Ethnicity

as a statistical indicator for the monitoring of living conditions and discrimination

FRIEDRICH EBERT STIFTUNG

UNDP

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Analytical report and recommendations for the Slovak Republic.

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Report was published in cooperation with
Friedrich-Ebert-Stiftung e.V., office in the Slovak Republic

Published by
United Nations Development Programme
Regional Bureau for Europe
and the Commonwealth of Independent States

ISBN 978-80-89263-09-7
EAN 9788089263097

Layout and print: Valeur

Printed in the Slovak Republic

FOREWORD

This analytical report was prepared by the United Nations Development Programme (UNDP) upon the request of the Slovak National Centre for Human Rights (SNSĽP) and the office of Friedrich-Ebert-Stiftung in the Slovak Republic. UNDP searches for and welcomes participation in projects leading to acquisition of knowledge and valid information about various forms of social disadvantage. Thus, UNDP considers the issue of availability of statistical data broken down by ethnicity to be very important because of the fact that in the Central and East European region there is a dynamic in which poverty correlates with marginalization of ethnic groups. This publication offers public policy makers and the broader public a review of ethnic data collection policies and practices in Europe as well as an analysis of the situation in Slovakia. We hope that this publication becomes a useful source of information that can be used to combat poverty, social exclusion and discrimination.

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ACKNOWLEDGEMENTS

The authors express their gratitude to Jarmila Filadelfiová for her detailed review of the entire text and her feedback. We also owe our thanks for valuable advice to Eduard Barányi, Janka Debrecéniova, Viliam Figush, Peter Guráň, Silvia Gregorcová, Jaroslav Kling, Géza Mihály, Milan Olexy, Katarína Ondrášova, Daniel Valentovič and Boris Vaňo. For support of the project and his patience we thank Michael Petráš.

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INTRODUCTION

The implementation of equal opportunity and anti-discrimination policies as well as the international commitments of the Slovak Republic in the field of human rights poses an urgent question to national policy makers and institutions: how to measure the magnitude of various forms of inequality, disadvantage and discrimination? When it comes to monitoring equal opportunities, public policy makers have been facing an increasingly urgent need to draw upon sufficient and accurate statistical information. They require it both for development of appropriate measures and for assessment of the consequences of their decisions. Only on the basis of reliable, valid data can policies and policy measures be drafted in an effective way. Statistical data can be one of the key analytical and argumentative tools for implementation of equal opportunity policies and for imporvement in living conditions for marginalized groups of the population.

From among the multitude of possibly important categories for monitoring of equal opportunities we focus in this report on ethnicity. We study the possibilities of using ethnicity as a statistical indicator for the monitoring of discrimination and living conditions in comparative perspective. This report closely examines: 1) concept documents, legislation and debate at the supranational level – mainly at the levels of the Council of Europe and the European Commission; 2) legislation, institutions and practices in the area of ethnicity-related data in Slovakia; and 3) legislation, institutions and practices in the area of ethnicity-related data in selected EU countries. A comparison within these three contexts – European, Slovak and selected national states – leads to conclusions and recommendations.

The problematic area of data collection regarding ethnicity is framed by two groups of laws which (though they may at first appear conflicting) complement each other. One group consists of laws regulating the handling of personal data. These laws regulate, for example, the ways in which data are collected and processed, who can do so and for what purposes. The laws are based on *Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free* *movement of such data* and, at the national level, in various modifications, they are usually called data protection laws. The other group based on *Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin* and other international conventions, consists of the so-called anti-discrimination laws and other measures governing the principle of equal treatment and its protection.

It could be said in simplified way that political and civic opinions about this topic are framed by two positions. On one hand there is the liberal position of non-interference with the personal integrity of an individual and not asking about one‘s ethnicity and abstracting from it for the reason that ethnicity (or nationality) may be misused or that they are secondary to universal human qualities. On the other hand, there is the position based on common knowledge that both discrimination and unequal treatment are present in society and that to rectify these conditions statistical information is needed. This way of reasoning also admits that particularly in instances of indirect discrimination legal protection must be underpinned with statistical data.

The necessity of collecting statistical data was acknowledged by participants attending the *World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance*.[1] The conference also adopted a *Programme of Action*,[2] which contained specific steps for its implementation. The Programme of Action makes requests upon individual countries especially in the areas of information collection and statistical data. It states that statistical data is needed for knowledge about the status of individuals or groups who are victims of racism, racial discrimination, xenophobia and related intolerance and that such data should be broken down in accordance with applicable legislation. According to the Programme, however, statistical data should be collected only with the consent of the subjects of the data, it must be based upon their personal self-identification and it must be in harmony with laws for protection of personal data and private life. Thus, every piece of information should be acquired with the explicit consent of victims of discrimination and should be based upon self-identification.

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[1] World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. The conference was held in the South African city of Durban from August 31 to September 7, 2001. More at http://www.un.org/WCAR/coverage.htm

[2] Both documents are available at http://www.un.org/WCAR/durban.pdf

International non-governmental organizations are also an important voice in this endeavour to improve anti-discrimination policies through monitoring of ethnic statistical data. A report by the Open Society Institute (OSI) in 2006 states: "Despite the push toward evidence-based policymaking, the difficulties with data availability persist. Within the judicial system, the use of data to establish indirect discrimination is regarded as an important tool. As it stands, there are still a number of sectors where data disaggregated by ethnicity is not systematically collected in any European country. There is slow progress towards enhanced systems of data collection and analysis, and these efforts must be redoubled." (OSI 2006: 7)

Among factors which are barriers to improvements in this area, the OSI report mentions insufficient legislation and absence of specialised institutions and urges: "A well-resourced, independent body with a broad remit is, in the first instance, a vital resource to victims of discrimination. Such bodies can also play an important role in the promotion of equality through research, public awareness-raising campaigns, and advocacy for stronger legislation. Where such bodies exist at all, they are not adequately resourced to play a full role in the overall legislative framework" (OSI 2006: 7). The report also stresses that: "it has been clearly shown that the use of data to demonstrate group characteristics does not violate the law on the protection of personal data" (OSI 2006: 7).

Current monitoring of ethnic discrimination and collection of data on ethnicity in Slovakia are unsatisfactory in spite of a growing need for statistical data in relation with implementation of anti-discrimination legislation based on transposition of the EU directives into the Slovak legal system. As was mentioned above, the anti-discrimination directives enshrine the principle of equal treatment of individuals regardless of their racial or ethnic origin and were adopted so that member states provide a minimum standard of protection to members of minorities.[3]

Demand for ethnic data directly or indirectly appears in many policy documents of the government in Slovakia. For example, in the draft, *the Medium-term Concept of the Development of the Roma National Minority in the Slovak Republic 2008 – 2013*[4]

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[3] The directive enshrining the principle of equal treatment of individuals was transposed into the Slovak legislation (together with two other EUanti-discrimination directives) through Law No. 365/2004 concerning equal treatment in certain areas and protection from discrimination (anti-discrimination law).

a shortage of data is mentioned several times as one of the systemic and legislative-related hurdles preventing improvements in the situation. According to the document there is an absence, for example, of data on health conditions, data concerning employment, education and so forth in Roma communities.

The Slovak Republic participates in the program *Decade of Roma Inclusion 2005 – 2015*[5] and developed its priorities in a *National Action Plan of the Slovak Republic Regarding the Decade of Roma Inclusion 2005 – 2015* which the government of SR approved on 12 January 2005 in its resolution No. 28/2005. The action plan establishes priorities, namely education, employment and health and identifies a set of indicators and their evaluation methods and the institutions responsible for their monitoring. It logically appears that the only possible way to assess progress in the above-noted areas and to conduct monitoring is to use data which enables quantification of conditions among the target group. For that reason, data collection that can be broken down by ethnicity appears absolutely necessary both for assessment of progress under the *Decade* and for monitoring its implementation.

Data on ethnicity are valuable not only for assessment of needs, proving and monitoring discrimination but also for the needs of social policy where indirect discrimination may appear. In other words, a neutral social policy may have discriminatory effects for certain ethnic groups of the population.[6] Therefore, it would be useful for developers of social policy to know what effects adopted measures have on specific ethnic groups.

It is necessary to stress that the issue of ethnic data collection is not simple problem. In all European countries (and at all decision-making levels) data collection on

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[4] The document was developed by the Office of Plenipotentiary of the Government of the Slovak Republic for the Roma Community and was submitted to the government SR for approval in January 2008.

[5] The initiative Decade of Roma Inclusion 2005 – 2015 was adopted by the governments of nine European states in February 2005 and is supported by the the Open Society Institute, the World Bank, the UNDP, the European Commission and other partners. The Decade is the first international campaign for social change in the position of Roma in Europe and provides a framework for governments in Central and Eastern Europe to achieve Roma integration.

[6] From past experience we know that new social policy (adopted in 2004) in Slovakia very likely had greater negative impacts on the Roma minority than on the majority population. In their final effects some changes appeared to be discriminatory and that is also how they were perceived by international human rights organizations. However, the exact quantification of its effects on Roma could not be done because of a shortage of valid statistical data.

ethnicity is a controversial issue in certain ways[7] and represents a much broader problem than it may first appear. Data on ethnicity is considered very sensitive in that they provide information on the personal matters of an individual which may have major implications. Fear about potential misuse of ethnic data is deeply rooted in the historical memory of Europe and its experience with Fascism, Nazism and other totalitarian regimes. Many people among minority groups have historically justifiable concerns that data concerning ethnicity may jeopardize them in certain ways. The Council of Europe also stresses that collection of certain data and their inclusion in official statistics entails recording characteristics which may be considered to be a certain threat to the identified persons. This is the reason why all international texts discussing data protection, freedom of information and respect for privacy call ethnic data "sensitive" (Simon 2007: 7). Collection and processing of such data in every country is regulated by data protection standards and laws which are based on respect for information of a personal and private nature. One of the consequences of the existence of such laws, though, is the practical implication that they will severely restrict collection of data regarding racism, xenophobia, antisemitism and intolerance (Simon 2007: 7). That is why many countries have developed (or are in the process of developing) standardized data collection procedures based upon a consensus on what is just and desirable and on how to interpret laws and how to understand legal terminology and sociological notions. Implementation of these standardized procedures into practice was often preceded by both expert and public discussion.

Collection of data on ethnicity is a much more sensitive issue for the Roma population than for other national minorities in Central Europe. This is probably related to the rather extensive, recurring, open and hidden discrimination and stigmatization of Roma. In our opinion, however, the problems of ethnic data gathering do not dwell in the capacity of ethnic characteristics and statistics themselves to jeopardize someone. Jeopardizing factors rest in the connotations which ethnicity evokes in its final effects which are based on prejudice and discrimination. And any problem should be dealt with at the source of its causes – prejudice, stigmatization and discrimination linked to Roma are not the consequences of collection of ethnic data.

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[7] In Slovakia "ethnic or racial origin" in Law No. 428/2002 on Personal Data Protection is identified as a special category of personal data.

No concept document currently exists in Slovakia which would deal with standardization of procedures for ethnic data collection. Slovakia does not currently have a policy for monitoring based on ethnic categories and rather has chosen the status quo regarding this complicated matter. Such a position, however, is not a policy – it is rather resignation to policy.

Yet the role of statistics is crucial in anti-discrimination policy. We think that the need for valid ethnic statistics stems from both the commitments of Slovakia related to equal opportunity policies and to the necessity for the monitoring of the effects of social policy. In this publication, *inter alia*, we want to show how countries which have decided to collect ethnic data approached this issue and what the outcomes have been.

Comments on terminology and methodology

This report is based upon analysis of various sources and draws upon desk research of documents and research materials. Certain case studies on selected countries rely on secondary sources, meaning that we did not review legislation and practices from original sources (laws, statutes of organizations and similar) in all countries but that we did use all generally available information.

In this report we consider the term “ethnicity” as synonymous to the term “nationality” without attributing any other connotations to it.

With the terms “ethnic data collection” or “collection of ethnic data” we refer to a broad spectrum of data collection procedures which permit subsequent disaggregation of data by ethnic origin in order to comapare disparities between ethnic groups.

Our attitude to ethnic data collection is in full conformity with self-identification principles which represent a reasonable method that permits people to freely express their own identity. This approach is generally applied in countries where population statistics are based upon a census. We underscore that any ethnic data collection should be based on principles of discretion and informed consent. Such an approach is in accord with the *Conference of European Statisticians Recommendations for the 2010 Censuses of Population and Housing* which states that: “Ethno-cultural characteristics have generally a subjective dimension.The free and open declaration of the respondents is therefore of essential importance.” (UNECE 2006: Chapter 9).

Nowhere in this publication do we indicate that differences between ethnic categories as they are and may be shown in statistics are necessarily caused by either ethnicity or discrimination. We believe, however, that data disaggregated by ethnic categories offer a foundation for better assessment of the causes of social inequalities and enable better adjustment and targeting of public policies. Every time we make a statement regarding the usefulness and necessity of ethnic data we assume that such data will be collected with respect to the principles of discretion, informed consent and reasonable standards for protection of the data.

EUROPEAN DEBATE ON THE COLLECTION OF ETHNIC DATA AND RELATED POLICY DEVELOPMENTS

The issue of ethnic data has recently become a substantial and integral part of public policy planning at the European level. While previously the practices of ethnic data collection varied across the countries and were a matter of national policies, the changing policy environment in Europe now provides extra impetus for comparative assessment both across the countries and between policy areas.

