

The Uneasy Road towards Remedying the Economic and Cultural Disadvantage of the Roma in Slovakia

Jarmila Lajcakova*

1. Introduction

Groups experiencing cultural and economic inequality can often find themselves caught in a vicious circle of disadvantage.¹ Theorists studying the relationship between economic and cultural inequalities observe that culturally biased norms are institutionalized in the state and the economy. At the same time, economic deprivation prevents the oppressed group from being able to participate on an equal footing in the development of the wider community's culture, and to challenge discriminatory norms in the public sphere.² It is the dominant group that, by and large, has access to the 'means of interpretation and communication' in a society. The dominant group typically engages in a project where it universalizes its own experience and culture as "representative of humanity as such."³ Despised minorities become stereotyped as deviant and inferior.⁴ The dominant group can thus rationalize its discriminatory practices in the social and economic sphere vis-à-vis the stereotyped group, in turn causing even greater socio-economic injustice.⁵

* Jarmila Lajcakova, LLB (Comenius, Slovakia), LLM (Toronto), Doctoral Candidate (Toronto).

¹ I do not mean to suggest, however, that some cultures are more, or less, suited to socio-economic development. Recent research clearly shows the lack of solid empirical evidence supporting this old thesis. See e.g., S. Fukuda-Parr *et al.*, *Cultural Liberty in Today's Diverse World, Human Development Report 2004* (United Nations Development Programme, New York, 2004) pp. 38–40, <www.undp.org.in/hdr2004/> visited 18 February 2006. For a theoretical and contextual critique of this argument, see J. H. Carens, *Culture, Citizenship and Community: A Contextual Exploration of Justice as Evenhandedness* (Oxford University Press, Oxford, 2000) p. 88 *et seq.*

² N. Fraser, 'From Redistribution to recognition? Dilemmas of Justice in a 'Post-Socialist age'', 1:212 *New Left Review* (1995) pp. 79–81.

³ I. M. Young, *Justice and the Politics of Difference* (Princeton University Press, Princeton, 1991) p. 59.

⁴ *Ibid.*

⁵ S. Choudhry, 'Distribution vs. Recognition: The Case of Antidiscrimination Laws', 9:1 *George Mason Law Review* (2000) pp. 159–160.

The Roma story reveals the intricate link between cultural and economic subordination. The Communist project of Romani assimilation offers perhaps one of the most vivid examples of how economic and cultural disadvantage reinforce one another. In Communist theory, the social and economic under-development of the Roma was used as an explanation for Roma cultural backwardness. At the same time, cultural under-development was blamed for their economic stagnation.⁶ Communism ideologists believed that the Roma would be better off if they were assimilated into the dominant nation. Although they associated socio-economic underdevelopment with their backward culture, the Communists also believed that the Romani language should not be helped to develop. Communists singled the Roma out as a subject of their policy of “civilization” and, thus, assimilation.⁷ Policies that focused aggressively on assimilation, however, brought very little improvement to the vertical mobility of the Roma. Instead, the Roma retained their status as part of a racially defined underclass. The democratic regime introduced in the 1990s officially rejected the categorization of the Roma as a deviant group that should assimilate into the dominant nation.⁸ However, in practice, the stereotypes of ‘lack of culture’ among Roma are, even today, deeply embedded in society.⁹ Deprivation and social exclusion makes it difficult for the Romani intelligentsia to settle on a meaningful definition of the term ‘normal’ in Slovak society and to free itself from the myriad of stereotypes. This notion of cultural inferiority in turn continues to serve as a justification for social and economic exclusion.

Central and Eastern European governments as well as the international community almost unanimously endorse the policy of ‘integration’ as a key tool in rectifying the dire circumstances of Romani communities across the region. The

⁶ Communists were generally supportive of national minorities and their distinct language in the former Czechoslovakia during communism. However, interpreting Stalin’s theory of ‘nation’ and of national minority, the communist ideologists in Czechoslovakia denied that the Roma constituted a national minority and were thus subjected to aggressive assimilation policies. Communism labeled Roma as ‘citizens of gypsy origin’. This label denies the distinct Roma ethnicity. Communist ideologists instead categorized this group as socially, economically, and culturally backward, and one that should be civilized through assimilation into the socialist society. For ideological rationalization of the communist stance against the Roma see J. Sus, *Cikánska otázka v CSSR* (Státní nakladatelství politické literatury, Praha, 1961).

⁷ For a concise overview of communist assimilation policies see e.g. A. Jurová, ‘Rómovia v období od roku 1945 po November 1989’, in M. Vašečka (ed.), *Čičipen Pal o Roma—Súhrnná správa o Rómoch* (Inštitút pre verejnú otázku, Bratislava, 2003) p. 53.

⁸ In 1991, for the very first time, the Roma were recognized as a national minority, whose members have a right to preserve its distinct culture and language. *Zásady politiky vlády České a Slovenské Federatívni republiky k romské menšine*, Government Resolution 619/1991 of 3 October 1991. See on identity rights of citizens belonging to national minorities and ethnic groups in Slovakia Articles 12(3), 33 and 34 of the Slovak Constitution. *The Slovak Constitution*, Act No. 460/1992 Coll., in its present amended form.

⁹ See a great account of the phenomenon of exclusion in a case study of one Romani settlement in rural Slovakia in D. Z. Scheffel, *Svinia in Black and White: Slovak Roma and their Neighbours* (Broadview Press, Orchard Park, NY, 2005) esp. c. 1 p. 17.

policy of integration is based on the idea of promoting cultural (recognition) and economic (redistribution) justice. Integration enables Roma to participate equally in the state's socio-economic life while recognizing and promoting their distinct ethnic identities.¹⁰

By drawing on the theoretical literature as well as practical strategies, this article examines the complicated connections between policies seeking to achieve the economic and cultural empowerment of the Roma.¹¹ The article studies the integration approach by drawing on pertinent aspects of political theory. Two main arguments can be advanced from this perspective: the inability of such policies to fully redress economic injustices and the stigmatizing effect this has on minority group members. In considering this challenge as a theoretical claim I review some of the corresponding empirical evidence. Analysis shows that the data remains inconclusive, and, by itself, probably does not challenge the policy of integration. Next, I scrutinize the practical implementation of this integration policy through the example of the education of Romani children. I argue that these existing initiatives as applied to the existing social, cultural, and economic contexts of Slovakia, despite its stated objectives, tends to lean towards assimilation. Various integration programmes in education are, perhaps understandably, dominated by concerns with Roma poverty rather than cultural equality. However, the existing education system, despite being critiqued as culturally biased, remains largely untouched by integration reforms. Romani students are *de facto* encouraged to 'adapt' into a system that provides them with little opportunities to succeed. Moreover, in these initiatives the Romani language plays merely an instrumental role in the ultimate aim of teaching the children Slovak. Cultural and linguistic assimilation consequently becomes a trade-off for inclusion into the mainstream institutions of public education. The article concludes by proposing a shift in the focus of the integration policies of the dominant group and mainstream institutions rather than merely endorsing 'integration' of the minority. Integration policies should, however, not only facilitate the inclusion of the Roman in the 'common' plural institutions, but also support the existence of some parallel minority-specific spaces. In the context of Romani education this proposal supports a transformation of the education curriculum that would permit Roma inclusion along with providing education of Romani children in Romani language classes within mainstream schools.

¹⁰ K. Miszei *et al.*, *Avoiding the Dependency Trap: the Roma Human Development Report* (UNDP, Bratislava, 2003) p. 11, <<http://roma.undp.sk/>> visited 18 February 2006. [*Avoiding the Dependency . . .*]

¹¹ I follow Carens' contextual method of inquiry that juxtaposes abstracts with the concrete and critiques actual practices from the perspective of theory. Carens, *supra* note 1, pp. 2–6.

I do not mean, however, to suggest whether or not a fair degree of Romani accommodation merits their integration.

2. *The Existing Approach to Remediating Economic and Cultural Injustice—The Policy of Roma Integration*

International and domestic policy documents share the assumption that achieving meaningful and lasting change to the Roma's circumstances requires measures that will remedy their cultural as well as their economic inequality.¹² We cannot fully rely on the policies of recognition to remedy economic inequality or, conversely, on the politics of redistribution to correct cultural disadvantage.¹³ The theory of combining the politics of recognition and redistribution is developed in the concept of integration. Integration, which is the current policy approach towards Romani communities advocated by the international community and adopted by Slovakia, involves a combination of affirmative action

¹² International law generally recognizes the connection between cultural and socio-economic disadvantage and the need to provide redress for both. The intimate relationship between culture and socio-economic disadvantage has been well-established, particularly with respect to indigenous peoples. (See e.g. case law of UN Human Rights Committee, e.g. *Lubicon Lake Band v. Canada*, Communication No. 167/1984, U.N. Doc. Supp.No.40(A/45/40) (1990); *Kitok v. Sweden*, Communication No. 197/1985, CCPR/C/33/D/ 197/1985(1988). It is similar for national minorities. International minority rights documents recognize the need to pay attention not only to cultural inequalities, but also to the social and economic circumstances of these groups. See e.g. Article 4(2) of the Framework Convention for the Protection of National Minorities. The Framework Convention was adopted on 1 February 1995, and entered into force on 1 February 1998.

