals devoted in particular to the Roma, addressing discriminatory practices by local administration, although the absence of anti-discrimination legislation renders the attempt difficult.<sup>127</sup> The issue of partial implementation therefore remains to a large extent unresolved.

## **b. The ‘Roma Strategy’**

In response to a European Commission requirement that “the position of the Roma ... requires attention from the authorities”,<sup>128</sup> Slovakia developed a second long-term strategy particularly aimed at addressing the problems of the Roma. It attempts to define and locate the problems and present solutions at the governmental level.

The Strategy as a whole is based on an important assumption, namely, that the Slovak authorities have accepted that the Roma form a permanent part of Slovak society.<sup>129</sup> Nevertheless, it adopts a rather stereotyped and paternalistic vision of the Roma minority which admits that some problems faced by the Roma must be attributed to “the specific way of life of a part of the Romany national minority”.<sup>130</sup> Yet, the Slovak government was more than ready to accept that “the practical application of human rights protection and protection of rights of persons belonging to national minorities in real life is not absolute, in particular with respect to the citizens from the Romany national minority.”<sup>131</sup> In other words, there is a discrepancy between minority legislation and implementation.<sup>132</sup> Four principal areas that concern the Roma as a group demonstrate the limited horizons of this effort.

Education is the first. The Strategy acknowledged the need for the Roma to complete at least a basic education. Language skills were targeted but the approach adopted is

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<sup>126</sup> *Priority Tasks of the Government of the Slovak Republic Arising from the Regular Report from the European Commission on the Slovak Republic’s Progress Towards Accession to the EU of 13/11/2001*, [http://www.government.gov.sk/eu/dokumenty/priority\\_taska\\_2002\\_en/priority\\_tasks\\_2002\\_en.doc](http://www.government.gov.sk/eu/dokumenty/priority_taska_2002_en/priority_tasks_2002_en.doc) p.2

<sup>127</sup> See note 88, EUMAP 2002, p.532. See also Government Resolution No.207, [http://www.vlada.gov.sk/csaky/akcny\\_plan\\_02\\_03\\_en.doc](http://www.vlada.gov.sk/csaky/akcny_plan_02_03_en.doc), at section 6.

<sup>128</sup> European Commission, Commission Opinion on Slovakia’s Application for Membership of the European Union, 15 July 1997, B.1.3.

<sup>129</sup> See ‘Introduction of the Strategy’, [http://www.government.gov.sk/INFOSERVIS/DOKUMENTY/ROMSTRAT/en\\_rs\\_strat\\_uvod.shtml](http://www.government.gov.sk/INFOSERVIS/DOKUMENTY/ROMSTRAT/en_rs_strat_uvod.shtml).

<sup>130</sup> Ibid, ‘Human Rights of persons belonging to national minorities and NGOs’, [http://www.government.gov.sk/INFOSERVIS/DOKUMENTY/ROMSTRAT/en\\_rs\\_strat\\_obl.shtml](http://www.government.gov.sk/INFOSERVIS/DOKUMENTY/ROMSTRAT/en_rs_strat_obl.shtml).

<sup>131</sup> Ibid.

<sup>132</sup> For a similar conclusion see Hughes and Sasse, note 30, p.26.

clearly assimilationist.<sup>133</sup> The issue of special schools was also addressed. The Strategy proposed instead “flexible equalizing basic school classes”<sup>134</sup> as well as the enlargement of pre-school (zero) grades, as a method of removing language barriers. The elimination of the existence of segregated classes for Roma has not figured in any recent governmental plans.<sup>135</sup> Both solutions, depending on implementation, could therefore result in further institutionalizing segregation. In 2002, concrete programmes were promised to increase the educational standard of the Roma starting in September 2002.<sup>136</sup> The concept of Education and Instruction of Roma children and pupils (Government Resolution 1193 of 19/12/2001) was also unsuccessful in producing practical changes.<sup>137</sup> The pilot programme on Roma teacher’s assistants on the other hand was a promising indication of progress.<sup>138</sup>