Demand for data for monitoring of discrimination has been growing because building a solid statistical database is becoming a necessity for implementation of anti-discrimination legislation and requirements within the EU. There still are considerable differences between individual societies when it comes to many practical aspects of ethnic data collection. The differences exist in implementation and interpretation of laws, data protection methods and so forth (Simon 2007: 7).[8]

Discussion concerning collection of ethnic data in the last two decades at a European level can be divided into several clear development waves or stages. The respective stages were prompted by developments on European level, and can be roughly divided on the basis of organisation that has provided or embodied the impetus for policy debate. The debate had its own internal dynamics of changing focus and shifting emphases: from issues of legal protection of minority rights to policies of equal opportunity and more recently, to affirmative action.[9] The stages mentioned herein are not strictly chronological and provide a simplified picture to serve as an analytical framework of the process. The process in reality was much more complex and influenced by a multitude of inputs, institutions and actors.

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[8] There still is no answer to the question, what are the causes of these differences – are they due to different legal approaches to transposition of EU directives, to different interpretation of laws, or are they due to differences in the social and political histories of individual countries? (Simon 2007: 7).

[9] The EU terminology concerning law and public policy prefers the term "positive action". In this publication we use both expressions to denote measures of the aforementioned type.

Stage I: Awareness about the lack of ethnic data: experience from the monitoring of individual countries

The progressing integration of the European Community and the political developments in Central and Eastern Europe after 1990 encouraged interest in protection of ethnic minorities and prevention of conflict at various levels. This interest was specifically reflected in the agenda of the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE). Gradually, the policy debates developed towards more thorough approach to minority integration and better protection from discrimination. This interest in improved integration of minorities was also noticeable in the EU agenda at the end of the 1990s in which the *Lisbon Strategy* attributed a significant importance to both social cohesion of individual societies and to the competitiveness of EU as a whole.

The European Commission against Racism and Intolerance (ECRI), an independent body for monitoring of intolerance and discrimination, was established within the framework of the Council of Europe in 1993. It is very likely that its establishment was driven by the issue of the ethnic data as an indispensible for the foundation of assessment of the situation in individual countries. The primary working method of ECRI has been regular evaluation of individual countries (a country-by-country approach).

ECRI clearly expressed its position regarding ethnic data through adoption of its *General Policy Recommendation No. 1: Combatting racism, xenophobia, antisemitism and intolerance* in 1996 which underscored the need to: "Ensure that accurate data and statistics are collected and published on the number of racist and xenophobic offenses that are reported to the police." According to the recommendations: "Since it is difficult to develop and effectively implement policies in the areas in question without good data, it is necessary to collect in accordance with European laws, regulations and recommendations on data-protection and protection of privacy, where and when appropriate, data which will assist in assessing and evaluating the situation and experiences of groups which are particularly vulnerable to racism, xenophobia, antisemitism and intolerance." (ECRI 1996)

ECRI's *General policy recommendation No. 4: National surveys on the experience and perception of discrimination and racism from the point of view of potential victims* in 1998 stresses that "statistical data on racist and discriminatory acts and on the situation of minority groups in all fields of life are vital for the identification of problems and the formulation of policies." ECRI recommended that national governments conduct various surveys concerning experiences and perceptions of discrimination from the point of view of victims such as immigrants, members of national minorities or other vulnerable groups. This new approach ".involves conducting surveys among members of various groups vulnerable to acts of racism, xenophobia, antisemitism and intolerance with questions aiming to elicit information about their experiences with racism and discrimination and how they perceive various aspects of the society in which they live in this respect". ECRI also recommended including in these surveys a "control" or "contrast" group who, in general, does not face problems with discrimination or racism which permits an elementary comparison to the disadvantaged group. Conducting such surveys, according to ECRI, ".might be entrusted to researchers or institutes with experience in the field of racism and intolerance, with the field work being carried out by survey research bodies." (ECRI 1998)

With its country-to-country approach, ECRI recommended, for example, that competent Slovak authorities consider ways of monitoring the situation of various minority groups with adequate respect for the principle of data and privacy protection in its *Second report on Slovakia* (ECRI 2000). In its *Third report on Slovakia* ECRI pointed out that "The existence of legislation prohibiting the collection of data broken down according to ethnic origin is cited as the main reason behind the lack of concrete information which would enable the authorities to monitor the situation of various minority groups" (ECRI 2004: 20). The Commission recommended that ways be identified to measure the position of minority groups in different areas of life and "that monitoring is crucial in assessing the impact and success of policies put in place to improve the situation [...] It should be carried out with due respect to the principles of data protection and of privacy and should be based on a system of voluntary self-identification, with a clear explanation of the reasons for which information is collected" (ECRI 2004: 21).

The experience of the European Monitoring Centre on Racism and Xenophobia (EUMC) points to the fact that practical aspects of collecting ethnic data differ among individual countries to a significant degree. Since its establishment in 1997 the EUMC has been striving to perform its unique role in gathering comparable information. EUMC has gradually built a specialized network (European Racism and

Xenophobia Information Network, RAXEN) for collection of data on discrimination, racial violence, and the status of ethnic minorities. Annual reports by EUMC rely on officially available data processed by contact persons in individual countries and grouped around themes in accordance with jointly developed guidelines. Before 2005 (actually until the Central European countries, including Slovakia, became EU members) EUMC stressed the basic problem: ".discrimination in the fields of employment, education and housing is difficult to quantify within a country and to compare between countries, because of the absence of statistical evidence on national and ethnic origin" (EUMC 2005: 100).[10] EUMC participated in various forums where the specific problems of ethnic data collection were discussed. The EUMC was transformed in February 2007 into the European Union Agency for Fundamental Rights (FRA)[11] which draws upon the collected expertise of EUMC and its mission is to "provide assistance and expertise relating to fundamental rights". The activities of the Agency are derived from the *Charter of Fundamental Rights* of the EU. Presently, discussion is ongoing as to whether FRA should cover the monitoring of all chapters of the Charter or whether it will focus only on certain thematic priorities.

In addition to the aforementioned large pan-European institutions, several smaller networks have been developed such as the European Network of Legal Experts in the non-Discrimination Field which occasionally monitor the situation of discrimination and integration of minorities. The European Network Against Racism (ENAR) is an association of European non-governmental organizations which conduct activities to support combatting racism in EU member states. There are frequent statements about the unavailability of ethnic data in reports that these organizations have prepared.

The need for ethnic data was also stressed by experts from the Advisory Committee for the Framework Convention on the Protection of National Minorities. For example, its *Opinion on Slovakia* of 2000 states: "The Advisory Committee notes that there are wide discrepancies between the official statistics of the Government and those of national minorities about the numbers of persons belonging to national mi-

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[10] The same quote is also mentioned by T. Makkonen (2007a).

[11] FRA (European Union Agency for Fundamental Rights) was founded on 15 February 2007 by Measure EC No. 168/2007.

norities in Slovakia. The Advisory Committee is concerned that such wide discrepancies in figures can seriously hamper the ability of the state to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities."

The Advisory Committee therefore expressed a belief that "the Government should seek to identify ways and means of obtaining reliable statistical data. Without such data being available it is very difficult for the Slovak authorities to operate effectively and for the international monitoring bodies to ascertain whether Slovakia meets its obligations flowing from the Framework Convention." (Advisory Committee 2000: 6). The European Commission explicitly pointed at shortcomings and absence of data collection in certain countries in its publication *The Situation of Roma in an Enlarged European Union* (European Commission 2004: 37 – 39).

Reports, assessments and recommendations by pan-European networks have assisted in the sense that the actors realized the need for ethnic statistics and demonstrated the shortcomings in collection of ethnic data and differences in collection practices in various countries.

Stage II: Establishing debate on the collection of ethnic data

Stage two can be characterized as a period in which ethnic data issues were discussed by lawyers or academics at the European level (for example, Kriszan 2001 and Szekely 2001). A non-governmental organization, the European Roma Rights Centre (ERRC) was consistently drawing vigorous attention to problems with ethnic data collection in Central Europe. The Centre focused public attention on the possibility of using ethnic data as evidence in court proceedings and as information to help improve awareness of social justice.

An important step in opening a serious discussion on ethnic data collection issues was the adoption of *Guidelines for dealing with issues related to ethnic data collection in ECRI's work* (ECRI 2005)[12] which ECRI adopted after consultations and meetings with stakeholders. This document summarized the status of the discussion

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[12] The document named *Guidelines for dealing with issues related to ethnic data collection in ECRI's work* was an outcome of a meeting held 13 – 16 December 2005.

and briefly identified key aspects of the issue. It offered arguments in favour of collection of ethnic data and also described problems related to the process for collection of these data. The document stressed that there are many reasons why ethnic data are a useful tool for development of good anti-discrimination policies and for support of social cohesion. Ethnic data not only provide facts indicating discrimination or violation of the equal opportunity principle but they can be used also for evaluation of actual policies and their effectiveness. ECRI mentioned unwillingness related to collection of ethnic data and stated that there is: "A persisting incorrect view of many European countries [...] that their legislative framework does not permit data collection disaggregated by categories of nationality, national origin or ethnic origin, language or religion" (ECRI 2005: Section 12). According to ECRI, national legislative frameworks do not prohibit collection of ethnic data in most cases but they do demand certain safeguards to prevent their misuse.

The explicit position of ECRI (and of the Council of Europe) supporting collection of ethnic data has gradually spread throughout the whole region. ECRI was an important pan-European voice in respect to its recommendations. ECRI also planned to monitor the situation regarding collection of ethnic data within the framework of regular reports from individual countries. It cannot yet be said that there is systematic monitoring but issues of ethnic data collection have already been commented upon in reports submitted within the last cycle.

Discussion in the second stage concerning collection of ethnic data can also be characterized by certain ambivalence in how courts viewed acceptance of statistical data as evidence in court proceedings to prove indirect discrimination. For example, ERRC collected data on the ethnic composition of elementary school pupils in the Czech Republic, seeking to raise the issue of segregation in public schools. On the basis of this study the case of *D. H. and Others v. the Czech Republic* was opened in 2000.[13] The case dealt with a complaint by eighteen Roma children in the Czech Republic who claimed that they had been assigned to attend a racially segregated school. The court proceedings were originally concluded in 2006 with a ruling that

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[13] For more information on the case of D. H. and Others v. the Czech Republic (ECHR No. 57325/00) see the information resource at the web page of the Open Society Justice Initiative http://www.justiceinitiative.org/db/resource2?res_id=103938

no discrimination was found in their assignment to special schools. However, in 2007 the Grand Chamber of the European Court of Human Rights ruled that discrimination had occurred. Its ruling used the term “indirect discrimination” (ECHR 2007: para. 175).

Although ethnic data in the form of an exact proportion of Roma children in special schools were not available, the court acknowledged that their number was disproportionately high and that the Roma were a majority in those schools. In other words, the court acknowledged that statistical data submitted by the plaintiffs were sufficiently reliable and were significant evidence to prove indirect discrimination.[14]

Stage III: Positioning debate on the collection of ethnic data: Links between the issues of ethnic data collection and other EU policy areas (social cohesion and anti-discrimination policies)

In this stage of the public discussion several issues of the collection of ethnic data became part of EU policies concerning social cohesion and combatting of discrimination. Two EC directives issued in 2000 were very important stimuli for development of the agenda to ensure effective implementation of anti-discrimination legislation. The importance of combatting racism and ethnic inequalities was stressed by policy makers when they devoted a separate *Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin* (also known as the Racial Equality Directive) to these issues. Other potential grounds for inequalities such as age, sexual orientation and the like were also incorporated into a single legal document referring only to employment – namely *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation*. Article 15 of the Preamble to the Racial Equality Directive reads that indirect discrimination may be recognized by any means, including on the basis of statistical evidence. The directive itself thus envisions collection and existence of statistical data based on racial or ethnic origin.

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[14] See paragraphs 187 – 190 of ruling of 13 November 2007 in case of D. H. and Others v. the Czech Republic (ECHR (GC) No. 57325/00).

With adoption of this specific directive, the issue of racial and ethnic equality acquired weight comparable to the issue of gender equality which had much earlier been a topic of EU policy which was discussed in many political documents.[15] The European Commission prepared an *Action Program of the community to combat discrimination* (2001 – 2006) in which it supported the development of a number of specialized studies. The issues concerning data on other grounds of potential discrimination such as sex, sexual orientation, disability, age or religion (listed in *Directive No. 2000/78)* were originally discussed as a whole at the European level (see, for example, *European handbook on equality data* – Makkonen 2007a). Intensified attention by the EU to anti-discrimination policies accelerated a broader interest in evaluation of measures for enhancement of equal opportunities and their effectiveness.[16] In this way the issue of ethnic data collection was interlinked with a broader framework, namely equal opportunity data in general.

With its agenda of pursuing equal opportunities, the European Union encouraged more interest in public policy areas such as the corporate economy and the labour market. For example, in 2006 the European Commission commissioned a comparative study on measures to combat discrimination in certain areas (Human European Consultancy and Migration Policy Group 2006b). The authors of the study arrived at the opinion that coverage of issues such as education, access to goods and services or social protection differed from country to country. They stated, however, that most EU countries had various anti-discrimination standards (on grounds of sex, religion, disability, age and sexual orientation) that were at a more comprehensive level than demanded by the European Commission. They also stressed that availability of data concerning social disparity between different groups of population varied considerably.

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[15] The first provision of EU legislation regarding measures for gender-based affirrmative action was Article 2(4) of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working condition. This directive was later revised (2002/73/EC).

[16] For a review of evaluation of anti-discrimination legislation, see, for example, Human European Consultancy and Migration Policy Group (2006a).