¹³ I use the terms the politics of 'recognition' and 'redistribution' as two paradigms of justice advocated by Nancy Fraser. The former is primarily concerned with cultural disadvantage whereas the latter is concerned with economic inequality. Fraser, in her theoretical account of groups that suffer from the vicious circle of economic and cultural injustice, demonstrates her reluctance to ascertain categorically whether one or the other is the primary reason for the injustices sustained by these groups. She claims that both are primary and original. See Fraser 1995, *supra* note 2; N. Fraser, 'A Rejoinder to Iris Young', 1:223 *New Left Review* (1997) p. 126; N. Fraser 'Rethinking Recognition', 3 *New Left Review* p. 107; N. Fraser 'Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation', in N. Fraser and A. Honneth (eds.), *Redistribution or Recognition? A Political-Philosophical Exchange* (Verso, London, New York, 2003) c. 1 p 7. (Fraser has slightly reformulated her theory of recognition and redistribution over time. For a good overview of the crucial changes in her work see e.g. C. F. Zurn, 'Identity or Status? Struggles over 'Recognition' in Fraser, Honneth, and Taylor', 10:4 *Constellations* (2003) p. 520 *et seq.*)

Fraser's proposition is plausible from the perspective of the main claims of the Romani movement. Both transnational and national based claims include elements combining the policy of recognition and redistribution. The draft of the European Romani Charter endorsed by a portion of the transnational Romani movement includes provisions seeking education in Romani language along with funding for development projects of Romani communities. A proposal of the Romani Charter is available at the website of the RomNews Society, online at <www.romnews.com/3_6.html> visited 23 July 2006.

Similarly, claims of various national movements include calls for affirmative action along with cultural emancipation. For example, a group of Romani leaders in Slovakia have directed their demands for policies geared at Romani communities to the Prime Minister. The memorandum of the Roma Parliament in the Slovak Republic, adopted on 25 January 2003 and submitted to Mikulas Dzurinda, the Slovak Prime Minister on 29 January 2003, sought to bring about the introduction of policies that would be supportive of the national development of the Roma as a national minority. The memorandum also sought redistributive measures in favor of the Romani minority. (The memorandum of the Romani parliament is on file with the author.)

measures¹⁴ and multicultural policies promoting distinct Romani identities. One of the first comprehensive reports on the situation of the Roma, produced by the Council of Europe in 2002, explains the meaning of integration as requiring that they are treated “as an ethnic group and a socially disadvantaged community.”¹⁵ The integration approach, as elaborated by various international governmental organisations, has been afforded its most detailed treatment in a set of recommendations

¹⁴ There appears to be confusion concerning the meaning of ‘affirmative action’, ‘positive action’ and ‘positive discrimination’. Affirmative action, upon the reading of the UN Human Rights Committee, includes measures that strive to “diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant.” (i.e. redress for historic and/or ongoing discrimination) General Comment No. 18: Non-discrimination: 10/11/89, CCPR General Comment NO. 18, para. 10. Affirmative action measures must fulfil the principle of proportionality, i.e. measures must be proportionate to their ends (which must be legitimate, e.g. redress historic discrimination). Some commentators have proposed that international human rights law should distinguish between ‘positive discrimination’ and ‘affirmative action’. Positive discrimination or ‘classic’ affirmative action aims to positively discriminate in favour of disadvantaged groups. S. Joseph, J. Schultz and M. Castan, *The International Covenant on Civil and Political Rights* (Oxford University Press, Oxford, 2. ed., 2004) p. 728. Affirmative action, by contrast does not ‘discriminate’ against other groups: “For example, the provision of ramps to allow disabled people public access is a positive measure which redresses disadvantage for disabled people. It is however not a measure of ‘positive discrimination’ as the measure does not discriminate against able-bodied people. Similarly, provision of more childcare facilities would tend to redress discrimination against mothers regarding access to employment. However, such provision does not discriminate against men.” *Ibid.* and sources cited therein p. 728.

Some commentators furthermore argue that the term ‘positive action’ is just “the European name for what Americans call ‘affirmative action’”. See T. Trelogan, S. Mazurana and P. Hodapp, ‘Can’t we enlarge the blanket and bed? A Comparative analysis of positive/affirmative action in the European Court of Justice and the United States Supreme Court’, 28 *Hastings International and Comparative Law Review* (2004) p. 40. In some instances, the selection of the term ‘positive action’ instead of ‘affirmative action’ or ‘positive discrimination’ may be instigated by strategic political rather than legal reasons. See on the situation in Slovakia *infra* note 20.

¹⁵ Recommendation 1557, *The Legal Situation of Roma in Europe*, Report of the Committee on Legal Affairs and Human Rights, Rapporteurs, Mr. Csaba Tabajdi of 19 April 2002, Doc.9397 Parliamentary Assembly of the Council of Europe, part B para. 20, <<http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/WorkingDocs/doc02/EDOC9397.htm>> visited on 18 February 2006.

A recent report of the EU Network of Experts in Fundamental Rights clarifies how these two goals may be implemented in practice:

“[T]he Roma should, for example, be able to have access to employment or obtain services without being prevented from doing so by the fact of them wearing traditional clothing, *even* when a justification may be given to support the prohibition of such clothing. What should be justified, however, is the refusal to make an exception to a general prohibition measure, because this measure prevents the Roma from preserving an essential element of their identity. The Roma should be able to choose to lead an itinerant or semi-itinerant lifestyle, *even* where there are good justifications for country planning legislation[s], denying them stopping places for their caravans.”

European Union Network of Experts in Fundamental Rights, *Report on the Situation of Fundamental Rights in the European Union for 2003*, Brussels, January 2004, p. 103. The full text of the report is available on the Internet website of the European Commission’s Directorate General of Justice and Home Affairs online: <http://europa.eu.int/comm/justice_home/index_en.htm> visited on 18 February 2006, [The EU Expert Report] .

contained in a UNDP report named *Avoiding the Dependency Trap*.¹⁶ The report's primary aim was to develop a policy of integration that would provide the Roma with opportunities for sustainable development.¹⁷ The authors define integration as "the opportunity to participate in socio-economic life on [an] equal basis without losing one's own distinct identity (linguistic, cultural), while simultaneously contributing one's individual distinctiveness to the cultural richness of the society."¹⁸ To facilitate the Roma integration and expand their developmental opportunities, the UNDP report suggests that governments must focus on addressing the three major deficiencies: (1) facilitating employment opportunities; (2) securing equal access to education; (3) participation in government, especially at the local level.¹⁹ To facilitate the Roma integration and expand their developmental opportunities, policy proposals included in the report are primarily focused on socio-economic empowerment and cover the sphere of education, employment, housing, health, and political participation. The UNDP proposals range from calls for emergency measures, such as a massive drive for re-vaccination and TB screening, towards certain longer term plans to desegregate Romani children in the education system and to introduce pre-school education.

International policy documents serve as the main model for domestic Slovak policies towards Romani communities. The most recent—and possibly also the most comprehensive government strategy—is based on the idea of "temporary equalizing measures" seeking socio-economic empowerment of Romani communities while respecting their distinct ethnic identities.²⁰ The spheres covered by this policy, in principle, follow on from the recommendations and 'best practices'

¹⁶ K. Miszei *et al.*, *supra* note 10.

¹⁷ *Ibid.*, p. 7. According to the report, "issues of Roma integration and sustainable income generation" are key priorities for (then) pre-accession countries. *Ibid.* p. 7. 'Integration' is the central term of likely the most robust international initiative 'The Decade of Roma Inclusion' 2005–2015, sponsored by the Open Society Institute, the World Bank, the European Commission, the UNDP, The OSCE, the COE, the Council of Europe Development Bank, international Romani organizations and 8 CEE countries. See more details <<http://siteresources.worldbank.org/INTRROMA/Resources/Moreabouttheromadecade.pdf>> visited 18 February 2006.

See web site <www.romadecade.org/en/index.php> visited 18 February 2006.

¹⁸ K. Miszei *et al.*, *supra* note 10, p. 11.

¹⁹ *Ibid.*, p. 2

²⁰ *Basic Positions of the Slovak Government on the Integration of Roma Communities*, approved by the government on 23 April 2003, government resolution 278/2003, <www.vlada.gov.sk/orgovanova/dokumenty/4zakladne_tezy.rtf> visited 18 February 2006 (in Slovak) [*Basic Positions . . .*]

The idea of affirmative action in favour of Romani communities, however, is far from being universally accepted in Slovakia. The *Basic Positions* were prepared and adopted under enormous pressure from the EU. One of the political criteria of Slovakia's accession to the EU was improvement in its treatment of minorities, and especially the Roma. The underlying idea of the strategy is to adopt 'temporary equalizing measures' to ensure equality of opportunity for the Roma. For the first time the government openly recognized that the past assimilation measures during communism and ongoing discrimination has created a

set out in the UNPD report. The government policies, at least in their stated objectives, underline however even more vigorously the support of Romani culture and language than the UNPD report.