Moving on to the second area, healthcare conditions amongst the Roma, the Strategy attributed poorer health conditions and unequal access to healthcare to the “low level of education of the Romany population, the resulting low level of social awareness, low standard of housing and personal hygiene”<sup>139</sup> despite Article 40 of the Constitution specifically guaranteeing equal access to healthcare. It then went on to support the continuation of projects dealing with education for marriage, responsible parenthood and the use of contraceptives<sup>140</sup> – the issue of child healthcare being a prominent omission. Yet, the Slovak Ministry of Health admittedly does not possess any reliable data on Roma health<sup>141</sup> and, furthermore, maintains that there has been no case of discrimination against the Roma in healthcare, at least not that has been reported to the Ministry.<sup>142</sup>

In reality, there are many cases of discrimination witnessed by Roma women in segregated maternity wards<sup>143</sup> and even worse, concerns about possible cases of non-

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<sup>133</sup> “The teaching of the Romany language ‘as a supporting language of instruction’ will be organized “depending on the need and interest” (emphasis added), Ibid, ‘Education and Training’, [http://www.government.gov.sk/INFOSERVIS/DOKUMENTY/RONSTRAT/en\\_rs\\_strat\\_ob.2.shtml](http://www.government.gov.sk/INFOSERVIS/DOKUMENTY/RONSTRAT/en_rs_strat_ob.2.shtml) .

<sup>134</sup> Ibid.

<sup>135</sup> See note 54, [http://www.eumap.org/reports/content/10/703/html/300/index\\_html?print=1](http://www.eumap.org/reports/content/10/703/html/300/index_html?print=1) , ‘Education’.

<sup>136</sup> See note 126, p.4.

<sup>137</sup> *Priorities of the Government of the Slovak Republic with regard to Roma Communities for 2002*, [http://www.valda.gov.sk/orgavanova/dokumenty/priority\\_vlady\\_2002\\_en.doc](http://www.valda.gov.sk/orgavanova/dokumenty/priority_vlady_2002_en.doc) at p.2.

<sup>138</sup> See note 88, EUMAP 2002, pp.557-558.

<sup>139</sup> See ‘Health Status’ in the Strategy,

[http://www.government.gov.sk/INFOSERVIS/DOKUMENTY/RONSTRAT/en\\_rs\\_strat\\_ob7.shtml](http://www.government.gov.sk/INFOSERVIS/DOKUMENTY/RONSTRAT/en_rs_strat_ob7.shtml).

<sup>140</sup> Ibid.

<sup>141</sup> See note 54, ‘Health care and other forms of social protection’,

[http://www.eumap.org/reports/content/10/803/html/300/index\\_html?print=1](http://www.eumap.org/reports/content/10/803/html/300/index_html?print=1).

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.

consensual sterilization of Roma women,<sup>144</sup> which the Slovak government reluctantly agreed to investigate after EU pressure.<sup>145</sup> The quality, reliability and depth of the investigation are still currently under question by human rights NGOs.<sup>146</sup> Segregation of Roma in healthcare facilities nevertheless continues to be reported by NGOs all over Eastern Slovakia.<sup>147</sup>

Housing constitutes a third source of discriminatory tendencies towards the Roma. Here, there are several related issues at play. The first of these is segregation. According to data included in the Strategy, of the 591 Roma settlements, 67 are located outside municipalities and 175 on the peripheries of municipalities.<sup>148</sup> Often, non-Roma residents have purposefully acted to ensure that segregation is maintained.<sup>149</sup> Some municipalities have even banned Roma from settling on their territory (e.g. in 1997, the municipalities of Rokytovce and Ňagov in Medzilaborce County).<sup>150</sup> In April 2001, in reaction, the Slovak parliament was even considering amending the Civil Code to block eviction by municipalities without court orders. Furthermore, conditions in the Roma settlements remain notoriously poor. In addition, the Roma experience difficulty in obtaining residence permits, something that has repercussions in their pursuit of other rights, such as claims to social benefits.<sup>151</sup> Despite this, the Strategy almost exclusively focuses on subsidies and loans at advantageous rates granted for housing development and on the eligibility criteria for grants from the State Housing Development Fund.<sup>152</sup>

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<sup>144</sup> On the basis of testimonies of Roma asylum seekers and medical observations in Finnish NGOs (source: see note 88). See also RFE/RL “Slovak authorities allegedly undermine probe into forced Romany sterilizations”, *RFE/RL NEWSLINE*, Vol.7, No.27, Part II, 11/02/2003, <http://groups.yahoo.com/group/multiethnic/message/2560> .