Stage IV: Ethnic data as an integral part of public policy planning

Collected ethnic data are one thing and whether they can be and are used is another matter. T. Makkonen in the publication drafted for the Council of Europe reminds: "It should be kept in mind that the collection of data in relation to the equality groups does not necessarily mean that the data is made use of for the purposes of anti-discrimination law and policy" (Makkonen 2007b: 109). Stage four of the development of the European agenda for ethnic data in which these data are becoming a constituent part of public policy planning is actually a model for the future in most EU countries. This approach, in which data are used in policy planning, is currently applied only in certain countries and the outcomes are quite different among countries (see Simon 2007).

The progressive trend in the future probably consists of combining multiple data sources with simultaneous application of a multi-disciplinary approach to their analysis (Olli – Olsen 2006). For example, a single disciplinary approach such as legal analysis may not completely capture the primary determinants of discrimination. An example might be that a victim's perception of discrimination only plays a minimal role in the legal approach. Using a multi-disciplinary approach and combining instruments of social sciences can, for example, permit certain less obvious aspects of discrimination to be revealed. Cases of so-called soft discrimination are known, for example, when interviews of job applicants belonging to an ethnic minority take a briefer period of time than for others. The importance of enhancing the method of combination of several data sources and then using a multi-disciplinary analytical approach is well described in the publication developed by The Norwegian Equality and Anti-Discrimination Ombud and the Danish Institute of Human Rights titled *Common Measures for Discrimination II. Recommendations for Improving the Measurement of Discrimination* (Olli – Olsen 2006).

Various data sources can be combined in several ways. There are several good practices of how data combined from various kinds of databases can be used for public policy planning. In Sweden, for example, an agency called the Swedish Integration Board manages a broad array of research relying on a multi-methodological approach. They have analyzed official labour market statistics, used situation testing, executed several surveys of minority populations and performed a national employer survey. Studies drawing from these data sources focused on varied aspects of discrimination within the labour market and at the same time allowed for a more comprehensive form of analysis since the individual methods supplemented each other and provided a more complete picture of the whole situation (Olli – Olsen 2006).

Various typologically different data sources have their own strong and weak points. This is related not only to their validity as a measure of discrimination but also to the manner in which these data are collected and processed. The simplest way of analyzing combined data sources is by using available and already existing research materials of various kinds. The most complicated way is interconnecting various information points through personal identification numbers (PINs).[17]

The *European handbook on equality data* developed by the Finnish Ministry of Labour summarizes problems related with combining various sources and types of data and proposes an integrated approach: "No single data source, such as national official statistics, justice system data, or survey data, can alone meet all the data needs. It is therefore necessary to set up and support several mechanisms by which equality data is compiled" (Makkonen 2007a: 8). This document underscores the problem based upon insufficient coordination at the national level in the area of policy planning. Because data are frequently scattered over various institutions and thus do not serve the purpose of coordinated policy planning, the handbook recommends that a national plan for data collection is adopted.

Throughout the discourse covered in this chapter the interests of various stakeholders and institutions regarding collection of ethnic data could be heard. Various approaches to the issue of collection of ethnic data drew attention to its different aspects and brought diverse arguments. The modes of discourse can be summarized in the following table:

Policy area	**Type of dominating discourse**
Anti-discrimination legislation	*Legal and human rights*
Social policy	*Social justice, public expenditures*
Ethnic diversity	*Costs and benefits*

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[17] This approach is used, for example, in Norway. Data from Living Conditions Surveys can be linked with data from records on income, employment and so forth through a PIN.

Debate on positive action

Discussion on various aspects of collection of ethnic data also had an influence on opening a public debate on positive action (to be called also: affirmative action, a positive approach, temporary support or special measures). It is important to note that no serious doubts are cast about the existence of positive action or its justification within the European debate; rather, our comments focus on new trends. Similarly to the debate about collection of ethnic data, the exchange of opinions concerning positive action was initiated by the main European stakeholders and institutions. The European Commission, for example, tried to promote this idea through its *Community Action Programme to combat discrimination (2001 – 2006)*. ECRI organized a meeting of specialized organizations from member countries of the Council of Europe on the issues of positive action in 2007.[18]

Regardless of this European debate, there are still many misunderstandings about implementation of positive action measures at the national level. Positive action measures frequently mean a standard higher than legal safeguards of equal treatment. Both policymakers and the public did not have and still do not have a clear enough idea of the meaning of the concepts "positive discrimination", "positive action" or "affirmative action". It seems, however, that the meaning of these concepts has been becoming gradually more understood and that there is a clearer prospect for positive action which would be acceptable to individual member states and which could be implemented.[19]

From a sociological point of view positive action is, in essence, an instrument for rectifying social injustice that is deeply rooted in societal structures. Society, however, better accepts positive action when the majority population and the political elite have sufficient knowledge and empathy about the existence of long-term inequalities between various population groups. If society does not believe that dis-

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[18] Seminar with national specialized bodies to combat racism and racial discrimination on positive action was held on February 22 – 23, 2007. http://www.coe.int/t/e/human_rights/ecri/1%2Decri/4%2Drelations_with_civil_society/1%2Dprogramme_of_action/23%2Dseminar_positive_action_2007/1-programme_Seminar.asp#TopOfPage

[19] A good review of the issues can be found in the publication Putting Equality into Practice. What role for positive action? (European Commission 2007).

advantages to minorities exist, then positive action appears as unfair.[20] From a legal point of view, the development of legal theory concerning positive action appears to be crucial.[21]

Positive action in public policies may represent a wide spectrum of measures aimed at remedying social disadvantages arising as a consequence of discrimination. It is important that society becomes aware of the fact that formal equality under law is not always a sufficient guarantee of achieving substantive equality. And achieving substantive equality – "full equality in practice" – is explicitly mentioned in basic EU documents.[22] Achieving "full equality in practice" may require compensatory measures that remedy the effects of past discrimination. Regretably, the definition of "full equality in practice" is not always clearly developed within the national context.

Positive action may be of various forms and may have broad scope – from earmarking extraordinary budget or off-budget financial assistance for minorities up to measures setting certain limits to open competition in the labour market, enrolment in schools and so on (for example, a quota system which specifies an exact number of jobs that employers must fill with members of a disadvantaged group). The Court of Justice of the European Communities has stated in reference to gender policies that positive action taking the form of certain promotion measures is acceptable and can be differentiated from illegal discrimination. The Court of Justice, however, has not handled a specific case of positive action related to categories defined in the Racial Equality Directive and thus it cannot be ascertained in what direction judicial assessment of such a case would go (Debrecéniová 2004: 12).[23]

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[20] B. Jarábik, for example, has written about Slovak society: "The idea of positive action, although needed in Slovak society, only caused increased tensions between groups as it is perceived as an idea establishing disadvantageous conditions for the majority population. To Slovaks who do not believe that discrimination exists in their country, positive action appears to be unfair" (In: Vašečka 2002: 240).

[21] According to certain authors, legal theory regarding positive action was not being developed at all in the 1990s in Slovakia (Hrubala 2001).

[22] See Article 141 of the Treaty on establishment of the European Community, particularly Section 3 which deals specifically with equal opportunities and equal treatment for men and women in issues of employment and occupation and the revised directive on equal treatment 2002/73/EC.

[23] According to our consultations with the author, this fact has not changd in the past years. Details on philosophy developed by the Court of Justice EC concerning gender equality can be found in a study by J. Debrecéniova (2004).

In Slovakia, the use of positive action (wording used in Slovakia is temporary special measures) is mentioned particularly in reference to the Roma minority. According to many experts and Roma activists and based on international experience in the last two decades, the use of positive action appears to be the most effective, if not the only way, to remedy permanent disadvantages of Roma in the labour market, in education and in other areas.

The anti-discrimination law in Slovakia covers positive action only since its amendment [24] on 14 February 2008.[25] It is specified as employment of "special measures" and is limited only to the scope of the state administration. The law explicitly stipulates that: "adoption of temporary special measures by the state administration authorities aimed at elimination of social and economic disadvantage or disadvantage resulting from age or disability whose aim is to ensure equal opportunities in practice is not considered to be discrimination."

In contrast to the original draft law which among the reasons for adoption of special measures included "racial or ethnic origin, belonging to a national minority or ethnic group" by deputies amended version which was adopted by Parliament no longer lists these categories. Instead, when reasons were defined for adoption of special measures the phrase "social and economic disadvantage" was used. The justification provided for the amendment reads: "wording sufficiently reflects the fact that temporary special measures will be used primarily in the areas of social and economic disadvantage." In our opinion, however, a doubt appears here whether measures targeting broadly defined social disadvantage can achieve the goal to mitigate disparities pertaining to ethnic groups?

The law, in an overly detailed way, establishes the nature of special measures. It indicates that special measures should be in employment, education, culture, health care and services and that they should be implemented "through targeted preparatory programs or dissemination of information about these programs or about possibilities of applying for jobs or opportunities within the education system."

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[24] Act No.365/2004, Collection of Laws, on Equal Treatment in Certain Areas and Protection against Discrimination (Antidiscrimination Act) was amended on 14 February 2008.

[25] In article I, point 18, section 8.

There is no excuse for European democracies currently turning a blind eye to structural discrimination if, by maintaining the status quo in unequal treatment, the social contract between the citizens and the state is violated. Policies promoting positive action in practice should be creative and need not necessarily rely only upon introduction of formal quotas. Available statistical or research data may be crucial for sensitive and effective use of positive action.

DEVELOPMENT OF ETHNIC DATA COLLECTION PLANNING

The situation regarding policy planning for collection of ethnic data differs significantly among countries. In spite of certain progress, the need to better understand the practical benefits of systematic anti-discrimination mainstreaming at the national level still reappears is apparent. The outcome of discussions at the European level which were reviewed in the previous chapter could have certain unifying effects on the development of planning for data collection among the EU countries. Certain important issues of ethnic data collection are on the agenda of the day for public policy planning and statistical surveys at the national level. This is related to the upcoming census in 2011, with ever more consistent mainstreaming of EU's anti-discrimination policies, with utilization of resources from EU structural funds and from implementation of measures within the Decade of Roma Inclusion 2005 – 2015.

Census of population, houses, and dwellings in 2010 and 2011

The Conference of European Statisticians, held under the auspices of EUROSTAT and the UN Economic Commission for Europe, published its *Recommendations for the 2010 Censuses of Population and Housing* in 2006. It stated in its recommendations that data on ethno-cultural characteristics of the population are of increasing relevance to countries of Europe within the contexts of migration, integration into society and minority policies. The Conference of European Statisticians suggested that ethnic data be collected based upon the "free and open declaration of the respondents" since "ethno-cultural characteristics have generally a subjective dimension" (UNECE 2006: para. 415).

The *Recommendations* state that classifications depend upon specific "national conditions and concepts" and that "no internationally comparable classifications is recommended" when defining ethnicity (UNECE 2006: para. 429). Document also reminds that potential concern on the part of minorities about the safety of personal data and correct collection procedures needs to be taken into consideration when planning the censuses. Based on this, it is our opinion that countries which are not collecting ethnic data should not seek to excuse themselves on the basis that there are no unified international standards on ethnic data collection.

In certain countries questionnaire surveys were conducted among data users, experts and policy makers during the preparatory process for the national census to find out what kinds of data (and what level of detail) are considered to be necessary.[26] A study by the Council of Europe offers a review of types of ethnic data surveyed in selected European countries based on analyses of population censuses (Simon 2007). The study highlights the fact that declaration of ethnicity is voluntary but that respondents frequently have limited choices because the census questionnaire provides a prepared list of nationalities (that is the case, for example, in Hungary and Great Britain). The census questionnaire in certain countries (Bulgaria, Lithuania and Latvia) provides a list of the traditionally most numerous nationalities and the remaining nationalities fall under the remaining term "other" (Simon 2007: 41 – 42). An implicit assumption that a respondent will choose just one nationality and that multiple identities do not exist also has an impact on drafting of a census questionnaire. The format of the census questionnaire can actually determine the types of answers. That is why those who prepare a census should seek to anticipate what responses they may actually receive.

Many experts admit that for several reasons population censuses have certain limits in the amount and extent of collectible data. The document from the working meeting of members of the implementation bodies from countries which adopted the Decade of Roma inclusion 2005 – 2015[27] makes important arguments explaining why censuses are extremely important for public policy planning (UNDP 2007). Many countries, for example, do not have other data sources which can be disaggregated by ethnic categories and used for analysis of social situations. For that reason, the demand arose to make full use of the 2011 census as a tool for collection of relevant data, for verification of new methods and procedures of making data anonymous, for making anonymized data samples accessible and the like.

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[26] This kind of questionnaire survey was conducted, for example, in Lithuania in the summer of 2007.

[27] The meeting was held in Belgrade on October 29, 2007.

The last population census in Slovakia was taken in 2001.[28] In this census, *inter alia*, citizenship, nationality[29] and mother tongue of the respondents were surveyed. Under the methodological guidance of the Statistical Office of the Slovak Republic, nationality was understood to be a person's belonging to a nationality or a national or ethnic minority to which the respondent claimed to belong. One's mother tongue or language used or best mastered by the individual was thus not decisive. The nationality of children younger than age 15 was derived from their parents; if parents were of different nationalities it was up to the parents to decide what to claim. As for mother tongue, the decisive factor was the language predominantly spoken by the respondent's parents during his/her childhood. The language of the mother was determinant if the parents spoke different languages. That is why data on nationality and mother tongue did not necessarily agree. The law which regulates the legal aspects of the 2011 census has already been adopted in 2008.