2.1. Challenges in Implementing 'Integration'

Does the policy of integration successfully address the problem presented by the intersectional nature of economic and cultural disadvantage? Do existing policies truly meet the objectives of 'integration'? In addressing these questions I begin

situation where a significant portion of the Romani population does not have the same opportunities as ethnic Slovaks.

The term 'temporary equalizing measures' is rather unconventional. Why not simply use affirmative action or positive action? The legal reasoning in the government strategy suggests two main considerations. One was simply a political decision that strove to make the policy acceptable for the majority population. The government thus sends a message that temporary equalizing measures are not aimed to 'unjustly privilege' the Roma.

"The Government realizes that a substantial percentage of persons belonging to the Romani minority currently fails to enjoy the same starting position as the majority population in Slovakia for various historic and other reasons." See section 3, "Temporary Equalizing Measures", *ibid.*

The other factor in the terminology selection relates to the unclear legal status of affirmative action in Slovakia at that time. In fact, the Slovak Constitutional Court was, in October 2004, motioned to examine the constitutionality of temporary equalizing measures. In May 2004, during adoption of the Slovak antidiscrimination legislation, a member of the Hungarian party proposed an amendment to the draft bill that would, as a matter of law, make 'special equalizing measures' for national, racial and ethnic groups legal in order to "ensure equality in practice." *The Act on Equal Treatment in Certain Areas, Protection from Discrimination and on Amendment and Supplementation of Certain Laws [Antidiscrimination Act]*, Act No. 365/2004 Coll., Para. 8(8). The Constitutional Court has been challenged by a petition, submitted by the government arguing that the affirmative action provision entrenched in para. 8(8) of the Slovak anti-discrimination law is not in concert with the constitution. Paradoxically, the government has thus challenged its own policy towards Romani communities as unconstitutional. The petition was prepared by the Minister of Justice, a member of the conservative Christian Democratic Party. See the *Proposal to Commence Proceedings in the Compliance of the Antidiscrimination Act with the Slovak Constitution*, adopted by the Slovak Government 941/2004 on 6 October 2004. [*The Proposal to Commence Proceedings* . . .] The Constitutional Court has, in October 2005, in an 11–4 decision struck down the provision allowing for 'special equalizing measures' for national, racial and ethnic groups on the grounds of unconstitutionality. The Chief Justice Mazák argued, for the majority, that the provision in question is unconstitutional due to three reasons: 1. special measures constitute prohibited positive discrimination of persons belonging to racial or ethnic groups; 2. the provision fails to specify subject, content and criteria for adoption of special measures; 3. the provision fails to specify that special equalizing measures should be merely temporary and thus could serve as a basis for prohibited positive discrimination of others. *Constitutional Court decision* Pl.US. 8/04-202 of 18 October 2005. It is beyond the scope of this paper to examine the troubling and internally inconsistent interpretation of the Constitutional Court. However, at this stage it is sufficient to mention that all existing programs called equalizing measures for the Roma continue to take place. Yet, beneficiaries of these programs are, in official rhetoric, labelled as 'socially disadvantaged individuals' rather than the Roma. This approach trivializes the inequality experienced by marginalized Romani communities. Moreover, any of the programs, even those funded by international organizations, the EU or other foreign states can be challenged at any moment as being unconstitutional.

with an examination of the major difficulties of the integrationist approach as identified in theory, followed by an assessment of relevant practice.

2.1.1 Inability to Redress Economic Inequality and Stigma

Integration combines measures of affirmative action in the socio-economic sphere and minority rights policies that promote distinct ethnic Romani identities. Nancy Fraser, one of the leading social and political theorists problematizing the relationship between redistributive and cultural justice, points out that this combination of policies is problematic.²¹ She argues that affirmative action remedies economic inequalities through a more equitable redistribution of jobs and educational places. The underlying structures that generate disadvantage, however, remain intact.²² Affirmative redistributive policies, such as targeted public assistance for those in need, (i.e. the Roma) do not alter existing class differentiation. In fact, these policies may even support the stratification of class. For example, public assistance programs, though providing material aid, can also produce an undesirable misrecognition backlash, creating “antagonistic group differentiations.”²³ Affirmative recognition, by contrast, promotes respect for marginalized groups.²⁴ The politics of ‘mainstream multiculturalism’²⁵ redresses, in part, the cultural injustice of disrespect without deconstructing underlying group differentiations.²⁶

The simultaneous implementation of affirmative recognition and affirmative redistribution policies, as we see encompassed in the politics of integration, is thus complicated. Fraser warns that affirmative redistribution in the case of race is insufficient to battle the racialized division of paid labour. Consequently, affirmative action policies repeatedly underline racial differentiation and ultimately stigmatize persons belonging to racial minorities as deficient and incapable.²⁷

²¹ Fraser herself does not criticize the policy of integration. It is rather my characterization of the policy of integration as involving affirmative recognition and affirmative redistribution, which is in turn subject to Fraser’s critique.

²² Fraser, *supra* note 2, p. 89.

²³ *Ibid.*, p. 85.

²⁴ *Ibid.*

²⁵ By mainstream multiculturalism Fraser means “the majority understanding of multiculturalism. It is mainstream in the sense of being a version that is usually being debated in mainstream public spheres.” *Ibid.*, n. 36 p. 82.

²⁶ Fraser uses the example of despised sexual minorities to illustrate the difference between affirmative and transformative modes of remedies. Affirmative recognition policies correspond to gay identity politics. Gay identity politics strive to revalue gay and lesbian identity. By contrast, queer theory is an example of a transformative remedy since it aims to deconstruct the homo/hetero dichotomy. *Ibid.*, pp. 82–83. Rather than treating homosexuality positively, queer theory treats homosexuality as a social construct defined in correlation to other sexualities. The ultimate consequence is to destabilize all fixed sexual identities. Deconstruction of cultural structures thus “not only raise the self-esteem” of minority members but transforms everyone’s “sense of belonging, affiliation, and self.” *Ibid.*, p. 83.

²⁷ *Ibid.*, p. 90.

This process is further exacerbated by affirmative recognition that re-evaluates the distinct identities of racial minorities without transforming the pre-existing binary black and white code. Promotion of minorities' difference would further stimulate opposition against affirmative action, leading to backlash misrecognition.²⁸

Fraser's argument against the combination of affirmative recognition and redistribution policies focuses chiefly on the ineffectiveness of affirmative action in remedying economic inequalities. Failure to deliver major transformations in the economic redistribution which stigmatizes the minority is then further exaggerated by multiculturalism that positively promotes group's difference. She puts forth this complex argument as a theoretical claim, but is it sustainable in practice? Although it would be too ambitious to attempt to capture the situation of numerous countries and the experiences with the various forms of affirmative action for the disadvantaged groups found therein, Fraser's claims are too stark.

In the context of African Americans in the US—Fraser's primary frame of reference—her assessment requires a more nuanced explanation. Affirmative action programs possibly *did* bring to fruition the results hoped for. One of the most comprehensive studies of affirmative action in higher education, *The Shape of the River*, authored by William Bowen and Derek Bok, prove that Fraser's concerns are empirically not well-founded.²⁹ Bowen and Bok's study is based on empirical data that tracked the outcome of preferential policies of selective colleges and universities on the performance of black and white students during and after their studies.³⁰ They pointed out that a policy of race-sensitive admissions helped to dramatically increase the percentage of black students aged 25 to 29 years graduating from college (5.4 per cent in 1960 to 15.4 per cent in 1995), from law school (1 per cent in 1960 to 7.5 per cent in 1995) and from medical school (2.2 per cent in 1964 to 8.1 per cent in 1995).³¹ Affirmative action in higher education, the authors conclude, brought about enormous gains in the representation of blacks in lucrative and influential professions and the emergence of a large black middle class.³²

²⁸ *Ibid.*, p. 91.

²⁹ One of the limitations of the study's results is its scope that includes merely affirmative action in higher education. W. G. Bowen and D. Bok, *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions* (Princeton University Press, Princeton, New Jersey, 1998) p. xxv.

It is important to note that my ambition here is not so much to draw conclusions on the basis of comparing the Roma with African Americans as to challenge Fraser's proposition in the context in which she advances her arguments.

³⁰ However, this approach only represents one form of affirmative action.

³¹ Bowen and Bok, *supra* note 29, pp. 9–10 and sources cited therein.

³² *Ibid.*, pp. 10–11 and especially c. 4 p. 91, c. 5 p. 118 and c. 6 p. 155. In-depth sociological analysis of the large amount of empirical data gathered and analysed by Bowen and Bok, however, is beyond the scope of this article.

Empirical evidence indicates that affirmative action has been relatively successful in transforming the distribution of wealth and prestige between racial groups and in the case of African Americans entering the middle class.³³ Similarly, data from other countries, such as India, Malaysia and South Africa, show that affirmative action helped reduce inequalities between groups and facilitated access of disadvantaged group members to the middle class.³⁴ Notwithstanding these observations, one may reasonably conclude that affirmative action as a tool of national policy is incapable (at least, on its own) of *fully remedying* the economic inequalities of disadvantaged groups. This is because it fails to transform the underlying structures that produce the inequalities in the first place.