<sup>145</sup> “EU Ambassador welcomes investigation into alleged sterilizations of Romany”, RFE/RL Newsline, Vol.7, No.34, Part II, 21/02/2003, <http://groups.yahoo.com/group/multiethnic/message/2581> .

<sup>146</sup> See for example Amnesty International, “Slovakia: Failing to ensure an impartial and thorough investigation into allegations of illegal sterilization of Romani women”, EUR 72/002/2003, <http://web.amnesty.org/library/print/ENGEUR720022003> .

<sup>147</sup> See note 44, p.11 for a list of localities and patterns of discrimination.

<sup>148</sup> See the section ‘Housing’ in the Strategy, [http://www.government.gov.sk/INFOSERVIS/DOKUMENTY/ROMSTRAT/en\\_rs\\_strat\\_ob5.shtml](http://www.government.gov.sk/INFOSERVIS/DOKUMENTY/ROMSTRAT/en_rs_strat_ob5.shtml) .

<sup>149</sup> For example, a municipal ordinance was passed by the city of Kosiče in 1995 allocating the housing settlement Lunik IX on the outskirts of the city (Municipal Ordinance 55/1995) for the ‘creation of living conditions for citizens of the city of Kosiče who illegally occupy flats, homeless persons, non-rent payers and inadapted citizens’. Since 1995, all non-Romani residents were moved elsewhere and vice versa for Roma living elsewhere. (source: see note 45, at p.8)

<sup>150</sup> The decrees were lifted in 1999 after being challenged before the European Court of Human Rights in 1999. ERRC, “Slovak towns repeal anti-Romani ordinances”, *Roma Rights*, No.2, 1999, [http://www.errc.org/rr\\_nr2\\_1999/snap19.shtml](http://www.errc.org/rr_nr2_1999/snap19.shtml) .

<sup>151</sup> See note 54, ‘Housing and other public goods and services’, [http://www.eumap.org/reports/content/10/703/html/300/index\\_html?print=1](http://www.eumap.org/reports/content/10/703/html/300/index_html?print=1) .

<sup>152</sup> See note 109 and Decree 137/2000 Coll.

A more promising initiative concerns the approval of a construction programme in April 2001 entitled *Programme for Supporting Construction on Special Standard Municipal Rental Housing for Persons in Material Distress and of Infrastructure in Roma settlements*. The general impression remains, however, of strong support of segregation of the Roma by the majority as well as active opposition to projects supported by EU or state funds to improve the situation in this area.<sup>153</sup>

Finally as far as access to employment is concerned, Slovak law provides some form of protection against discrimination, as was outlined above. Discrimination by private and public employers has nevertheless persisted, which is unsurprising given the wording of the government's own publications, e.g. that "a part of the Romani population lacks interest in working, suffers from bad work morale, poor liability, low work endurance and has unrealistic wage requirements."<sup>154</sup> Predictably, no concrete state initiatives in this direction are included in the Roma Strategy. The Slovak authorities have instead limited themselves to declaring that "the government shall re-assess the possibility of positive economic incentives helping business people and employers to make work financially more attractive than social benefits."<sup>155</sup>

In sum, it is clear that the Strategy is a step in the right direction. However, it suffers from unclear articulation of its principles and goals towards the Roma, as expressed in Stage I.<sup>156</sup> In response, the Commission has noted a need for an increase in the number of Roma advisors to local authorities, in an attempt to secure wider outreach of the Strategy<sup>157</sup> to which Slovakia has so far failed to respond comprehensively. In other words, the prospective candidate state is still failing to identify discriminatory practices. Concrete measures expressed in Stage II of the Strategy also suffer from a lack of clarity.<sup>158</sup> More crucially, no funds have been allocated to the project and there is no indication that a body will be established that ensures and assesses the activities in a systematic manner, although the additional support was provided to the Plenipotentiary for Roma Communities. The participation of various ministries in its implementation

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<sup>153</sup> See note 88, EUMAP 2002, at p.564.