Anti-discrimination mainstreaming in implementation of EU policies

Even if certain crucial anti-discrimination policy initiatives are gradually implemented at the EU level there still are problems with mainstreaming of these policies. The Centre for Strategy and Evaluation Services (CSES) presented case studies in 2007 describing the mainstreaming process in its publication *Non-discrimination mainstreaming – instruments, case studies and the way forward* (CSES 2007).

Certain relevant methods showing how to use soft mechanisms of data collection for promotion of equal opportunities are presented in the CSES study. These case studies can be found in chapters on "Race equality impact assessments" and "How to produce a racial equality scheme" (CSES 2007: 37 – 38). The CSES study also discusses how "equal opportunity" plans are developed at various decision-making levels (including at the local municipal level) in certain countries. Available mechanisms which are used for mainstreaming of other "non-ethnic" aspects of equality should be considered in the development of policy for collection of ethnic data.

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[28] The legal framework of this census was given by Law No.165/1998, Collection of Laws, concerning census of population, housing and dwellings of 2001.

[29] Results of the population censuses of 1991 and 2001 disaggregated by nationality can be found at http://portal.statistics.sk/files/Sekcie/sek_600/Demografia/SODB/Tabulky/tab11.pdf

This and similar evaluation studies are important because they provide positive examples based on practical experience.

Countries of Central and Eastern Europe should also be encouraged to test innovative ways of the monitoring and reporting anti-discrimination policies because various areas of equal opportunity policy (for example, gender equality) have received more attention through programming of structural funds and in implementation of distinct EU funded projects than ethnicity.[30]

The Roma agenda is becoming one of the most important integral parts of European policy planning. *The Resolution of the European Parliament of 31 January 2008 on the European strategy for dealing with the Roma issue*[31] illustrates new trends of pan-European programming. The Resolution urges that more attention be paid to Roma and directly calls for improvement of legislative frameworks and development of an active Roma policy. Several specialized mechanisms are proposed to increase cohesion of Roma policies at the European level and to implement a unified strategy in this area. There is a suggestion, for example, to establish a Roma unit within the EC Commission to coordinate the implementation of the European framework strategy on Roma inclusion and to shape a comprehensive Community Action Plan on inclusion of Roma and to ensure tackling Roma issues by all relevant bodies. The document also outlined certain potential measures of social policy such as financial aid for vocational training and retraining, for promotion of positive measures in education and the labour market and for promotion of self-employment and small businesses by Roma.

In order to implement these measures the policy-making process needs detailed planning and establishment of mechanisms for evaluation of effects. The statistical data would then permit observation of whether the situation of target groups, for example, marginalized Roma, has changed or not.

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[30] See Council Regulation (EC) No. 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No. 1260/1999.
Section 8 of Regulation of the European Parliament and Council (EC) No. 1080/2006 of 5 July 2006 concerning the European Regional Development Fund which supersedes Regulation (EC) No. 1783/1999.

[31] European Parliament resolution of 31 January 2008 on a European strategy on the Roma http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0035+0+DOC+XML+V0//SK

Indicators for assessment of progress achieved in integration of the Roma population: cooperation among countries which adopted the Decade of Roma Inclusion

Even though the outcomes of the Decade of Roma Inclusion will be determined by the internal achievements of individual countries, the activities accompanying the Decade have created a platform for international comparisons of the situation and an exchange of opinions and ideas among countries. *Quantitative indicators for the Decade of Roma Inclusion progress monitoring* (UNDP 2007), the outcome of a working meeting with members of implementation agencies of countries which have adopted the Decade, is one of the documents which reflects the current practices and public policies in individual countries and which outlines number of applicable improvements.

The document primarily focuses on the process of policy planning. The document states that the potential benfits gained from ethnic data collection will depend to a great extent upon the quality of the national action plans (NAPs) developed for the Decade. NAPs and public policies in general should have a strong foundation in sets of relevant indicators. Indicators should be developed for various stages of the policy development process – that means that a clear distinction should be made between indicators of "input", "output" and "outcome" (UNDP 2007: 16). Policy planners and data collecting institutions should be in contact with each other and statistical authorities should be knowledgeable about policy planning issues. The document also points to an extremely important question, namely building capacity for effective monitoring and evaluation, including the required training and budgetary resources.

One interesting example is a pilot program for the monitoring of ethnic minority integration in Bulgaria and a description of possible approaches to producing ethnically disaggregated data (UNDP 2007: Chapter 5):

- Disaggregating hard statistics using personal identification numbers (EGN) as ethnic markers
- Disaggregating hard statistics using territorial tags as ethnic markers
- Extending the samples of regular sample surveys with Roma boosters
- Custom "on the spot" surveys among recipients of social services
- Community-based collection of data conducted by data collectors from the communities monitored

These approaches complement each other and should be an integral pillar of a comprehensive system for collection of ethnic data and for the monitoring of ethnic discrimination. According to the UNDP report, all five methods could be used in a pilot project in Bulgaria because the Bulgarian legislation and its data collection standards permit such an approach.

Although the national action plans and the monitoring mechanisms developed under the *Decade* were prepared exclusively for the purposes of the monitoring progress in inclusion of the Roma population they can also be potentially used for the monitoring and planning of integration measures for other ethnic groups, including new immigrants. A problem inherently present in the NAPs, however, is that almost all of the indicators established for progress measurement are based on comparison of ethnically disaggregated data. For multiple reasons, many of which are described in this publication, there is no regular collection of ethnically disaggregated statistical data in most of the countries which adopted the *Decade*. That means that NAPs do establish indicators and the basis for their evaluation but do not confront the problem of a shortage of ethnic data in reality and do not deal with problems related to personal data protection laws and other obstacles to data collection.[32]

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[32] For more information on critical evaluation of NAPs of the Decade see the first part of the document (UNDP 2007).

INSTITUTIONS AND LEGISLATION RELATED TO EQUAL TREATMENT AND ANTI-DISCRIMINATION

European and international legislation concerning equal treatment

The *Charter of Fundamental Rights of the European Union* establishing individual human rights vis-a-vis the EU was adopted at a meeting of the European Council in Nice in December 2000. Although the Charter is not a legally binding document it is of major political importance. The Article 20 anchors the principle that everyone is equal before the law. The Article 21 establishes a ban on discrimination on multiple grounds including race, colour, ethnic or social origin; with a specific provision devoted to prohibiting discrimination on grounds of nationality. The Charter – in contrast to the *Treaty establishing the European Community* – describes grounds for discrimination in a demonstrative way.

Because the Charter is rather more of a political document, the Article 13 of the *Treaty establishing the European Community* is of much more importance in day-to-day life since it empowers the Council of Europe to take appropriate action to combat discrimination based on sex, race or ethnic origin, religion or belief, disability, age, or sexual orientation.

Subsequent to these documents, the EU adopted a series of anti-discrimination directives which focused mainly on employment. As mentioned in the chapter on the development of the European debate concerning ethnic data collection a new element in this debate was the Racial Equality Directive of 2000[33] in which race and ethnic origin are dealt with respect to equal treatment. This directive regulates in considerable detail the duties of countries to ensure equal treatment and prohibition of discrimination on grounds of race or ethnic origin in an array of areas of human life such as employment, self-employment, education, health care and social benefits, as well as in provision of services and housing.

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[33] Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

The directive commits member states to prohibit discrimination in their legal systems, to establish an obligation to ensure equal treatment and to define concepts related to discrimination – direct discrimination, indirect discrimination and harassment. Furthermore, states must establish legal tools which permit victims of discrimination to actually and effectively defend themselves against discriminatory conduct through judicial or administrative procedures. This concerted effort to achieve equality and to effectively combat discrimination should also be backed by the obligation to designate a body to deal with promotion of equal treatment and to provide independent assistance to victims of discrimination.

Proving indirect discrimination is very specific and it frequently cannot be accomplished without statistical data because it is the data which can indicate the disadvantage of one group in comparison to another. The EU is cognizant of that fact and therefore Article 15 of the Preamble to the Racial Equality Directive directly states that indirect discrimination may be established by any means including on the basis of statistical evidence. In this way the directive assumes that there should be collection and maintenance of statistical data based on racial and ethnic origin.

The use of the term race in the Racial Equality Directive, however, does not mean that the EU accepts theories which attempt to determine the existence of separate human races. To the contrary, Article 6 of the Preamble to the Racial Equality Directive explicitly rejects such theories. As for the Council of Europe and protection from discrimination, the key provisions are in Article 14 of the *Convention for the Protection of Human Rights and Fundamental Freedoms* which prohibits discrimination on a whole array of demonstrative grounds, *inter alia,* sex, race, colour, language, national or social origin or association with a national minority. This provision, however, prohibits discrimination only in using rights and freedoms set forth in that *Convention* which means that there is no universal prohibition of discrimination. The *European Social Charter* (revised) also prohibits discrimination on the same grounds as are mentioned in the *Convention*. Prohibition of discrimination based on belonging to a national minority is embedded in the *Framework Convention for the Protection of National Minorities*.

Protection from discrimination is also enshrined in international human rights instruments of the United Nations (UN), particularly in its specific *International Convention on the Elimination of All Forms of Racial Discrimination*. Prohibition of discrimination on grounds of race is also in its *International Covenant on Civic and*

Political Rights, in its *International Covenant on Economic, Social and Cultural Rights* and in its *Convention on the Rights of the Child.* The International Labour Organization also adopted *Convention No. 111 concerning Discrimination in Respect of Employment and Occupation.* This convention prohibits discrimination in employment or occupation, *inter alia,* on the basis of race, colour, national or social origin.

Legislation on equal treatment in Slovakia

The *Constitution of the Slovak Republic*[34] in Article 12 guarantees fundamental human rights and freedoms to all irrespectively, *inter alia,* of race, colour, language, belief and religion, national or social origin, and belonging to a national or ethnic group. At the same time it also explicitly establishes that "no one can be harmed, advantaged or disadvantaged for those reasons". The Constitution simultaneously respects and also explicitly enshrines the right of an individual to decide about his or her nationality. No one can be forced in any way to claim a certain nationality.

Prohibition of discrimination has been an integral part of the Slovak legal system for many years but detailed regulations only followed as a result of the duty to implement relevant anti-discrimination directives which, after a long endeavour, culminated in adoption of an anti-discrimination law in Slovakia in 2004.[35] The anti-discrimination law established the obligation to comply with the equal treatment principle consisting in prohibition of discrimination on any grounds in the exercise of rights and duties in accordance with good morals as well as in adoption of measures for protection from discrimination.

The anti-discrimination law prohibits discrimination on grounds of racial, national or ethnic origin in regards to labour and similar relations, access to and provision of social benefits, health care, education and provision of goods and services, including housing. The law also covers situations where someone is discriminated against on grounds of relationships with a person of certain racial, ethnic or national origin even though he or she is a member of the majority and that kind of

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[34] Act No. 460/1992, Collection of Laws

[35] Act No.365/2004, Collection of Laws, concerning equal treatment in certain areas and protection from discrimination and amendment of certain laws (anti-discrimination act)

conduct is considered to be discrimination. Under the anti-discrimination law, direct discrimination, indirect discrimination, harassment, sexual harassment, instructing and inciting to discriminate and unjustified sanctions are considered to be discrimination.

The Slovak National Centre for Human Rights (SNSĽP) was established on 1 January 1994 under *Law No. 308/1993, Collection of Laws, concerning the establishment of the Slovak National Centre for Human Rights*. Based on an amendment to the anti-discrimination law[36] the Centre has also become the body to which powers concerning equal treatment were entrusted beginning on 1 July 2004. Under the law in this area the Centre not only provides legal assistance to victims of discrimination and issues various positions but also is obliged to monitor compliance with the principle of equal treatment, to conduct research and surveys and to collect information on racism, xenophobia, and antisemitism. From the description of its assigned tasks it clearly follows that if the Centre wants to fully comply with its duties it cannot avoid collection and gathering of data regarding the race or ethnic and national origin of persons. Within the organizational structure of the Centre a monitoring and survey section was established to perform a research and monitoring role. The Centre has so far conducted various surveys, for example, research into respecting the rights of Roma children[37], research into discrimination in the labour market, the monitoring of human rights and adherence to the principle of equal treatment. Since there is no concept document for collection of ethnic data in Slovakia, these surveys were not a part of policy planning and were conducted on a rather ad hoc basis.

The Centre publishes a *Report on observance of human rights in the Slovak Republic* every year which includes information regarding adherence with the equal treatment principle and prohibition of discrimination. So far these reports have not included detailed information on the number of submitted complaints of discrimination which would specify the respective discrimination grounds and areas of discrimination.

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[36] Act of the National Council of the Slovak Republic No.308/1993 Collection of Laws, concerning the establishment of the Slovak National Centre for Human Rights as amended by Act No. 136/2003, Collection of Laws

[37] http://www.snslp.sk/rs/snslp_rs.nsf/0/D58852A7D99BD186C1257185003FA3FF?OpenDocument

In the event of discrimination in labour relations a complaint may be lodged with the Ministry of Labour, Social Affairs and Family[38] and an instance can be submitted to the Labour Inspectorate as well. If discrimination occurs in provision of services, meaning an area covered by the consumer protection law, a complaint can be made with the Slovak Trade Inspection office. The numbers of complaints submitted to these state agencies and the outcomes of inspections can also serve as a source of data showing the extent of discrimination.

The definition of direct discrimination in the Slovak anti-discrimination law draws from definitions in EU directives. Direct discrimination is thus defined as "any action or omission where one person is treated less favourably than another person is, has been or would be treated in a comparable situation."