Fraser furthermore argues that unsuccessful affirmative action programs, exaggerated by policies of multiculturalism, generate misrecognition of minority groups and their members. Fraser thus makes two propositions: (1) affirmative action is insufficient to alternate racial division of labour and thus leads to the stigmatization of racial minorities; (2) policies of multiculturalism that positively promote minorities' cultural difference further magnifies this stigmatization. The lack of empirical evidence prevents me from verifying or disputing the second claim. Instead, I merely focus the discussion in this paper on the relationship between affirmative action and stigma.³⁵

As we have seen, affirmative action has brought about important changes in the socio-economic status of African Americans. Still, one may reasonably ponder that affirmative action has not yet been fully effective in getting rid of racially defined classes. Has this outcome yielded the 'stigmatization phenomenon'?³⁶ *The Shape of the River* study indicates that research into inter-racial relationships and the related experiences of stigmatization is multifaceted. Nevertheless, and despite the range of opinions regarding the value of diversity in the educational process, Bowen and Bok conclude "there is no mistaking the predominantly favorable impression that students of all races share about the value of diversity in contributing to their education."³⁷ Among the study's results is an important

³³ See on this point also R. A. Lenhardt, 'Understanding the Mark: Race, Stigma, and Equality in Context', 78 *New York University Law Review* (2004) pp. 806–807.

³⁴ See Fukuda-Parr *et al.*, *supra* note 1, p. 9, *see* data also pp. 70–71.

³⁵ The second claim is, however, contingent on the validity of the first one.

³⁶ Lenhardt, for example, defines stigma as "a problem of negative social meaning. . . [t]o be racially stigmatized, under this view, implies more than merely being referred to by a racial epithet or even the denial of a particular opportunity on the basis of one's race. It involves becoming a disfavoured or dishonoured individual in the eyes of society. . . .", Lenhardt, *supra* note 33, p. 809. *See also* Lenhardt's useful analysis of components of racial stigma, p. 816 *et seq.*

The stigma argument was also put forward by members of a conservative party that wished to ban affirmative action in Slovakia. *See The Proposal to Commence Proceedings . . .*, *supra* note 20.

³⁷ Bowen and Bok, *supra* note 29, p. 216.

finding that the experience of attending college was valued as being a highly positive experience by the black graduates who participated in this evaluation.³⁸ If black minority students suffer stigma, one could reasonably expect that they would be less likely to complete their studies, less successful in their professional careers and would generally perceive their college experiences in negative terms.³⁹ The study also does not support the conclusion that black students were suffering from the burden of being viewed as unqualified because they were the beneficiaries of affirmative action. If that phenomenon had existed, evidence would have shown that these students performed better in their careers in the end result if they had attended college with students who had similar qualifications at the point of admission. If that were the case, black students would have achieved better academic results at these colleges because they did not suffer from feelings of inferiority, or the stigma of being privileged because of their race—with the consequence that their qualifications became devalued in their eyes.⁴⁰ By contrast, Bowen and Bok found that black students were significantly more successful at selective schools and had more lucrative careers than black students graduating from less selective schools.⁴¹

As a small empirical research study on stigma among African American students undertaken at a leading US law school reveals, experiences within the community are nevertheless complex.⁴² The author of the study, Ashley Hibbett, an African American law student, argues that while *quantitatively* there may be a 'united voice' of African American students, *qualitatively*, respondents agree with each other for very different reasons. Nevertheless, Hibbett concludes

“[r]egardless of difference in their views, each participant had a clear opinion on how they are viewed at the Harvard Law School campus because of their race. This made me realize the additional burden that minority students face in their educational environment. I am not talking about the burden of stigma. Rather, I am referring to the emotionally draining process of having to consider how the campus community views you as an individual because of your race . . .”⁴³

It would be unwise to dismiss out of hand the fact that some minority group members feel stigmatized by affirmative action undertaken to enhance the prospects of their community. The question for policy makers thus becomes whether or not the feelings experienced by some members of the disadvantaged

³⁸) *Ibid.*

³⁹) *Ibid.*, p. 261.

⁴⁰) *Ibid.*, pp. 263–264.

⁴¹) *Ibid.*

⁴²) A. M. Hibbett, 'The Enigma of the Stigma: A Case Study on the Validity of the Stigma Arguments Made in Opposition to Affirmative Action in Higher Education', 21 *Harv. Black Letter Law Journal* (2005) p. 75.

⁴³) *Ibid.*, p. 99.

community should outweigh the other tangible benefits of affirmative action and, in the end, prevent the policy from being adopted.

An important factor in deciding whether to pursue a policy of affirmative action is the range of measures available. Affirmative action may consist of a variety of measures that extend far beyond the simple preferential treatment of minority members in accessing prestigious occupations or gaining places on selective university courses. Christopher McCrudden, for example, has outlined the following types of affirmative action:

1. Needs-based programs that target particularly disadvantaged areas. The aim is to provide disproportionately favourable benefits to certain racial and ethnic groups because they are disproportionately affected and have a greater need.
2. Outreach programs aimed at attracting qualified individuals from under-represented groups; i.e. by bringing employment opportunities to the individual's attention, or encouraging them to apply for, and providing them with, training.
3. Preferential treatment (e.g. the preference that is given to one individual over another when both candidates are equally qualified, the preference that is given when the candidate from the disadvantaged group is less qualified, etc.)⁴⁴

The main type of affirmative or positive action programs currently aimed at the Roma in Slovakia involve those falling into the first and second categories of McCrudden's classification. These measures are aimed at redistribution in favour of Romani communities and strive to ensure that all the basic necessities can be accessed—such as infrastructure, housing and access to essential health care. Some of the projects also include measures that are to be found in the second category. For example, re-qualification courses (including training Romani teacher assistants and Romani health care personnel), small community works projects and special scholarships for Romani students. Preferential measures included in the third category generally have not been employed.

The differences between the various affirmative action programs, outlined above, are important in assessing the significance of stigmatization. It would be hard to justify the failure of the state to adopt measures that ensures that the Roma have access to all basic necessities such as drinking water, food, shelter,

⁴⁴ C. McCrudden, 'The Constitutionality of Affirmative Action in the United States: A Note on *Adarand Constructors Inc. v. Pena*,' 1 *International Journal of Discrimination and the Law* (1996) pp. 369–370.

electricity, access to health care and elementary education on the basis that a small proportion of the Romani community feel stigmatized by these measures.⁴⁵

To conclude, Fraser's theoretical insights applied in the case of integration policy and affirmative action for the Roma, suggests that we can foresee improvements in their economic standing, but only to a certain degree. Affirmative action is by itself insufficient to fully alleviate the racial division of labour. Yet this inability to deliver the perfect solution should not prevent the adoption of affirmative action in its entirety.⁴⁶ Similarly, the weight of the stigma argument, as empirical evidence in the US suggests, should not be overstated. Furthermore, consideration of the importance of the stigma dilemma should take into account differences in the type of affirmative measures sought.

2.1.2 Assimilation⁴⁷

Besides the deficiencies of the redistribution element in integration policies aimed at remedying economic inequalities, the practice suggests that there remains a profound challenge in balancing the elements of redistribution and recognition. A portion of Romani leaders in Slovakia as well as experts warn that, in practice, integration measures may actually require the Roma to assimilate.⁴⁸ Integration fails to culturally transform existing mainstream social, economic and political institutions in a way that would allow the inclusion of diverse cultural groups.⁴⁹ Consequently, participation of the Romani in mainstream

⁴⁵ The appalling circumstances to be found in some Romani settlements have the effect of creating stigma. Also, the other factors that can cause stigma often accompany 'development' projects aimed at helping the Roma. All too often, the mass media fails to portray these projects for what they are: initiatives perceived as necessary to 'civilize the Roma'. For a study of poverty in Romani settlements in Slovakia, see generally e.g., D. Ringold, M. A. Orenstein and E. Wilkens, *Roma in the Expanding Europe: Breaking the Poverty Cycle* (Washington, The World Bank, 2003) c. 3.

⁴⁶ See section 3, below.

⁴⁷ I understand the term 'assimilation' as "social inclusion at the expense of losing distinct group identity." *Avoiding the Dependency . . .*, *supra* note 10, p. 11. Sacrificing own identity is required to receive entry opportunities to the larger society. *Ibid.*

⁴⁸ Thomas Acton, a Professor of Romani studies, warned in 2003 that the outcome of the implementation of the UNDP report would, in reality, require the Roma to assimilate. I. Klimova-Alexander, *The Romani Voice in World Politics: the United Nations and Non-State Actors* (Ashgate, London, 2005) p. 114. The worry that existing policies of integration in practice encourage Roma assimilation is also present in the memorandum submitted by Romani parliament in 2003. The memorandum warns that during the last thirteen years state measures towards Romani communities indicated a tendency towards Roma assimilation and cultural genocide. The memorandum expressly sought the support of education in the Romani language and more general assistance in maintaining and developing Romani culture and language. Memorandum of the Roma Parliament in the Slovak Republic, *supra* note 13.