<sup>154</sup> See 'Un/employment' in the Strategy, [http://www.government.gov.sk/INFOSERVIS/DOKUMENTY/ROMSTRAT/en\\_rs\\_strat\\_ob5.shtml](http://www.government.gov.sk/INFOSERVIS/DOKUMENTY/ROMSTRAT/en_rs_strat_ob5.shtml).

<sup>155</sup> See 'Un/employment' in the Strategy', [http://www.government.gov.sk/INFOSERVIS/DOKUMENTY/ROMSTRAT/en\\_rs\\_strat\\_ob5.shtml](http://www.government.gov.sk/INFOSERVIS/DOKUMENTY/ROMSTRAT/en_rs_strat_ob5.shtml).

<sup>156</sup> See note 31, p.17.

<sup>157</sup> See note 35, p.31.

<sup>158</sup> See note 54, 'The Government Strategy for the Roma', [http://www.eumap.org/reports/content/10/703/html/400/index\\_html?print=1](http://www.eumap.org/reports/content/10/703/html/400/index_html?print=1).

remains low, which is itself an indication of a lack of political will to support it.<sup>159</sup> It is not surprising therefore that the Commission in its 2000 regular report saw the effort and in particular Stage II as “a list of valid intention and good practices ... [that] lacks definition of objectives, assessment of progress to date, clarity in financial allocations and follow-up mechanisms,”<sup>160</sup> although no comprehensive guidelines how to remedy this were provided at any stage by the EU organs. Effective participation of the Roma therefore also remains an issue that is yet to be resolved.<sup>161</sup>

#### **IV. Conclusion**

The previous analysis has tried to show that EU conditionality on minority rights as applied to Slovakia has had limited effects. The asymmetry of the effects in policy pursued mainly by the European Commission has appeared multidimensional while in reality also demonstrating the limits of the process as a whole.

On the one hand, and has been often pointed out, the EU clearly contradicts itself by requiring higher standards of legal protection and guarantees from candidate states than its own member states apply to themselves. Furthermore, within the framework of its monitoring activities, there is also a clear antithesis between the EU institutions. The European Council has adopted a vision of minorities as a security concern, couched in terms of high politics, while the European Commission has attempted to improve the situation of minorities in Slovakia through borrowing international standards and benchmarks from other organizations, while gradually seeking to develop its own legal apparatus on the same questions (e.g. Race Directive 2000/48). Thus, the EU as the monitor of compliance for the protection of minority rights is not fulfilling its task mainly as a consequence of structural deficiencies related to an unclear strategy and partial monitoring that stems largely from this internal contradiction.<sup>162</sup> Owing to its uncertainty as to the correct line to pursue, the pressure that the EU applies to candidate states therefore bares the same characteristic marks of uncertainty. In this sense, Slovakia has not been an exception to the rule. Quite the contrary, especially given that the treatment

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<sup>159</sup> See note 88, EUMAP 2002, pp.540-541.

<sup>160</sup> European Commission, 2000 Regular Report, note 33, p.21.

<sup>161</sup> See note 88, EUMAP 2002, p.585.

<sup>162</sup> The contrast is striking in that respect between for example the 2002 Regular Report of the European Commission and the UN Human rights Committee findings on Slovakia. For a summary of the UN comments see: MINELRES: “ERRC Welcomes Human Rights Committee Findings on Slovakia”, <http://lists.delfi.lv/pipermail/minelres/2003-August/0027873.html>.

of Roma is considered by the EU to be “a problem, but ... has not influenced our decision on the readiness of the candidate countries to join the EU.”<sup>163</sup> It is true that an isolated Slovakia outside the EU would risk further deterioration of its circumstances, but one cannot overlook the contradiction in the Commission’s own declaration of 1997, declaring the fulfilment of the first Copenhagen criterion an essential prerequisite for membership. In the end, the process remains political and minority concerns do not seem to rank high in the list of EU priorities.