Direct discrimination is based on comparing one person with another person when one person is treated less favourably than the other person and where this less favourable treatment is motivated by a prohibited reason, for example, race or ethnic origin. Submission of statistical evidence is usually not required for the purpose of making a *prima facie* case of direct discrimination; proving less favourable treatment in comparison with another person in a comparable situation is sufficient. However, this statement is not always true and there may be situations where statistical data can help to establish a *prima facie* case of direct discrimination if, for example, a large number of persons belonging to a certain group are directly discriminated against (Makkonen 2007b: 31). These may be situations where statistical data are acquired through situation testing which indicates a disadvantaging of a certain group of persons.

The Slovak anti-discrimination law defines indirect discrimination as an "apparently neutral instruction, provision, decision or practice that would put a person at a disadvantage compared with other persons, unless such instruction, provision, decision or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary."

While the definition of indirect discrimination in the Slovak anti-discrimination law specifies putting *a person* at disadvantage in comparison with another person the definition included in the racial equality directive talks about *persons* put at a disadvantage

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[38] Act No. 5/2004, Collection of Laws, concerning employment services and amendment of certain laws as supplemented later.

in comparison with other persons. Direct discrimination is based on comparison of individuals whereas indirect discrimination is based on comparing groups. The original approach to indirect discrimination applied in Great Britain required that the definition of being put at a disadvantage covered a substantially large number of persons of a certain group. This approach, however, required the use of statistical data. The current concept of indirect discrimination outlined in directives states that indirect discrimination is when a neutral provision or criterion produces a certain disadvantage for a given group of persons in comparison with others. In that way indirect discrimination can be detected even without statistical data. But even with that possibility, statistics will play an important role in proving indirect discrimination. (Makkonen 2007b: 33).

Protection of personal data at the European and international levels

The EU underscored the importance and significance of protection of personal data when it was included explicitly in the *Charter of Fundamental Rights of the European Union*. Under Article 8 of this document everyone has the right to protection of their own personal data, a right to access the data which has been collected about them, and the right to have it rectified. The *Charter* additionally requires either the consent of the concerned person or some other legitimate basis established by law permitting the processing of personal data. Under the *Charter*, compliance with the established rules shall be subject to control by an independent authority. Personal data protection also can be considered covered by Article 7 of the *Charter* which establishes the right to respect for private life.

Protection of personal data is covered very specifically and thoroughly at the EU level by several directives. The key one is *Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.* The directive commits states to regulate details under which processing of personal data is legal and permissible. Article 2 (a) of the directive defines personal data as "any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity."

Article 8 Section 1 of this directive defines special categories of data which are personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and data concerning health and sex life. Member states shall prohibit the processing of these types of special personal data, the so-called sensitive data. Their processing is permitted only exceptionally and in the following defined cases:

- The data subject has given his or her explicit consent to the processing of these personal data unless a national law prohibits giving such consent;
- The data were manifestly made public information by the data subject;
- The data are necessary to comply with a labour law related obligation and a national law authorizes it;
- The data processing is carried out by a foundation, association, or any other non-profit-seeking body pursuing legitimate activities (political, philosophical, religious, or trade-union aims) and the processing relates solely to the members of the body or persons who are in regular contact with it in connection with its purposes.

EU member states are required under Article 28 of this directive to appoint a body responsible for the monitoring the adherence to legal regulations adopted to protect personal data in compliance with the directive and, thereby, to protect personal data as well. Each person shall have the right to address this body with a claim concerning protection of his/her rights and freedoms in regard to the processing of personal data. The responsible body is obliged to inform the applicant about the outcome of their claim. The previously mentioned Office of Personal Data Protection SR is the responsible body in Slovakia.

The Council of Europe devotes considerable attention to protection of personal data as a fundamental human right. Article 8 of the *Convention on the protection of human rights and fundamental freedoms* (1950) establishes the right for respect for family and private life. The state can only intervene in the exercising of this right in cases defined by law. If the right to respect of private life is violated, the one whose right was violated— having pursued all national legal remedies—can file a claim with the European Court for Human Rights.

Protection of personal data is also covered by a separate *Convention of the Council of Europe No. 108 for Protection of Individuals with regard to Automatic Pro-*

cessing of Personal Data, which became valid in 1985 and its *Complimentary Protocol No. 181*. Under Article 2 of the *Convention,* personal data are every type of information concerning an identified or identifiable natural person. Anonymous data are not protected under this *Convention*. The *Convention* focuses primarily on data processing and storage and not on the methods of their collection (Makkonen 2007b: 63).

Article 6 of *Convention No. 108* defines a special group of personal data—those which reveal the racial origin, political views, religious or other beliefs, health-related or sex life of an individual. These personal data categories may be processed only if the national legal system gives sufficient guarantees to prevent accidental loss of these data and to prevent unauthorized access to or unauthorized changes to the data.

The United Nations covers the issues of protection of personal data in its *International Covenant on Civic and Political Rights* and its *International Covenant on Economic, Social and Cultural Rights. Decree 120/1976, Collection of Laws,* concerning these documents establishes the right to protection of privacy in Article 17 under which "no one shall be exposed to arbitrary interference with their private life, family, home or correspondence or attacks on his or her honour or reputation [...] everyone has the right to legal protection against such interference or attacks." The Human Rights Council (HRC) stated in its *Recommendation No. 16* of 1984 that "public authorities should demand only such private information which is necessary in the interest of society". The HRC, like the Committee on the Elimination of Discrimination against Women (CEDAW) and the Committee on the Elimination of Racial Discrimination (CERD) – control bodies for human rights' covenants of the UN – jointly require in their guidelines for development of national reports on compliance with the covenants that the states include in these reports statistical data which make it possible to assess whether improvement has been achieved in respecting human rights. With respect to the aforementioned HRC recommendation the data collected must be necessary for fulfilment of the equal treatment principle which certainly ranks among fundamental human rights. CERD demands data mainly concerning the Roma minority in the Central European context.

Protection of personal data in Slovakia

Protection of personal data is perceived as an integral part of human rights protected by the legal system of the Slovak Republic. This is shown by the fact that it is embedded in Title Two of the *Constitution of the Slovak Republic* as an integral part of fundamental human rights and freedoms. Under Article 19 Section 3 everyone has the right to be protected from unjustified collection, disclosure or other misuse of his or her personal data. Under Article 22 protection of personal data shall be guaranteed. Details on what data and under what conditions it can be collected are regulated by a special law.

Act No. 428/2002, Collection of Laws, on Protection of Personal Data which implements *Directive No. 95/46/EC* can be considered the key law covering protection of personal data. The law defines in great detail protection of the personal data of natural persons, defines what data are considered personal, the manner in which this personal data can be processed and, as well, defines the status of the Office of Personal Data Protection and its control powers.

The personal data protection act explicitly prohibits the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, membership in political parties or movements, trade-union membership and data concerning health or sex life (Section 8 (1)). This prohibition, as in the relevant directive, is not absolute, because the act also defines exceptions where the prohibition does not apply. Personal data which allow identification of racial or ethnic origin can be processed if the concerned person has given his or her consent (Section 9 (1)); but such consent is considered invalid if it is prohibited by another special act. The other situations, in which the aforementioned data can be collected even without the consent of the concerned person, are listed and defined in Section 9 (2):

- A special act is needed for the processing which stipulates what data and for what purpose it can be processed and also stipulates the condition for their collection;
- The processing is necessary for protection of vital interests of the concerned person;
- Personal data serving exclusively for internal needs can be processed by civic associations, foundations, non-profit organizations and other listed en-

tities within their authorized activities and when the processing only concerns their members who are in regular contact with the above;

- The processing concerns personal data which have already been made public by the concerned person or data necessary for enforcement of a legal claim;
- The processing of data for the purpose of health insurance and provision of health care which are processed by entities specified by law;
- The processing of social insurance data.

Those who collect or process personal data bear responsibility for the security of the data and must protect them from theft, damage, loss, unauthorized access or dissemination. That is why such persons must adopt appropriate technical, personal and organizational measures. Such persons are also obliged to maintain the confidentiality of the processed personal data.

Under *Act No. 428/2002, Collection of Laws,* the Office of Personal Data Protection supervises the protection of personal data and also protects the fundamental rights and freedoms of each individual in the processing of their personal data. The Office conducts inspections and the inspected entity is obliged to give all required cooperation to the Office. If the Office finds a breach of the law it may issue a measure to remedy the situation or impose a sanction on the offender. The Office may impose a fine of up to 300 thousands Euro to an offender who has processed personal data in violation of Sections 8 and 9, meaning in violation of the provisions regulating collection of personal data and unauthorized revealing of racial or ethnic origin.

Natural or legal persons who suspect a breach of their personal data can lodge a written complaint with the Office under Section 45 of the Act. The Office is obliged to investigate and respond to the complainant within 60 days. Under this provision any person who believes that an unauthorized person has surveyed and collected data on racial or ethnic origin is also entitled to file a complaint with the Office.

In addition to this specialized law, protection of personal data can be invoked by a person under the right to protection of personality regulated by the *Civil Code*.[39] This code guarantees persons the right under paragraph 11 and following to protect their personality, human dignity, reputation and expressions of personal nature. In general, consent of the concerned person is needed to use documents or expres-

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[39] Law No. 40/1964, Collection of Laws, as amended

sions of a personal nature, portrayals, visual records or audio records; such consent is not required only if these personal expressions are used for official purposes based on a law, or for scientific or reporting purposes. A person has the right to demand cessation of the unauthorized intervention into his or her rights, elimination of the effects of this violation and to adequate satisfaction in the event their specified personality rights are violated.

The gravity of a violation of the right to protection of personal data is also demonstrated by the fact that such a violation is deemed to be a criminal act. Paragraph 374 of the *Criminal Law*[40] establishes sanctions for making personal data available or public, without authorization; namely up to one year loss of freedom if it occurred in relation with data collected in the exercise of public powers or the exercise of constitutional rights or with data collected in connection to one's employment or occupation and if doing so was a violation of law. A person can be sentenced to up to two years loss of freedom if he or she released personal data, made them public or otherwise made them publicly available or released them in some other significant manner and caused serious damage to the affected person by such act. A person damaging or misusing an entry in an information medium can also be punished with loss of freedom from six months to eight years, depending upon the severity of the criminal act.

Another opportunity to defend against a violation of the right to protection of personal data is by lodging a complaint with the ombud.[41] Any person who thinks that his or her fundamental rights, including the right to protection of their personal data, were violated by activity, decision-making or inactivity by a public administration body can turn to the ombud. The ombud is authorized by law to process personal data if such data is needed to investigate the complaint.

In our opinion, collection of ethnic data, *per se*, is not in conflict with the law on protection of personal data or protection of personal data under EU directives or of protection of human rights. National and international laws have, however, established restrictions on collection of data and have defined what data can be collected and in what manner so that they are protected from misuse. All of these legal restrictions must be taken into consideration for every single collection of data, in its

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[40] Law No. 300/2005, Collection of Laws, as amended.

[41] Act No. 564/2001, Collection of Laws, on Public Defender of Rights (Ombud).

planning and in its execution, meaning that these restrictions must be assessed on a case to case basis (Makkonen – Reuter – Oosi 2004). Statisticians, state administrators and researchers should therefore cooperate with authorities for data protection. It is also important to remember that ethnic information must be based on a free self-declaration because ethnic-cultural characteristics have a subjective dimension.

Protection of personal data in selected EU countries

The structure and content of personal data protection is very similar in most European countries (Makkonen 2007b: 64). This similarity is logical as these countries are members of the Council of Europe and the European Union and documents focusing on protection of personal data adopted by these institutions have been incorporated into the legal systems of those countries. The instruments are mainly the *Directive of the European Parliament and Council 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data* and *Convention of the Council of Europe No.108 on Protection of Individuals with Regard to Automatic Processing of Personal Data* which all countries have ratified.

These documents establish quite a detailed legal framework for protection of personal data. In light of these documents, all surveyed countries make a distinction between ordinary personal data and the so-called special categories of personal data. This differentiation provides significant protection to the particular data. The special data categories, so-called sensitive data, are subject to a much stricter system of protection than are ordinary personal data in these countries. Therefore, collection of sensitive data can be done only under precisely established conditions.

In principle, sensitive data can only be collected with the consent of the subject of the data; in Hungary and in Slovakia, for example, this consent must be in writing. Collection of sensitive data with the consent of the subject can be subject to even further restrictions under special regulations in certain countries such as the Czech Republic, Great Britain, France and Slovakia. Some countries (for example, Lithuania, Sweden, Finland and Hungary) explicitly permit collection of sensitive data for research or statistical purposes. Swedish law also grants its national agency for protection of personal data the authority to permit collection of sensitive data in cases other than those specified in the law (Makkonen 2007b: 65).

Great Britain is essentially the only country that has legitimatized collection of sensitive data from the workplace. The Race Relations Act of 1976 does not stipulate an obligation to conduct ethnic and racial monitoring but it does establish the obligation of employers to ensure ethnic equality among employees as well as among job applicants. The British Commission for Racial Equality[42] has made a direct recommendation to employers to use the ethnic categories that were used for the census of 2002 for such monitoring.[43]

The Commission for Racial Equality has also explicitly recommended to local authorities and to housing organizations that they include Gypsies and Irish Travellers in their ethnic monitoring.

The British Information Commissioner's Office (ICO) in its Employment Practices Code for employers[44] recommended establishing personal data categories in a way that would permit people to actually identify themselves with one of the offered categories. Specifically, they recommended that when monitoring ethnic origin that closed answers should not be offered as that could prevent certain individual from appropriately identifying themselves.[45] The British concepts draw from the foundation that surveying and collection of data about race or ethnic origin, *per se*, is not discriminatory: that these records, *per se*, are neutral and serve to implement and verify equality policies.