⁴⁹ One of the basic premises of the pioneering work of liberal pluralists is that the 'colour blind' or 'neutral' policies have in fact an eroding effect on minority cultures. This argument is based on the observation that the majority culture and its linguistic, religious and other cultural characteristics are deeply embedded in political, social and economic institutions. See e.g., Young, *supra* note 3 p. 96 *et seq.*, W. Kymlicka, *Multicultural Citizenship* (Clarendon Press, Oxford, 1995) p. 108.

institutions remains contingent upon their assimilation. I will explore this point in more detail through the example of the education of Romani children.

Education is without doubt the most crucial aspect in facilitating the socio-economic empowerment of a disadvantaged group. All the reports, recommendations and policy proposals agree that Romani education is central to any perceptible improvement of the socio-economic circumstances of this group. In addition, Romani education plays a key role in the preservation of Romani language and culture. The education of Romani children is, as we shall see, also the most striking example of the compound effects of economic and cultural disadvantage felt by the Roma.

One of the main pillars of the communist project of the Romani 'civilization' was the assimilation of Romani children into the mainstream education system. It was hoped they would achieve a command of the Slovak language and assimilate into the wider Slovak culture.⁵⁰ Paradoxically, this strategy of forced assimilation in fact led to a much institutionalized practice of segregation. Segregation manifested itself—and continues to manifest itself—through the placement of a disproportionately high number of Romani children in special remedial classes or schools.⁵¹ Special schools or classes are those designed for mentally

⁵⁰ See in more detail N. Kušnieriková, 'Prístupy k vzdelávaniu Rómov v minulosti', in M. Vašečka (ed.), *Čačipen Pal o Roma–Súbrnná správa o Rómoch* (Bratislava, Inštitút pre verejné otázky, 2003) p. 679.

⁵¹ Official data of the Department of Information and Prognosis on Schooling are based on self-identification of the family of the child in the public censuses. However, Roma self-identification is, due to a variety of reasons, extremely low. We are therefore left only with unofficial estimates. Moreover, it is illegal to gather data based on ethnicity for any purposes, including designing programs for the Roma that comply with international human rights standards. As a result, non-existing data makes it very difficult to prove the extent of the segregation. See in more detail on this *Roma and Statistics* (Princeton, Project on Ethnic Relations, 2000) <www.perusa.org/reports/PERStrasbourg.pdf> visited 18 February 2005.

I refer to what is probably the most accurate data in the context of Romani education gathered by the European Roma Rights Center, a Budapest-based NGO. The Center conducted intensive field research in areas with the highest percentage of Romani population during 2002–2003. The Center's report was submitted for the consideration of the UN Human Rights Committee at its 78th Session, 14 July–8 August 2003. [*The ERRC Report*] (This report is on file with the author) pp. 18–22.

Sadly, the European Court of Human Rights has recently adopted a deferential approach in its scrutiny of a disproportionately large proportion of Romani children that are being placed in special schools in the context of the Czech Republic. The Court refused to consider the social context of special schools and their role in perpetuating the systemic discrimination of the Romani children. *Case of D. H. and Others v. The Czech Republic* (Application No. 573250/00 of 7 February 2006), see esp. paras. 45–49. Specifically, the Court failed to consider the biases involved in the psychological tests and the overall procedure under which Romani children were placed into special schools, even though the state party acknowledged that these tests were problematic and biased. See on this point the concurring opinion of Judge Cabral Barreto, para. 2.

Notwithstanding the decision of the ECHR, numerous international governmental and non-governmental organizations describe the practice of placing Romani children into special schools across the CEE region as a form of 'discrimination' and/or 'segregation'. Among the latest reports see e.g. Final Report in the Human Rights Situation of the Roma, Sinti and Travellers in Europe prepared by Mr. Alvaro

handicapped students; those perceived as being incapable of keeping up at 'normal' schools.

Romani children have been placed in special programs for various reasons. In essence, the psychological tests used by schools produce a bias that has not traditionally favoured children of Romani origin. These tests were designed to measure social rather than intellectual or logical skills.⁵² Romani children—often from underprivileged and extremely poor families—have simply not had the same social opportunities as their 'white' counterparts. Moreover, these tests are undertaken in the Slovak language—a language many Romani children did not understand.⁵³ Even when Romani children are able to attend regular primary schools, they frequently suffered humiliating treatment by school staff and non-Romani students.⁵⁴ Romani parents have therefore often chosen—and

Gil-Roles, Council of Europe Commissioner for Human Rights, CommDH (2006) 1 of 15 February 2006, Strasbourg online: <[www.coe.int/T/DG3/RomaTravellers/documentation/discrimination/CommDH\(2006\)1_en.asp#P245_54968](http://www.coe.int/T/DG3/RomaTravellers/documentation/discrimination/CommDH(2006)1_en.asp#P245_54968)> visited 30 June 2006), see section 3.

See the most recent, third country report on Slovakia prepared by the European Commission Against Racism and Intolerance, adopted on 27 June 2003 and made public on 27 March 2004, paras. 103–104, online: <www.coe.int/t/e/human_rights/ecri/1-ecri/2-country-by-country_approach/slovakia/slovakia_cbc_3.asp#P262_33475> visited 30 June 2006.

See Second Opinion on the Slovak Republic by the Advisory Committee on the Framework Convention for the Protection of National Minorities, ACF/OP/II (2005) 004 adopted on 26 May 2005, made public on 21 June 2006, online: <www.coe.int/t/e/human_rights/minorities/2_framework_convention_monitoring/2_monitoring_mechanism/4_opinions_of_the_advisory_committee/1_country_specific_opinions/2_second_cycle/PDF_2nd_OP_SlovakRepublic_eng.pdf> visited 30 June 2006, paras. 17, 93, 96, 97, 100 & 141. [Second Opinion of the Advisory Committee].

See concluding observations of UN Human rights bodies. For example, the Human Rights Committee urges Slovakia to "take immediate and decisive steps to eradicate the segregation of Romani children in its educational system." Concluding observations of the Human Rights Committee: Slovakia of 22 August 2003 adopted on seventy-eights session CCPR/CO/78/SVK para. 18. Similarly, the UN Committee on the Rights of the Child as well as the UN Committee on the Elimination of Racial Discrimination remains concerned by the disproportionately high number of Romani children in special schools in the Czech Republic. See Concluding Observations of the Committee on the Elimination of Racial Discrimination on the Czech Republic, 10/12/2003 CERD/C/63/CO/4 para. 14, Concluding observations of the Committee on the Rights of the Child, CRC/C/15/Add. 201 of 18/03/2003 paras. 54 and 55(b).

⁵² L. Čurelová, 'Nedostanú š ancú', *1 Rómske listy* (2003): <www.romskelisty.sk/index.php?LANG=slovak&ACTION=article&ARTICLE=6&YEAR=2003&NUMBER=1> visited 10 August 2004.

Roma are often placed in special remedial programs without undertaking the relevant psychological tests. S. Rigová and M. Maczejková, 'Vzdelávací system a Rómovia', in M. Vašečka (ed.), *Čičipen Pal o Roma—Súhrnná správa o Rómoch* (Inštitút pre verejnú otázky, Bratislava, 2003) p. 715.

The danger of relying on psychological tests is aptly explained by the concurring opinion of Judge Costa in *Case of D. H. and Others v. The Czech Republic* that "under cover of psychological or intellectual tests, virtually an entire, socially disadvantaged, section of the school population find itself condemned to low level schools, with little opportunity to mix with children of other origins and without any hope of securing an education that will permit them to progress." Para. 4 of concurring opinion of Judge Costa, *Case of D. H. and Others v. The Czech Republic*, *ibid.*

⁵³ Čurelová and Rigová & Maczejková, *ibid.*

⁵⁴ *The ERRC Report*, *supra* note 51.

choose—to place their children in separate, special schools in order to protect them from the hostility they would suffer in the mainstream education system.⁵⁵ Some observers argue that Romani children have been deliberately sent to special remedial schools as a form of discrimination. A number of Romani children who failed in regular classes were also subsequently placed in special classes.⁵⁶

According to estimates undertaken in the school districts with the highest proportion of Roma, it was found in 2003 that—on average—more than 90 per cent of pupils in special remedial schools or remedial classes within regular schools were Romani.⁵⁷ It is 28-times more likely that a Romani child will be placed in a special school than a non-Roma child.⁵⁸ In eastern Slovakia, almost every village with a Romani settlement⁵⁹ has a special remedial school or a separate remedial class.⁶⁰ Romani children are frequently traumatized in the school environment; from an early age experiencing segregation and stigmatization on the basis of their ethnicity.⁶¹ Furthermore, the child's chance to pursue higher education, to enter a secondary school from⁶² a remedial program at the elementary level, is minimal.⁶³

There are a number of governmental and non-governmental sponsored initiatives aimed at improving Roma access to education and remedying the cultural and economic disadvantage experienced by Romani children. The common ground among the various projects is the desegregation or re-integration of Romani children into mainstream education.⁶⁴ 'Zero-classes', pre-school educational programs, 'Romani assistant teachers', the revision of psychological tests

⁵⁵ World Bank, Foundation S.P.A.C.E., Ineko, and the Open Society Institute, *Poverty and Welfare of Roma in the Slovak Republic*, Bratislava: LUKA, April 2002, p. 38.