Asymmetry is nevertheless also visible in the effects of the process on Slovakia. It is clear that the country’s pending legal issues on minority rights in the framework of accession largely revolve around the lack of a comprehensive body of anti-discrimination legislation, which in so many ways affects the Roma disproportionately. In addition, this also has ramifications for the degree to which its implementation of domestic and international legal engagements can also be judged unsuccessful. This is not to suggest an absence of adequate legal texts, which is demonstrably not the case, but rather a widespread discriminatory attitude amongst the official administration.<sup>164</sup> Numerous examples prove this. One of the most obvious cases of discriminatory attitudes emanating from the official administration concerns hate speech against the Roma as voiced by politicians themselves. In this way, Jan Slota, president of the Slovak National Party was not subject to any punitive sanctions despite his blatantly racist comments towards the Roma and in spite of the resulting public outrage.<sup>165</sup> Any improvement on the scale of implementation will, however, be more difficult to measure as the accession date approaches.

At the level of institutions, EU pressure has nevertheless succeeded in triggering the establishment of bodies that address minority issues in general, often with the accent put on Roma issues. Bodies such as the ‘Public Defender of Rights’, the post of the Deputy Prime Minister for Human Rights, Minorities and Regional Development and the Office of the Plenipotentiary of the Government of the Slovak Republic for addressing the issues of the Roma appear to be the result of the European Commission’s recommendations that

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<sup>163</sup> Declaration by Jean-Christophe Filori, a spokesman on enlargement at the European Commission, as quoted in “Shame of a continent”, by Gary Younge, *The Guardian*, 8/01/2003 <http://www.guardian.co.uk/eu/story/0,7369,870469,00.html> .

<sup>164</sup> The 2000 European Commission Regular Report is eloquent in a variety of incidents against Roma. See note 33, pp.20-21.

<sup>165</sup> Some are included in the *Report to the OSCE implementation Meeting on Human Dimension Issues*, released on 6 October 2000, pp.87 and 106-107, <http://www.ihf-hr.org/reports/osce00-2/OSCE00-2report.pdf>. The attitude of the Slovak authorities toward the issues of the Roma exodus is another one of these examples.

Slovakia should establish a body to “promote non-discrimination, provide assistance to individual victims of discrimination, conduct surveys on discrimination and publish reports and recommendations on discrimination.”<sup>166</sup> All institutions have limited powers of an advisory nature but they have the potential to evolve into more participatory organs, provided that a dynamic approach is adopted in the application of the current legislative framework.

Yet, the situation of minorities is not adequately protected in general: the choice of an individual rights approach, combined with deficient and slow implementation and different levels of integration of ethnic minorities produce an anomalous mix of multi-level outcomes to the same basic rights when applied to different ethnic groups. In addition, while the EU strictly advocates a non-discrimination approach to its legislation on the protection of the rights of minorities,<sup>167</sup> Slovakia has developed both non-discrimination norms as well legislation and action plans that deal with specific group rights for minorities and affirmative action.

A coherent vision on the legal position of minorities is lacking both from the EU and from Slovakia. The fact remains that “discrimination is not inserted into constitutions”<sup>168</sup> of the CEECs. As a result, one should look for it in social patterns and behaviour. It appears questionable to what extent the EU is capable of having an effect on this particular area, as “practical improvement in the daily life of the minorities is very minor if not unnoticeable” in Slovakia, as the Commission does not hesitate to acknowledge.<sup>169</sup> The possibility of real change in Slovakia, as elsewhere, is at present dependent on the future of EU policy on minorities and of the continuing relevance of the Copenhagen criteria in the post-enlargement context.

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<sup>166</sup> Conference on Accession to the European Union, Slovakia, ‘European Union Common Position’, Chapter 13, Social Policy and Employment, CONF-SK, 2/01, Brussels, 14/02/2001.

<sup>167</sup> In accordance with the legal principle of non-discrimination based on nationality (Article 12 EC Treaty).

<sup>168</sup> Ibid.

<sup>169</sup> See note 33, p.21.

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## Biographical Note

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