Censuses which include questions surveying about ethnic or national origin are conducted, for example, in the Czech Republic, Lithuania, Hungary and Great Britain. And there are states, for example France, which do not include a question about ethnic or national origin in the census questionnaires. While the question in Great

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[42] On 1 October 2007 the Commission for Racial Equality merged with the Commission for Equal Opportunities and the Commission for Rights of Disabled Persons and established a new commission, the Equality and Human Rights Commission. http://www.equalityhumanrights.com/en/Pages/default.aspx

[43] More information on ethnic classification in Great Britain can be found in the study by P. Ratcliffe (2008) and the web page of the Commission for Racial Equality http://83.137.212.42/sitearchive/cre/gdpract/em_cat_ew.html

[44] The Information Commissioner's Office, 2005: The Employment Practices Code http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/employment_practices_code001.pdf

[45] ibid, page 37

Britain asks about ethnic origin, the question in Hungarian, Czech and Lithuanian censuses asks about national origin (Makkonen 2007b: 108). Censuses in Sweden and Finland survey the country of origin and Finland also includes nationality and mother language. In the Czech Republic, for example, the 2001 census asked about nationality and did not offer any choices to respondents but its question about mother language offered a choice from among several languages – namely, Czech, Roma, German, Slovak and Polish and also offered the possibility to give another language.

Information on race or ethnic origin is information which may indicate inclusion of a person in a certain group regardless of whether that person openly claims that inclusion or not. Because race and ethnic origin were in the past, and still are at times presently, a source for open or hidden disadvantaging of the concerned person, collection of these data are very strictly limited under European law as well as laws of individual countries. International legal documents and legal regulations of individual countries denote race and ethnic origin to be personal data.

Anti-discrimination laws deem race and ethnic origin to be a potential basis for discrimination and prohibit any such discrimination: no one can treat another person unequally on grounds of race or ethnic origin. The matter gets much more complicated if discriminatory conduct, especially indirect discrimination, is to be proven or, to the contrary, if positive measures aimed at elimination of disadvantage to the group are developed and implemented. In these cases, statistical data are an important and frequently necessary tool to demonstrate the magnitude of disadvantages of certain racial or ethnic groups or to discern the effectiveness or non-effectiveness of policies aimed at equality. If mechanisms for collection of personal data do not exist it may quite often happen that indirect discrimination cannot be proven and, even worse, it will not be identified at all.

The stress laid on protection against unauthorized collection and gathering of data identifying ethnic origin can be understood in the context of historical experience. On the other hand, a too rigorous interpretation of protection may make collection of these data wholly impossible and that may also happen in situations in which collection of these data would be purposeful and useful, for example, in proving the existence of a disadvantage to a certain ethnic group.

THE DILEMMA OF ROMA STATISTICS IN SLOVAKIA

Issues of the Roma population were originally not an explicit part of the European debate regarding collection of ethnic data (see, for example, ECRI 1998; 2005). But towards the end of the 1990s the European Commission acknowledged that problems and issues of Roma were matters that needed to be dealt with at a European level. The need for statistics on Roma has also been becoming more pressing because special programs for the Roma minority have been started in many countries. The European Roma Rights Center (ERRC), for example, has drawn attention to this issue in its 2004 publication on ethnic statistics (Roma Rights Quarterly 2004).

There are differing and, in essence, contrasting opinions regarding collection of data on the Roma population; this was confirmed at a two-day round table sponsored by the Council of Europe on the theme "Roma and Statistics" held in 2000 (Council of Europe 2000). Roma representatives themselves defended differing opinions. On one hand there were opponents of generation of ethnic statistics who were concerned about misuse of such data. On the other hand there were Roma representatives who stressed the need for quantitative and qualitative ethnic data. In the opinion of the supporters of collection of ethnic data, such data can show actual degrees of disadvantage of the Roma minority and thus permit development of programs targeted on the group's members and assessment of the successfulness of implemented policies and anti-discrimination measures.

Surveys show that Roma in Slovakia regularly appear among groups at highest risk of poverty, social exclusion and discrimination. Several disadvantages come together within this ethnic group: poverty inter-related with demographic conditions; poverty generated by unemployment; poverty caused by poor job skills or insufficient education; and discrimination. Roma living in segregated settlements are in the worst situation. This ethnic group is also explicitly mentioned in political documents and action plans of Slovakia to eliminate poverty and exclusion. For example, in the *National Strategy Report on Social Protection and Social Inclusion for 2006 – 2008* (MPSVR SR 2006) Roma rank among the population groups which are at highest risk for poverty and social exclusion. For Slovakia, the so-called "Roma issue" is a matter of social policy and equal opportunity policy as well as of data collection practices and statistics.

The development of ethnic statistics and administrative data has a historical background in Slovakia and in the Czech Republic. Several Roma population enumerations were organized and conducted by the Interior Ministry after World War II. In the 1950s to 1960s a state-wide enumeration of the Roma population was conducted under the auspices of the Statistical Office. Enumerations conducted in the 1950s and 1960s were followed up in the 1970s with certain record-keeping by state administration authorities on the basis of which welfare benefits were paid and services were provided by social workers to the Roma population. These administrative records captured information on the Roma population more accurately than in comparison with the previous decades but their drawback was that only those Roma who received social aid were included (Vaňo – Haviarová 2002: 478).

A post-War general census (in Slovakia in 1946 and in the Czech lands in 1947) did not include a question on nationality or mother tongue. The census in 1950 covered the entire population. In surveying for nationality principle of self-declaration was employed and the question was: "What nationality do you claim?" The Roma nationality, however, was not considered as one of the official census classifications because of the alleged non-fulfilment of criteria for existence of such a nation (absence of common territory and economic life). Roma were forced to declare one of the officially acknowledged nationalities (Czech, Slovak, Ukrainian, Russian, Polish, Hungarian, or German) or to include themselves in the group "other nationality". The 1970 census complemented the question "What nationality do you claim?" with a question concerning mother tongue but subsequently in the 1980 census the mother tongue question was no longer included. In parallel with the 1970 and 1980 general censuses a separate register of Roma was taken and the results were processed separately and treated as classified, secret material. Belonging to the Roma population was ascribed – and it was determined by census takers on the basis of anthropological features, language or lifestyle (Kalibová 2003: 46).

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[46] For more information on this topic see the publication by M. Vašečka (2002: Chapter E, pages 475-498).

Mother tongue was again surveyed in the 1991 census and ethnicity was recorded on the principle of self-declaration. That is the likely reason for a significant statistical decrease in the numbers of the Roma population when compared to the previous censuses as well as when compared with "common knowledge" on the numbers of Roma.

An informal practice of adding an "R" identification mark attributed to Roma clients in administrative registers was common in labour exchange offices in the second half of the 1990s. Activists as well as European political circles responded negatively to these practices and subsequently this practice was banned for being in conflict with principles of human rights. ECRI's *Third report on Slovakia*, for example, reads that "an end should be put to any 'informal' systems which may be in place in various administrative sectors by which persons are involuntarily identified and recorded as belonging to particular minority groups" (ECRI 2004: para. 86). However, ECRI's document mentioned alleged indications of administrative recording of ethnicity in years 2000-2003, which had not been proven: "there are allegations that certain administrations – such as some hospitals, the police and employment offices – do record the supposed ethnic origin of persons with whom they are dealing, presumably based on the assumptions of the officials dealing with the public, although these allegations are refuted by the authorities" (ECRI 2004: par. 84). In our opinion, there probably have been no practices of adding a Roma identifier into administrative registers in this decade.

Data on living conditions and discrimination in the Roma environment have been acquired in past years in Slovakia through monitoring probes by European institutions and by specialized, predominantly sociological, researches. These researches focused on the social and economic conditions of Roma life and also targeted specific areas such as schools, the labour market and so forth. These research projects were initiated and conducted by non-governmental research institutions, academic institutes (for example, the Slovak Academy of Sciences), European institutions, international non-governmental organizations, as well as by supranational entities such as the World Bank, the United Nations Development Programme (UNDP) and others. In terms of methodology, these were various probes based on qualitative investigation. If data quantification occurred the sample was usually not statistically representative enough to permit comparisons with the general population. From the second half of the 1990s to the present, many studies and synthesizing reports have been produced (for example, ERRC 1997, Radičová 2001, World Bank et al. 2002, European Commission 2004, Open Society Institute 2004, World Bank 2004, Ringold et al. 2005). Monitoring reports by European institutions also supplied partial data on specific areas of life. For example, ECRI covered the issue of education of Roma children in its monitoring reports (ECRI 2004).

A significant shift in the method of data collection occurred at the beginning of the 21st century through the initiation of territorial "sociographic" mapping of Roma settlements. This was a specific response by researchers and public policy makers to the ongoing, chronic shortage of quantifiable information (and also a response to external pressures from European institutions to collect valid data on Roma). The territorial approach to collecting data on the Roma population draws on the assumption that the Roma population lives in certain enclaves (within a municipality, on the outskirts of a municipality or in segregated settlements) and that this permits "mapping". It is assumed that such a procedure is in compliance with the standards of protection of personal data because the mapping does not investigate individual ethnic identity but is only taking an "inventory" of settlements.[47] This approach, however, has certain shortcomings, in that, for example, it does not "capture" Roma who are integrated or who live in non-marginalized communities.

Territorial "sociographic" mapping of Roma communities in Slovakia has been conducted with support from a consortium that included state administration bodies (the Plenipotentiary of the Government of SR for Roma Communities), Slovak non-governmental organizations (S.P.A.C.E., IVO and the Regional Centre for Roma Issues) and supranational institutions (the World Bank). The mapping was completed in 2004 and included 1,068 municipalities and 1,573 Roma settlements (Radičová 2004). The census of Roma settlements identified four types of housing situations of the Roma population vis-a-vis the majority: integrated – scattered (Roma residents are scattered among the majority within a municipality); integrated – concentrated (Roma residents live within a municipality but are concentrated in a certain part or

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[47] Territorial "sociographic" mapping is considered to have been a positive, successful and desirable initiative which was clearly a step forward in public policies vis-a-vis the Roma population. Our feeling is that the legitimacy of territorial "sociographic" mapping (and the fact that no stakeholders have cast doubts about it) is a positive model for a broader consensus concerning practices for data collection in the public interest. A similar consensus could also arise in standardization of other methods and procedures for collection of ethnic data.

parts); in outskirts of municipalities (Roma residents are concentrated in the outskirts of a municipality); and completely outside of municipalities (Roma residents live in a settlement at a distance from the municipality or are separated by a barrier).

A UNDP survey conducted in 2005 used a territorial approach to identification of the target group (Filadelfiová et al. 2006). The data collection places were selected on the basis of the abovementioned sociographic map of Roma communities in Slovakia. Detailed data on Roma settlements permitted splitting the households into three basic groups depending upon their degree of integration with the majority population. As part of the research a sample of the general population was used as a control group in order to permit comparison of certain socioeconomic data.

Collection of empirical data for the UNDP survey was conducted via face-to-face interviews between interviewers and respondents using an anonymized structured questionnaire. The selection unit in this research was an *economic household* which was defined in the survey manual as “an individual or a group of people, whether related or not, who live together as an independent group in the sense that they manage their affairs in common (that means that they share with each other or support each other within a single family budget)”. The questionnaire sought information on both the household and the individual member of the household. This UNDP survey has been the most unique, profound and representative survey about the Roma population conducted thus far. Presently, the Ministry of Labour, Social Affairs and Family SR, in cooperation with the UNDP, is preparing similar representative sample surveys in a time horizon through 2014 which will offer data sets suitable for drawing an image about the development of living conditions of Roma within a time perspective.

A project *Improving Employment Chances of the Roma* implemented (2007 to 2008) in the Czech Republic, undertaken with technical assistance to the government of the Czech Republic by the World Bank, was a targeted labor force survey of Roma and non-Roma residents in segregated localities. This survey provided education and qualification profile and labor market experience of employed and unemployed Roma and non-Roma living in marginalized territories. The places for data collection and the sample of respondents from the target group were identified through the method based on the territorial approach.

Development of targeted public policies for Roma in Slovakia in the absence of necessary ethnic data is difficult. The demand for accurate data which can be disaggregated by ethnicity has been directly or indirectly appearing in almost all government concept documents. For example, *the Medium-term Concept of the Development of the Roma National Minority in the Slovak Republic 2008 – 2013* mentions several times that the absence of valid data on Roma is among the systemic and legislative barriers for improvement to the situation. According to this document, for example, there is a shortage of data concerning health conditions, data on employment and education and the like concerning Roma communities.

Some time ago the Slovak Republic joined the program Decade of Roma Inclusion and developed priorities in its *National Action Plan of the Slovak Republic Regarding the Decade of Roma Inclusion,* which was approved by the Slovak government in 2005. The action plan lists a set of indicators for priorities such as education, employment and health, stipulates their assessment and identifies institutions responsible for monitoring. It logically appears that the only possible way of assessing progress in these areas and ensuring effective monitoring is to use quantitative data that can be broken down by ethnicity. For that reason collection of data by ethnicity seems absolutely necessary in order to be able to evaluate results under the Decade.

The future trend of data collection regarding living conditions of the Roma population in Slovakia is likely to continue with anonymous sample surveys among population living in disadvantaged areas. In our opinion, it is not very probable that method based on adding Roma sample boosters to regular surveys or methods based on interlinking of administrative data and linkages using a personal identification number will be initiated in the near future.