⁵⁶ Čurelová, *supra* note 52.

⁵⁷ *The ERRC report*, *supra* note 51. Applicants in *Case of D. H. and Others v. The Czech Republic* indeed argued that special schools constitute a *de facto* parallel segregated educational system for members of different racial groups—that is special schools for the Roma and regular or 'ordinary' schools for non-Roma. *Case of D. H. and Others v. The Czech Republic*, *supra* note 51, para. 15.

⁵⁸ Rigová and Maczejková, *supra* note 52, p. 706.

⁵⁹ Romani settlements are typically segregated on the outskirts of a 'white' village. For a good description of forms of spatial exclusion and segregation, see Scheffel, *supra* note 9, p. 20 *et seq.*

⁶⁰ This is certainly not the case in areas with a small share of the Romani population. See Scheffel for a vivid and detailed account of segregation practices in *supra* note 9, pp. 36–39.

⁶¹ Rigová and Maczejková, *supra* note 52, p. 716.

⁶² See on this point *ibid.*, p. 717; see also applicants petition in *Case of D. H. and Others v. The Czech Republic*, *supra* note 51 para. 15.

⁶³ See on this point *ibid.*, p. 717; see also applicants petition *Case of D. H. and Others v. The Czech Republic*, *supra* note 51 para. 15.

⁶⁴ *Government Strategy on Integrated Education of Romani Children and Youth*, approved by the government on 26 May 2004, resolution no. 498/2004 online: <www.rokovania.sk/appl/material.nsf/0/FD9E6FEBE7E4345AC1256E9E0033E442?OpenDocument> visited 18 February 2006.

for entry into mainstream education and the inclusion of Romani culture, literature and history into mainstream education⁶⁵ are the principal projects aimed at improving the access of Romani children to educational opportunities across the CEE region. The main priority that is often cited is the objective of stimulating the pre-school education participation of Romani children.⁶⁶

The concept of the ‘zero-class’ or preparatory classes for children from socially underprivileged environments is a widely accepted tool to “resolve the problem of Romani education.”⁶⁷ Zero-classes should eliminate the “handicaps”⁶⁸ often experienced by a Romani child entering grade one or two of elementary school. The content of the education policy in zero-classes is adapted in such a manner that a “Romani child’s musical and dancing talent” is considered a positive factor.⁶⁹ Proponents of this concept believe that children’s attendance in zero-classes enhance their linguistic and communication skills (in the majority language) and helps them to form a more positive picture of the school environment. Children

For IGO’s and NGO’s activities, see e.g., Organization for Security and Cooperation in Europe (OSCE) *Action plan on improving the situation of Roma and Sinti within the OSCE area*, adopted 497th Plenary meeting of the OSCE Permanent Council, PC.DEC/566 of 27 November 2003 pp. 9–11:

<www.osce.org/documents/odihr/2003/11/1562_en.pdf?PHPSESSID=052149d8cd20a1a830127282d308dac4> visited 18 February 2006. For an overview of NGO activities in Slovakia see E. Koncoková, L. Šimčáková and E. Kriglerová, ‘Alternatívne projekty vzdelávania rómskych úiakov’, in M. Vašečka (ed.), *Čačipen Pal o Roma–Súhrnná správa o Rómochoch* (Inštitút pre verejné otázky, Bratislava, 2003) p. 725.

⁶⁵ Sadly, in practice, the transformation of mainstream education towards a less culturally biased environment is low on the government’s list of priorities. See on this point section 3, below.

⁶⁶ See e.g., *Recommendation of the Committee of Ministers to member states on the education of Roma/Gypsy children in Europe*, Council of Europe, No. R (2004) 4 of 3 February 2000, para. 4, <<http://cm.coe.int/ta/rec/2000/2000r4.htm>> visited 18 February 2006, *Action plan on improving the situation of Roma and Sinti within the OSCE area*, Decision No. 566, adopted by the Permanent Council on its 479th Plenary Meeting on 27 November 2003, para. 75(d): <www.osce.org/documents/odihr/2003/11/1562_en.pdf?PHPSESSID=83b0fba4c5070069e8a8935d2d3d0873> visited 18 February 2006.

⁶⁷ See generally Rigová and Maczejková, *supra* note 52, p. 709 *et seq.*

⁶⁸ Ethnocentrism seems to be embedded in the explanation offered by Slovak education experts on Romani children’s handicaps in education. According to well respected experts on Romani education, Romani children are often disadvantaged as a result of their social development, which is generally “conditioned by habits, customs, taboos, and upbringing. Their upbringing gives them little stimulation and is of low quality, because of their parents and the environment they live in. Since a neglected child with poor upbringing finds it difficult to adapt, this social negligence can easily mushroom into delinquency.” “Roma students are seldom equal partners in communication with other students, and this is not only due to their language handicap. They lack the usual social routine; they do not know how to communicate with the group, and so on. On the other hand, Roma students have a good, intuitive social intelligence that helps them to satisfy their basic needs and intuitively find their way in human relationships.” S. Rigová *et al.*, ‘The Roma in the Education System and Alternative Education Projects’, in M. Vašečka M. Jurásková and T. Nicholson (eds.), *Čačipen pal o Roma: A Global Report on Roma in Slovakia* (Institute for Public Affairs Bratislava, 2003) p. 417.

⁶⁹ Rigová and Maczejková, *supra* note 52, pp. 710–711.

in zero-classes should also acquire the “cultural, social and hygienic” habits necessary to function successfully in mainstream society.⁷⁰ The idea is also that the involvement of parents in zero-class related activities will have the effect of promoting parental responsibility later on with regard to their children’s school attendance.⁷¹ Although zero-classes are intended for all children from a socially underprivileged environment, they in fact exclusively target Romani children.⁷² The introduction of Romani teacher assistants is another example of good practice. A Romani teacher assistant is placed in preparatory programs and schools with a high proportion of Romani children. Assistants are mainly Roma with special educational training and a good command of the Romani language. Their role is to help Romani children to cope with the requirements of school through providing interpreting services, assistance with homework, communication with parents and other measures.⁷³

Romani teacher assistants and zero class projects are designed to facilitate the integration of Romani children. These initiatives should be complemented alongside the numerous other activities aimed at alleviating Roma poverty that would, collectively, have the effect of bringing about the corresponding

⁷⁰ See *supra* note 67 and accompanying text. See also submissions in *Case of D. H. and Others v. The Czech Republic*. The Czech Republic acknowledged that “one of the main problems encountered by Roma pupils was their poor command of the Czech language” and thus the “Ministry of Education considered that the best solution (and the only realistic one) would be to provide preparatory classes at the preschool stage for children from a disadvantaged socio-cultural background.” *Case of D. H. and Others v. The Czech Republic*, *supra* note 51, para. 27. See on the idea of recognizing the Roma in affirmative action programs as a ‘socio-culturally disadvantaged group’ *supra* note 20.

⁷¹ State sponsored experts in pedagogy working in the area of the education of Romani children often argue that one of the reasons for unsatisfactory school results among Romani children is caused by negative or ‘over-tolerant’ attitudes of their parents towards the school work. See submission by the Czech Ministry of Education in *Case of D. H. and Others v. The Czech Republic*, *ibid.*, para. 16.

One of the methods adopted to improve the high drop out rate and absence of Romani children at school is to tie the family’s allowance to the children’s presence at school. Family allowances for children that have an unreasonably high number of school absences will not be paid to the parents. Instead, the money will be directed to the schools, which should provide free meals for ‘these children’. This measure, which on its face appears neutral, was intended to target Romani children. Romani children have by far the highest drop out rates and recordings of school absence. One of the rationales of this measure was to ‘punish’ the parents. Introduction of the new method of redistribution of family allowances created a perverse and disturbing practice of segregation. Schools have developed a practice for children whose lunches are covered through the family allowance contribution that involves placing them in separate canteens. Schools justified this practice of segregation by logistical arguments. The vast majority of children in these separate canteens are, however, Roma. Release of Romani Press Agency M. Hušová, ‘Rómske deti z Odavských Matiašoviac musia obedovať segregovane’, 30 June 2004, <www.rpa.sk/clanok.aspx?o=z&n=1979&l=sk> visited 30 June 2004.

⁷² *Ibid.* See also *supra* note 20 on this point.