As for future development of policy planning, the main shortcoming of the aforementioned surveys and researches is that they were not an integral part of public policy planning. As stated by many (for example, UNDP 2007), the planning for collection of ethnic data should be an integral part of public policy plans for the sake of both continuity of collection and acquisition of longitudinal comprehensive information.

The matter alone is raising society-wide discussions which could result in a certain consensus on the planning of data collection and systemization of data collection practices. The future will show how the discussion develops and which attitudes will prevail.

USE OF ETHNIC DATA FOR DEVELOPMENT OF PUBLIC POLICY: CASE EXAMPLES FROM SELECTED COUNTRIES

It is important to understand the various ways in which data can be used for the purposes of policy development and planning and individual countries have made specific achievements in this area. The selection of countries for these case examples was guided by a desire to present an array of experiences within various backgrounds. The factors which were considered included: various sizes of the minority populations (a relatively small minority population in Hungary, a relatively large share in Lithuania and Slovakia); various kinds of minority populations (immigrant minorities in Great Britain, France and Finland, ethnic-linguistic minorities in Lithuania, a large Roma population in Hungary and in the Czech Republic); differing historical backgrounds of ethnic policies (post-communist Europe on the one hand and Western democracies on the other); differing administrative practices (the current practice of registering the ethnic origin connected with the absence of mechanisms for data analysis in Lithuania, almost no information on ethnicity in France, no censuses in Finland but data available from registers); and differing approaches to the development of anti-discrimination policies (absence of statistical data collection but support for testing methods in France, non-application of testing methods and official non-application of special measures in Lithuania and in Slovakia, developed application of special measures in Northern Ireland).[48] The outline above shows that national frameworks are very important and that the existing differences between countries reveal how many various possibilities there are and why it is useful to understand them.

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[48] This list of countries and their individual facets is not complete. For more comprehensive information, see the study by P. Simon (2007).

Great Britain and Northern Ireland[49]

A question on ethnicity in a census was introduced in Great Britain for the first time in 1991. A question concerning religious beliefs was added to the census in 2001. In spite of the problems which always accompany statistical categories such as ethnicity it is worth noting that before that question was included in the census a working party was established by the Office for National Statistics (ONS) to discuss the ethnic group question.

Certain problems still exist in Great Britain in the processing and interpretation of ethnic data. Inconsistencies in ethnic categories and their limitations only partially reveal the complexity of ethnic diversity. Officially established ethnic categories are frequently challenged by individuals or groups who believe that they are outside of the scope of the official schemes or who feel they were misused. P. Ratcliffe claims that despite objections by those who excessively stress the policy of diversity the data acquired from a census are sufficient for those who are interested in monitoring disadvantages.

The questions concerning ethnicity and religious denomination of an individual do not appear exceptional, *per se*. The interesting thing, though, is the way in which the census data are used. Individual census forms are kept in secured storage and embargoed for a period of one hundred years from the day of a census. However, the Samples of Anonymized Records (SARs) are made available to users. In order to get access to the samples a user must sign an agreement to the effect that he or she will not attempt to identify households or individuals. Two separate SARs are available: a 2 % sample of individuals and 1 % sample of households and dwellings.

P. Ratcliffe adds that for census data on race, ethnicity, and religion to have good reporting value they should be supplemented by more complex statistical analyses in localities. These, however, can only be conducted in spatial areas with appropriate legal and organizational conditions, including access to SARs of census data.

Ethnic monitoring and a public duty to implement equal treatment policies in Great Britain have their origin in the ethnically divided and conflict-ridden envi-

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[49] The main source of information on the British census policy is from work by P. Ratcliffe (2008). For ethnic statistics, see also CSES (2007) and ERRC (2007).

ronment of Northern Ireland[50]. Equal treatment policies were first gradually formalized there and later also introduced into other parts of Great Britain.

The experience of Great Britain is also interesting because official ethnic monitoring is publicly supported and it is done by both government agencies and employers. As stated by P. Simon, the law on data protection permits collection of data concerning ethnic or racial origin provided that "Processing is necessary for the purposes of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons of different racial or ethnic origins with a view to enabling such equality to be promoted or maintained" (2007: 60).[51]

Official institutions in the UK have published many documents such as codes and guidelines to promote the use of monitoring and equality policies. The Commission for Racial Equality played a key role in this process. P. Simon stated that statistics have been systematically used in anti-discrimination policies and equal opportunity policies since the mid-1990s but that only 60 % of companies had been keeping ethnic statistics (2007: 62). Because of the very heated debates that followed the London public transportation explosions in 2005 the emphasis on ethnic data collection weakened. Critical opinions were voiced at that time that monitoring of ethnic origin did not contribute to building of national unity but, to the contrary, it resulted in emphasizing ethnic differences and a racial division of society. However, anti-discrimination policies and measures to support equal opportunities through use of statistical data have not been changed or abolished.

The UK, like most European countries, has strict laws for protection of personal data but the Commission for Racial Equality (CRE) successfully exerted pressure on the government to permit collection of ethnic data. As a result, specific provisions regarding the collection of ethnic data for monitoring of equality in employment were incorporated into the Data Protection Act (ERRC 2007: 64). The monitoring policies are well-prepared and comply with protection of personal data in the UK.

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[50] Northern Ireland has equal opportunities legislation different from that of Great Britain.

[51] Data Protection Act 1998, UK, schedule 3 (9). Monitoring of ethnic or racial discrimination is covered by the Race Relations Act of 1976, amended in 2000 – Quoted from the study by P. Simon (2007: 60).

The *Fair Employment and Treatment Order* (FETO)[52] in Northern Ireland is a good example which can be an appropriate model for Central Europe, particularly in relation to Roma. FETO is a breakthrough initiative which was adopted to eliminate discrimination and to effectively eliminate socio-economic inequality between the Catholic and Protestant populations. According to the ERRC, the situation of Roma in the labour market in Central Europe resembles the situation of Catholics in Northern Ireland from the 1960s to the 1990s especially when it comes to a majority population with prejudiced views of the minority (ERRC 2007: 61).

Anti-discrimination legislation prior to FETO had no discernable effect on changes in the labour market or on elimination of religious-based job segregation. FETO not only condemns and prohibits discrimination but also establishes specific duties for employers regarding the policy of equality in employment. Ethnic-religious statistics are the core element in this process. Private sector employers with more than ten employees and the entire public sector employers are obliged to register with the Equality Commission for Northern Ireland (ECNI) and to carry out monitoring to ensure proportionate numbers of Catholics and Protestants in their workforces. Promotion of equal opportunities became a duty for employers or in FETO terminology a "positive commitment". The proactive policy has been successful and an evaluation of FETO has shown a substantial improvement in the employment profile of Catholics (ERRC 2007: 63).[53]

FETO is an example of direct measures reducing social differences along ethnic lines. It also is an interesting example of what could be called a "soft approach" to accomplishing goals of public policies. Mechanisms for monitoring of inequalities were entrusted by FETO to employers who in that way became agents in the process of ethnic-religious inclusion. In cases where monitoring results were not satisfactory or showed an imbalanced structure in the workforce the authorities employed an active approach – instead of applying sanctions, they supported those companies and offered them consultations how to assure balance in their workplaces. Additionally, the ECNI provided financial assistance to companies to set up the

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[52] The Fair Employment and Treatment Order was adopted in 1998 and became effective in 1999. It was amended in 2003 in line with Directive No. 2000/78/EC http://www.opsi.gov.uk/sr/sr2003/20030520.htm
The analysis presented of this document is based on the publication ERRC (2007: 61 – 63).

[53] Quoted from Osborne, B. – Shuttleworth, I. 2004: *Fair Employment in Northern Ireland, A Generation On*. Blackstaff Press; Northern Ireland.

administrative procedures related to monitoring of labour inclusion and reporting (ERRC 2007: 62). One of the strongest sanctions against companies failing to comply with their monitoring and reporting duties was exclusion of the company from public procurment, a sanction stronger than pecuniary sanctions (ERRC 2007: 62).

Hungary[54]

Statistical identification of ethnic origin is required in the context of the policy on ethnicity and nationality in Hungary. In the 1993 Act on rights of national and ethnic minorities, ethnic groups are defined as follows: "A national or ethnic minority is any ethnic group which has been present in the Republic of Hungary for at least a century, which represents a numerical minority of the country's people and whose members are also Hungarian citizens, are distinguished from other citizens by having their own language, culture and traditions, have a sense of collective belonging, try to preserve these features, and express and protect their communities, which have emerged over time."

The traditionally multi-ethnic Hungary has collected data on ethnic origin for a long period of time. Language was the main criterion for belonging to an ethnic group until 1941. A direct question about ethnicity appeared in the 2001 census. That census was different from the previous ones primarily when it came to its methodology and specific questions covering sensitive information. It can be said that the census included at least six sensitive questions: three about language, two about ethnic self-identification and one about religion. Ethno-cultural affiliation thus was approached from the perspectives of mother tongue, language spoken in the family or with friends, self identification with a group and affinity with group's values, traditions and culture. Comparing these indicators resulted in a picture of the degree to which certain indicators expressed the ethnic identity of minority groups. For example, 190,000 persons claimed to be Roma but only 130,000 identified themselves with Roma culture and 50,000 persons claimed Roma language as their mother tongue. In comparison only 142,000 persons identified themselves as Roma in 1990.

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[54] The description of the situation in Hungary is based on the study by P. Simon (2007: 52 – 56).

The formulation of the questions about ethnic affiliation in the 2001 census permitted several (maximum of three) answers to each question which was in harmony with demands of minority representatives. This opportunity, however, was used by few respondents (about 1.5%). The census was in compliance with laws concerning protection of data and laws concerning national and ethnic minorities. Consultations by the statistical office, which was responsible for the census, with government commissioners for minorities resulted in a compromise which permitted the collection of data useful for protection of ethnic minorities in compliance with laws on data protection. Questions concerning ethnicity, language, religious belief and disability were in the concluding portion of the questionnaire and a footnote advised that answering was not mandatory (in contrast to the other questions). Despite the sensitivity of these questions, the concern that respondents would not be willing to respond to them did not come true. The response refusal rate was less than 6%.

In addition to censuses there were also several sample surveys among the Roma population in Hungary. The surveys focused on information about the most prominent visible disadvantages of Roma, for example, on ethnic segregation in schools which contributes to intergenerational transfer of poverty.

Many minority representatives and Roma activists have called for improvement of techniques for collection of data about the situation of minorities, especially the Roma minority. Many of them have criticized the law on data protection which in their opinion intentionally restricts the possibility of researching inequalities between the majority population and Roma.

The the 1993 Act on rights of national and ethnic minorities, however, does not concern itself with social conditions with minority groups but rather provides resources to minorities which they need to protect their culture and language. The law does stipulate that public institutions (for example, schools) must be capable of ensuring conditions (for example, instruction in mother tongue) which satisfy the demands of minorities. The law on minorities does not directly tackle discrimination.

France[55]

During the drafting process of *Directive No. 2000/43/EC* the French delegation prevented the inclusion of a provision requiring member states to collect statistical data on ethnicity. France is one of the few European states which have not ratified the *Framework Convention on Protection of National Minorities.* For that reason it is not surprising that collection of ethnic statistics and data about minorities have been one of the recurring problems in combating ethnic discrimination in France.

The law on protection of data has been valid in France since 1978.[56] *Directive No. 1995/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data* was also transposed into this law. Many problems have accompanied this law since it deals with subjective issues such as ethnic identity which are traditionally considered as very sensitive in France. The last amendment to the law was in 2004. The process of amending the act sparked discussion among the statistical authorities and legal experts. The discussions mainly concerned improvement of conditions for processing and secondary use of data files and how to update legal safeguards preventing misuse.

In 1978 France established an independent body called the National Commission on Data Processing and Liberties (La Commission Nationale de l'Informatique et des Libertés, CNIL) consisting of 17 members (among them parliamentarians, judges and other experts) for the purpose of the monitoring the implementation of the data processing law. Its main responsibility is protection of privacy and freedom of individuals. CNIL also has the responsibility for issuing positions on all operations in data processing in both the public and private sectors. CNIL plays a very active role. It monitors requests for data processing and also has investigative powers in that area. It can lead investigations and check whether its decisions were respected. It may also verify the application of preventive measures to prevent misuse of data. CNIL also uses its regulatory authority to establish standard rules for secure data processing. It is responsible for

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[55] Text is based on the study by P. Simon (Simon 2007).

[56] Data collected in censuses in France have changed little since the end of the 19th Century. Data about country of birth and citizenship which identify native French, people who have acquired French nationality and foreigners have been collected since 1881. To the contrary, religious denomination has not been surveyed since 1882.

respecting individual freedoms during electronic data processing. Its important powers also include supervision over contents of data files and deciding about conditions under which they can be used. In order to avoid the necessity of repeatedly requesting an authorization for collection of data a simplified system was introduced – statistical and research agencies submit annual plans for data collection to CNIL for approval.

The activities of CNIL in the area of ethnic data focus mainly on data about nationality and country of birth. These data help to identify ethnic and racial origin in France. The position of CNIL is not rigid but it develops alongside public discussion. CNIL issued a recommendation on how to measure diversity using ethnic criteria in 2005. That was done as a response to growing requests by companies which had adopted the *Charter of Diversity in the Workplace* and had committed themselves to combat discrimination and to promote ethnic diversity but did not know a legal way of monitoring and evaluating ethnic diversity. In this important recommendation CNIL considers the goals of combatting discrimination in employment to be a legitimate public interest and states that: "activities of combatting discrimination and specifically combatting ethnic and racial discrimination could be advanced by statistical tools permitting the measurement of discrimination to which individuals or groups are exposed in companies and public services."