⁷³ The project of teaching assistants was launched in Slovakia by Inforoma, an NGO. See more details on the project on their web site <www.inforoma.sk/english/romasist.html> visited 10 August 2004. See also S. Rigová *et al.*, *supra* note 67, p. 429; Čurelová, *supra* note 52.

improvements that are necessary to create the right conditions for the participation of Romani children in regular schools.⁷⁴ Given the vast economic disparities that exist between the Romani and non-Romani populations, policy makers are perhaps understandably more concerned with addressing Roma poverty than developing the policy programs necessary to preserve their language. There is also the difficulty associated with the existing degree of segregation of Romani children where ethnicity serves as an axis of oppression. Given this practice, promoting group difference through conventional parallel education in the Romani language may—despite the best of intentions—serve (or be understood by Romani parents to serve) as just another form of segregation. Moreover because of the multiplying effects of the Roma socio-economic and cultural disadvantage, decision-makers face the practical challenge of delivering education in Romani, such as finding Romani speaking teachers who also have the necessary credentials.

However, there remains the danger that these “integration” initiatives will force the Roma to abandon their language and distinct identity in return for social inclusion. We have seen that Romani children are routinely excluded from mainstream education through entry tests that are proven to be both culturally and socially biased.⁷⁵ Such a selection and educational system more generally does not support the integration of children from distinct ethnic backgrounds. Yet very little focus is given under current initiatives to transforming public education and to recognizing the existence of the distinct cultures and histories of minority members, including those of the Roma.⁷⁶ Furthermore, focusing on improving the material conditions of Romani children diverts attention away from the fact that the Romani language simply plays an instrumental role in the educational process. In zero-classes and Romani teaching assistant projects, Romani is used to communicate with the children who often do not speak Slovak. Still, the Romani language is used exclusively as a tool to eventually teach the children Slovak.⁷⁷ Romani culture is only given a small amount of attention in the process of educating Romani children. Ultimately, participation may become dependent upon Roma assimilation.

Beyond the example of education, when groups experience enormous and debilitating socio-economic inequalities (and with the vast majority of the state’s wealth being accumulated by the dominant ethnic group), socio-economic inclusion can easily be traded-off in the pursuit of retaining one’s own ethnic identity. In practice, integration policies may deliver positive outcomes in reducing

⁷⁴ See examples of covered activities in section 2, above.

⁷⁵ See p. 13–14, above.

⁷⁶ See *supra* note 64.

⁷⁷ See the Second Opinion of the Advisory Committee, *supra* note 51, para. 104.

economic disparities but there appears to be a price to pay for the minority.⁷⁸ Those minority members who do not assimilate will become trapped in this catch-22 and remain part and parcel of this racially defined underclass.

3. *Alternative Proposals*

The existing integration approach as a mechanism designed to rectify economic inequality is insufficient and may have the unintended, though real, affect of stigmatizing some of the group members. Reconciling recognition with redistribution is difficult in practice and leads to assimilation rather than 'integration'. Is there an alternative to this widely endorsed strategy?

Fraser offers some possible alternatives to the dilemma. Her starting position is in keeping with existing public policies towards Romani communities. She claims that achieving justice in the case of groups experiencing economic and cultural inequality requires us to remedy both inequalities simultaneously.⁷⁹ Fraser theorizes about the longer term effects of the concurrent implementation of both the recognition and redistribution strategies.⁸⁰ Intuitively, she claims, the remedies for the two types of injustice may pull in different directions. The redistribution paradigm strives to put group difference "out of business as such" whereas the logic of recognition is to promote the difference.⁸¹

⁷⁸ In addition, in implementing minority rights and seeking just outcomes, it is important to appreciate the differences between states and the extent of their nation-building policies. The outcomes of minority rights policies, as advocated by Kymlicka, might be different in the CEE context, not only with respect to different minorities but also with respect to different states. The 'societal culture' and nation-building of the dominant nation, as Kymlicka cogently observes, is much thicker and more illiberal in the CEE context than in the West. W. Kymlicka, 'Western Political Theory and Ethnic Relations in Eastern Europe', in W. Kymlicka and M. Opalski (eds.), *Can Liberal Pluralism be Exported? Western Political Theory and Ethnic Relations in Eastern Europe* (Oxford University Press, Oxford, 2001) pp. 53–60. A more aggressive promotion of the 'thicker' societal culture of the dominant nation makes it harder for ethnic groups to integrate. Michael Walzer, for example, makes the proposal that in states with thicker and more aggressively promoted societal cultures, immigrants may require more autonomy and in fact may "have to be dealt with as if they were national minorities." M. Walzer, 'Nation-States and Immigrant Societies', in W. Kymlicka and M. Opalski (eds.), *Can Liberal Pluralism be Exported? Western Political Theory and Ethnic Relations in Eastern Europe* (Oxford University Press, Oxford, 2001) p. 153.

⁷⁹ She actually *assumes* that justice requires both, Fraser, *supra* note 2, p. 69. See on this point also *supra* note 13 and accompanying text.

⁸⁰ Fraser, however, advises that for analytical purposes she is working with the two paradigms of justice which are distinct from each another. In the real world, she admits, however, that they implicate one another. Fraser, *supra* note 2, p. 70.

⁸¹ Fraser, *supra* note 2, pp. 79–80. Fraser's account of likely outcomes of affirmative and transformative recognition and redistribution policies framed as recognition vs. redistribution dilemma may appear intuitively plausible. Yet, there is not enough empirical evidence to support a view that multicultural policies are an inevitable trade off for policies of redistribution in modern welfare states. In fact, Keith Banting and Will Kymlicka in their large comparative empirical study of the impact of multiculturalism on the

Fraser proposes that in order to reconcile these seemingly conflicting types of remedies, we must analytically distinguish the nuances of each possible strategy of recognition and redistribution.⁸² She differentiates between two modes of remedy: affirmative and transformative. As stated earlier, affirmative remedies aim to correct the imbalance created by unfair social organization, while at the same time leaving underlying social structures intact.⁸³ Transformative remedies instead target the root rather than the outcome of the injustices.⁸⁴ Everyone's condition of existence is ultimately altered.⁸⁵ Transformative remedies, aimed at destabilizing class differentiation, embraces policies such as steep progressive taxation, universal welfare programs, strategies aimed at full employment or the support of a large public non-market sector.⁸⁶

Using an analytical matrix (redistribution policies in its affirmative form present the liberal welfare state as transformative socialism; affirmative policies of recognition take the form of mainstream multiculturalism and its deconstructive form of deconstruction), Fraser discusses several possible theoretical alternatives.⁸⁷ As explained in the previous section, a combination of affirmative-affirmative strategies is imperfect. Similarly, the transformative-affirmative alternative is also problematic, robustly exhibiting the tension between the politics of recognition and redistribution. Fraser holds that the most attractive alternative combines the politics of transformative redistribution with transformative recognition. In the case of racial minorities, this scenario combines a form of anti-racist socialism, or anti-racist social democracy, grounded in anti-racist deconstruction theory that is oriented towards undermining racial dichotomies. In the long run the goals of both policies, in its transformative mode, are compatible. Transformative recognition and redistribution blur the existing racial hierarchies and substitutes them with "shifting networks of multiple intersecting identities."⁸⁸

Fraser herself acknowledges, however, that these models—although intellectually compelling—are far from being politically feasible. They would require the alteration and detachment of peoples' current interests and identities.⁸⁹

welfare state do not find conclusive evidence to support Fraser's thesis. See in more detail, K. Banting and W. Kymlicka, 'Do Multiculturalism Policies Erode the Welfare State?', in P. Van Parijs (ed.), *Cultural Diversity versus Economic Solidarity* (De Boeck & Larcier s.a., Bruxelles, 2004) p. 227.

⁸² Fraser, *supra* note 13, p. 129.

⁸³ Fraser, *supra* note 2, p. 82.

⁸⁴ *Ibid.*, p. 82, see also *supra* note 26 and accompanying text.

⁸⁵ *Ibid.*, p. 84.

⁸⁶ *Ibid.*, p. 85.

⁸⁷ *Ibid.*, p. 87. Analytically, the least attractive model is the combination of affirmative and transformative policies. One policy promotes group differences whereas the other aims to undermine it.

⁸⁸ Fraser, *supra* note 2, p. 91.

⁸⁹ *Ibid.*

Moreover, in the sphere of redistribution, given the region's past experiences with socialism, the transformative redistribution proposal would be difficult to convey. Slovakia has been set on an opposing trajectory for some time now.⁹⁰ Taxation policies, for example, have evolved into the antithesis of progressive taxation.⁹¹ In the sphere of recognition, the transformation of people's identities would likely be unacceptable for the ethnic Slovak majority as well as for the Roma minority. Slovaks received their first real taste of territorial and political independence only recently, and since then have been actively involved in the project of nation-building and asserting their distinct national identity.⁹² The Romani movement has also been involved in promoting the idea of Romani difference: through the idea of common nationhood among dispersed Romani communities at the transnational level and through their recognition as a minority at the national level.⁹³

In her later writings, Fraser searches for a more politically workable institutional alternative. According to her, affirmative policies can, in practice, have a transformative effect. Fraser advocates the idea of a *nonreformist reform* which presents a *via media* between affirmative and transformative approaches. The essence of this strategy is to adopt a politically feasible reform in the sphere of recognition as well as redistribution that would prepare the ground for more transformative changes later on.⁹⁴ This idea seems to be a more stimulating way of looking at the policies needed to bring about full Roma integration. The relevant decision-makers can, for example, attempt to transform mainstream institutions, while at the same time advocating affirmative recognition and redistribution measures for the minority. In keeping with the existing minority rights policies in Slovakia and in the region we may want to think of ways to create a 'common plural' space along with 'parallel autonomous minority institutions' that have both recognition and redistribution aspects and that would not require the wholesale alteration of everyone's identity. Such a transformation

⁹⁰ For an overview of welfare reforms, see Global Reports on the State of Society in Slovakia, prepared by the Institute of Public Affairs in Bratislava, published in Slovak and English. The reports contain a separate paper on developments to the social system <www.ivo.sk> visited 18 February 2006.

⁹¹ Slovakia has, as of January 2003, introduced a two-tier flat income tax for persons as well as corporations. In the first tier, below a certain threshold, no taxes are payable. In the second tier, above the threshold, flat tax is paid. For low-income earners the threshold creates a tax relief effect.

⁹² See e.g., N. Nedelsky, 'Constitutional Nationalism's Implications for Minority Rights and Democratization: the Case of Slovakia', 26:1 *Ethnic and Racial Studies* (2003) p. 109.

⁹³ For an overview of alternatives of Roma self-determination see e.g., N. Gheorge and A. Mirga, 'The Roma in the Twenty-First Century: A Position Paper' (1997) p. 7 *et seq.*

<www.eurozine.com/pdf/2001-03-12-mirga-gheorgh-en.pdf> visited 18 February 2006; I. Klímová-Alexander, 'Prospects for Romani Cultural Autonomy', in E. Nimni (ed.), *National Cultural Autonomy and its Contemporary Critics* (Routledge, London and New York, 2005) pp. 124–26.

⁹⁴ Fraser, *supra* note 13, pp. 78–79.

would be conducive to permitting the individual to participate in mainstream social, economic and political institutions, while at the same time preserving his or her opportunity to maintain a distinct ethnic identity.

How would such a project work in the case of Romani education? Because of the current practice of segregating Romani children through the 'special school' system, the conventional model of organizing a parallel minority school system might be inappropriate. In addition, the territorial dispersion of the Roma would make the introduction of a separate system, at least at the primary level, difficult to establish on a practical level. Instead, a more attractive model is to seek the inclusion of Romani children into the education systems of mainstream schools. This is, in reality, in line with the objectives of the existing policies of integration.

However, my proposal endorses the shift on the transformation of the mainstream education systems rather than on attempts to 'adapt' Romani children. Mainstream education, some believe, perpetuates the superiority of one culture.⁹⁵ Education is biased against students from culturally diverse backgrounds, including the Roma. The method and content of education appears ethnocentric.⁹⁶ Yet, as we have seen, the main focus of the current initiative remains the Romani children and their re-integration into a system that remains, by and large, intact. The transformation of the schools' curriculum is vital.

Second to ensuring the Roma the opportunity to maintain their distinct ethnic identities,⁹⁷ the classes of and in Romani language would be offered within the mainstream school system.⁹⁸ Rather than questioning whether the Roma do

⁹⁵ M. Hübschmannová, 'Czech School and 'Romipen': The Core Identities of a Rom Child', reprinted in Csaba Fényes *et al.* (eds.), *The Roma Education Resource Book* (Vol. 1, 1999) available online at the website of Open Society Institute Budapest, <www.osi.hu/iep/minorities/ResBook1/Romipen.htm> visited 23 July 2006, p. 1.

⁹⁶ On the problem of monocultural education generally, see e.g., B. Parekh *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (Palgrave Publishers Ltd., Hampshire & New York, 2000) pp. 224–230. In the context of Slovakia, see e.g., K. Bezáková and J. Lajčáková, 'Multikulturalizmus a inklúzia ako riešenie Rómskej problematiky', in M. Vašečka (ed.), *Čičipen Pal o Roma–Súhrnná správa o Rómoch* (Inštitút pre verejné otázky, Bratislava, 2003) pp. 828–834.

⁹⁷ I do not mean to suggest that the Roma are not an internally homogenous group. In contrast, they are created from a mosaic of diversified groups, identifying themselves according to the family, clan or particular Romani branch to which they belong and also speak a variety of Romani dialects. Yet there is no reason why the internal diversity within the Romani minority should prevent this group from benefiting from minority rights protections including the right to be educated in their mother tongue. Nonetheless, as far back as 1971 there has been an attempt to codify a unifying version of the Romani language that would serve as a basis for education in the Romani language. The corresponding text book on the grammar of Romani language was prepared and published in 2003. See in more detail on the codification of the Romani language, S. Cina, 'Rómsky jazyk a špecifická jeho štandardizácie', in M. Vašečka (ed.), *Čičipen Pal o Roma–Súhrnná správa o Rómoch* (Bratislava, Inštitút pre verejné otázky, 2003) p. 113.

⁹⁸ This proposal is in fact not novel but corresponds to yet unfulfilled Slovakian obligations under the European Charter for Regional or Minority Languages, for example. See Slovakia's commitments to provide education in Romani language under Article 8 'Education' at all levels of education system (see

or do not wish to study in their language—as is the current non-Romani dominated debate⁹⁹—it would be the Romani students and their parents who would choose whether or not to attend. Providing for Romani language within the mainstream educational system should, however, be seen as having an intrinsic value rather than being viewed merely as an instrument geared towards Roma ‘integration’ into the dominant society, as is the current practice.

Finally, this combination of transformative and affirmative recognition approaches would undoubtedly involve critical implications in the sphere of redistribution. It would be necessary, for example, to prepare a critical number of Romani speaking teachers¹⁰⁰ for the task, along with the publication of text books for Roma specific classes, and financing to transform the general school curricula.

4. Conclusion

In the debate on Roma rights, the policy of integration combining recognition and redistribution policies remains problematic for several reasons. The policy of integration based on the idea of affirmative action does not alter the underlying structures that produce economic injustices. Although such an approach does not seem to be fully able to resolve economic inequality, empirical evidence shows that, in the long term, it can bring about some important transformative outcomes by facilitating access of some disadvantaged groups to the middle class. There is, however, a worrying flip side to affirmative action: the possibility that minority members will be stigmatized, viewed as deficient and incapable. Stigma

commitments for ‘Romani language’ under Article 8, para. 1 a iii; b iii; c iii; d iii; e ii; f ii; g; h; i). The Charter was adopted on 5 November 1992, and entered into force 1 March 1998. Slovakia ratified the Charter on 5 September 2001; entry into force for Slovakia took place on 1 January 2002.

⁹⁹) Ethnic Slovak politicians doubt the wisdom of education in the Romani language. Politicians openly express the view that Romani children should first acquire perfect command of the state language. They downplay the importance of education in Romani by questioning the very existence of the language, or reason that the Roma no longer use their native language. Regrettably, these views are not the exception in a non-Roma orientated discussion. See e.g., views of Slovak members of the Parliament expressed in B. Dóková, ‘Štátny jazyk by mal byť prioritn’, 5 June 2004, *Nový deň*.

¹⁰⁰) For example, in the case of Romani education, one of the immediate challenges stemming from the double disadvantage suffered by the Roma is an almost absolute lack of teachers of the Romani language. The Slovak government has recently started a pilot-project aimed at training Roma teachers. This project, combining aspects of redistribution and recognition, commenced only a couple of years ago, has been undertaken by the Ministry of Education in cooperation with some of the most respected Romani scholars. The objective is two-fold: to prepare the curriculum for Romani teachers and admission procedures for the applicants; and to prepare the curriculum for the teaching of Romani language and some additional courses in Romani for schools. See *Basic Positions . . . , supra* note 20, para. 3.2(11) More information on this project can be obtained from the Office of the Slovak Government Plenipotentiary for Romani Affairs <www.government.gov.sk/orgovanova/> visited 18 February 2006. See on these developments also the Second Opinion of the Advisory Committee, *supra* note 51, para. 104.

is a serious factor in deciding whether affirmative action is an appropriate measure to adopt. In weighing the strength of the stigma argument, however, we must consider the degree of existing segregation and social exclusion.

Notwithstanding, integration policy is, on a purely practical level, difficult to sustain in light of its stated objectives. Using the example of Roma education, I have shown how reconciling policies of redistribution and recognition is a problematic exercise. In practice, the redistribution element in the integration policy tends to prevail, possibly leading to Roma assimilation in the long term. Saliently, existing integration programmes fail to transform the mainstream educational system in such a way that would provide opportunities for the Roma to integrate. The focus on the 'adaptation' of Romani children that dominates integration incentives requires, in fact, that the Roma must be willing to assimilate in order to participate in society's mainstream institutions.

Despite these frustrations with the policies of integration, the way forward is certainly not to abandon existing initiatives. This article proposes that attempts to 'adapt' the minority should be replaced by the transformation of mainstream institutions that would facilitate the inclusion of the Roma along with more balanced recognition policies. In the context of Romani education, I have argued that the integration approach should aim to achieve the inclusion of Romani children in the mainstream educational system while, at the same time, the state should offer classes of and in the Romani language.