In May 2007 CNIL published an opinion which opened the opportunity to collect information about country of birth and nationality of parents. Questions about these issues should either be included in a census or answers to them should be acquired from analysis of names and surnames. CNIL takes a very reserved position to development of nomenclature, meaning a fixed list of ethnic-racial categories, in France. According to this CNIL opinion, data collection about "physical image" and "colour of skin" is possible within the framework of scientific studies about discrimination perceptions by its victims.

Not all administrative registers in France include information about the country of origin and nationality. Information about immigrants is only rarely given publicly either to avoid their stigmatization or because there are no special public policy measures for them. Recommendations issued by the commission result in further limiting of information disseminated about immigrants because owners of data files assume strict supervision by CNIL and, in that way, self-censorship occurs. CNIL recommends monitoring three categories: French, foreigner from an EU country and foreigner from a third country. These categories, however, are too general to be used in research concerning discrimination or for application of targeted measures of social policy.

In 2004 as required by the EU Racial Equality Directive, France established a High Authority for combating discrimination and for equality (La Haute Autorité de Lutte contre les Discriminations et pour l'Egalité, HALDE) which has powers concerning human rights and fundamental freedoms. The law under which this authority was established, however, does not regulate what types of statistical data can be collected and in what ways. The law on equal opportunities (of 31 March 2006) was adopted as a response to unrest in worker neighbourhoods in November 2005. This law did not formalize a system of equal opportunity and only covers certain issues. It stipulates, for example, that CVs of job applicants should be anonymous and that the "testing" method should be applied to combat discrimination.

HALDE has been gradually adopting a position in the area of statistical data. Its preferred source of information about discrimination is analysis of complaints from citizens. HALDE has also developed a discrimination barometer method based on regular testing. This testing method is supposed to replace the use of ethnic data in official statistics. France adopted minimum measures concerning a strategy to combat indirect discrimination whose proof is based mainly on the testing method.

The issue of collection of ethnic data is regulated in the new (some believe controversial) *Act on Controlling Immigration, Integration and Asylum* (adopted in October 2007) which permits data collection about race and ethnic origin for the purposes of specialized studies under Article 63. The French constitutional court ruled this article to be unconstitutional on 15 November 2007.[57]

Lithuania

Lithuania adopted the *Law on National Minorities* in 1989 but the term "national minority" is not defined and specific minorities are not listed. All linguistic and ethnic groups are considered to be national minorities.

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[57] See the link http://www.conseil-constitutionnel.fr/decision/2007/2007557/2007557dc.htm.

The population census is the primary source of data on ethnic composition of society. Data concerning ethnic groups are not surveyed in any other way between the censuses which means that the censuses are the primary reference source for observing the dynamics of ethnic developments.[58]

Ethnic or national minorities in Lithuania account for 15.6% of the total population according to the last census of 2001 (Lithuania has a population of 3.5 million). In comparison with the last census in the Soviet era when 20.4% of the population claimed a minority affiliation, the data from the 2001 census indicate a decreased percentage of persons who declared a minority ethnic identity. To a certain degree that may be a consequence of emigration of non-Lithuanians to the territories of the former Soviet Union after 1990 and also a consequence of optional declaration of ethnic identity in the 2001 census. The ethnicity of children younger than 15 was registered as reported by the parents. Less than 1% of respondents (0.94 %) did not declare any ethnicity. Most of these respondents had minority background or were the persons with a mixed ethnic origin; more than 40% of them were younger than age 20. That could mean that parents did not claim any nationality for these children (Leončikas, 2007: 40). The issue of declaring an ethnicity has never been deemed to be a very sensitive or important question in public discourse. Never, for example, has it been debated whether the numbers of ethnic minorities are different in reality from data acquired from the census.

Protection of personal data is monitored by a specialized State Inspectorate for Data Protection (Valstybinė duomenų apsaugos inspekcija)[59] which was established in 1996. The law on protection of personal data was harmonized in 2003 with the *Directive of the European Parliament and Council No. 95/46/EC*. The inspectorate monitors the manner in which large databases such as state registers, electronic and telecom services and data transfers are processed.

The Office of Ombudsperson for Equal Opportunities deals with issues of equal treatment in Lithuania in accordance with the anti-discrimination directives of the EU. The Office is responsible for investigating complaints about discrimination but has no

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[58] However, Lithuania began using data from the population register to update population statistics since 2007, which includes information about size of ethnic groups (i.e. figures of population who have declared their ethnicity), available in a summarized form on the Database of indicators of the Statistics Lithuania (http://db1.stat.gov.lt/).

[59] See the link http://www.ada.lt.

authority or capacity to conduct research or surveys into discrimination against groups. It is interesting that Lithuania does not have an independent body for human rights which would usually conduct such monitoring activities within a broader context.

Certain administrative practices in Lithuania include declaration and registration of the ethnic origin of individual persons. For example, there were cases of individuals who demanded a special stamp in their passport because they wanted their nationality to be explicitly identified and preserved in this personal document. There are residents who still hold such kinds of valid passports. New identity cards do not provide a possibility or space for inscription of ethnicity. However, ethnicity is still recorded in birth certificates. Ethnicity of children is determined by the ethnicity of their parents or can be chosen by one of the parents in a mixed marriage. These data are considered as personal and are protected under the data protection laws. No one has complained thus far that ethnicity information that was entered in his or her document was done so without his or her consent. Data about ethnicity in birth certificates are not used for statistical purposes and we have no information about whether these data are used for research or public policy development purposes.

The relatively peaceful climate around the issues of ethnic statistics may be caused by the absence of social policy measures targeted towards specific groups of the population or ethnic minorities. Research on the social and economic conditions of ethnic groups is insufficient and necessary data are not available in Lithuania.

The Statistical Office of Lithuania published statistics on the labour force broken down by ethnicity in 2002 – 2003. The data revealed that unemployment among national minorities was higher than the national average. However, no public policy response followed and data collection by ethnicity was discontinued.

Employment related data are regularly collected via sample surveys conducted by the Statistical Office. Some statisticians and ministerial officers expressed their opinions in informal interviews that the share of respondents from ethnic minorities in these surveys is too small to be statistically representative. They suggested that specific minority-oriented surveys should be conducted rather than collecting of ethnic information via standard labour market surveys.

Czech Republic[60]

The political discussion about ethnic minorities and human and social rights in the Czech Republic has been revolving particularly around issues of the Roma population. Similarly to Slovakia, the primary areas of discussion are about two policy principles: the principle of protection of personal data and the principle of monitoring for ethnic discrimination and the living conditions of minorities.

Collection of ethnic data is regulated in the *Act on Personal Data Protection*[61]. The Act also regulates the role of the Office for Personal Data Protection (Úradu pre ochranu osobných údajov, ÚOOÚ)[62] and regulates the conditions for collection and processing of data about nationality and ethnic origin as sensitive data.

For a better understanding of the situation in the Czech Republic it should be noted that the anti-discrimination law, which was prepared to transpose the anti-discrimination directives of the EU, was still not valid by the beginning of 2009. The Czech Republic was expected to adopt an anti-discrimination law upon becoming an EU member but thus far the law has been approved only by the government (in June 2007) and at the time that this study was published the law was being discussed in the House of Representatives of the Czech Parliament. The Czech Republic is thus the last remaining EU member state without a law prohibiting unequal treatment. The Czech Republic may be sued about this in the European Court of Justice and fined.

The draft anti-discrimination law specified the office of Ombudsperson as the body with a systematic role regarding issues of equal treatment and in providing assistance to victims of discrimination.

The *Act on Employment*[63] regulates prohibition of discrimination in access to employment in detail. Discrimination is also prohibited in the *Labour Code*[64] which refers to details in the so far non-existent anti-discrimination law.

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[60] The case study is partially based on the chapter by D. Chytil in the publication E. Olli and K. Olsen (2006).

[61] Act No. 101/2000, Collection of Laws, on Protection of Personal Data. http://www.uoou.cz/index.php?l=cz&m=left&mid=01:01:00&u1=&u2=&t=

[62] Office for Personal Data Protection (Úřad pro ochranu osobních údajů ÚOOÚ). http://www.uoou.cz.

[63] Law No.435/2004, Collection of Laws, on Employment.

[64] Law No 262/2006, Collection of Laws, Labour Code.

A frequently discussed issue in the Czech Republic is determining the numbers of the Roma population. Claiming Roma nationality is based on self-identification fully in compliance with human rights standards for declaration of ethnicity. Many stakeholders (activists, state administration and so forth) claim that the numbers of Roma identified from official statistics based on the census is much smaller than "common knowledge" of the numbers of Roma. It is noteworthy that it is fully recognized that data on ethnicity drawn from the census are not reliable and that the numbers of Roma are understated and that the data on the numbers of other nationalities are generally accepted.

In the Czech Republic, similarly as in Slovakia, research procedures are frequently used in which specific territorial "mapping" of the Roma population is conducted. Research mapping of the Roma settlements[65] in the Czech Republic, however, has not achieved as much territorial comprehensiveness as has the Slovakian sociographic mapping of Roma communities.[66]

Under the draft Czech anti-discrimination law the Ombudsperson for equal treatment should conduct various researches in this area similar to that done by the Slovak National Centre for Human Rights. Statutory authority to conduct surveys is, for example, held by the British Commission for Equality and Human Rights.

Administrative registers do not include data about ethnicity. The law on protection of data permits processing of personal data only in a limited way and in accordance with the purpose of their collection. Because of the legislation for data protection no use is made of data from registers of a non-ethnic character either. The Statistical Office prefers to cooperate with state authorities which maintain administrative data and then to have the opportunity to use the data for specific tasks.

The Interior Ministry administers the Information System on the Population (ISEO) which contains name, surname, date of birth, gender, country of birth, birth certificate number, nationality, address, previous address, marital status and date of marriage. ISEO also maintains data about aliens with residence and long-term stays in the Czech Republic. Availability of data from the ISEO system is restricted.

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[65] See Gabal Analysis & Consulting (2006). For more information see the interactive reaseach map and web page http://www.esfcr.cz/mapa/index.html.

[66] See Chapter titled Dilemmas of Roma Statistics in Slovakia in this publication.

The Statistical Office can use data from the population registry for distribution of census sheets but other processes using personal data are strictly forbidden.

Data are available from sample surveys on labour and the EU SILC (EU Statistics on Income and Living Conditions) but the sample does not include a sufficient number of members of ethnic minorities. Sample 'boosters' of ethnic minorities have thus far not been applied in regular surveys (for example, under EU SILC and the like).[67] Many specific analyses and sociological research projects have focused on issues of the Roma population and migration. The government supports and uses surveys, research, and analyses focused on ethnic minorities.

Certain experts believe that combining various data sources will be feasible in the future. This will be possible once the birth certificate number can be interlinked to other data. At present, the birth certificate number is used as an identification code for specific administrative databases. Interlinking registers and data from the Czech statistical office will be possible in the future; the first steps have already been made in this matter.

Finland[68]

Finland is an example of a state which maintains its statistics through a well-developed system of administrative registers. These information systems are usually used for data on social security, social services and benefits, education, income and housing. Countries with well-developed register systems are able to gradually update and compile necessary information and do not need to take traditional censuses.[69] Population registers seem to be the most important component for ethnic statistics. The Finnish population register[70] is administered by the Finance Ministry and contains information on individual's name, address, municipality, mother tongue, gender, age, marital status, country of birth, nationality, religion and employment.

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[67] The possibilities to extend samples for members of ethnic minorities in surveys such as EU SILC are discussed in this study. See also UNDP (2007).

[68] Information on Finland is based on the case study published in work by T. Makkonen (2007a: 99 – 101).

[69] Denmark, Finland, Germany, the Netherlands, Norway and Sweden are considered to be countries with well-developed administrative registers (Makkonen 2007a: 59).

[70] See link at http://www.vaestorekisterikeskus.fi

Finland harmonized its law with the anti-discrimination directives of the EU in 2004.[71]

The Finnish anti-discrimination legislation has a scope broader than what is proscribed by the directives. In spite of a quality system of statistics Finland has certain problems with monitoring of discrimination. Because of higher migration in the 1990s increased attention was focused on the ethnic dimension and the need for data indicating the extent of ethnic inequalities.

The Finnish Ministry of Labour established a multi-sectoral work group for preparation of a monitoring system for ethnic discrimination in 1996. Data collection started with research (surveys among victims, public opinion polls, content analysis of media discourse and the like) and state research programs. The police also started recording racial motivation of individual incidents. In spite of that, ECRI pointed out that not all possible methods of ethnic discrimination monitoring were fully utilized in Finland.[72]

A developed system of registers automatically requires a developed system of technologies for data protection. When society feels safe and protected from misuse of data, it is more feasible to access administrative registers and to make data available for analyses.

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[71] Anti-discrimiation law became valid on 1 February 2004.

[72] See reports on Finland of 1997 and 2002 at the web page http://www.coe.int

REVIEW OF PUBLIC OPINION ABOUT ETHNIC DATA IN EU COUNTRIES

The aim of this study has been to present expert and substantive arguments for informed policy making in this field. It is, however, well-known that policy makers are influenced by public opinion. Collection of ethnic data as well as development of policy measures for which these data are needed (for example, positive action) is perceived to be very sensitive issues. That is why claim about importance of public opinion are heard from countries where ethnic data are collected as well as from countries where collection of this kind of data is perceived as forbidden.

Year 2007 was proclaimed as the "European Year of Equal Opportunities for All" by the European Commission and a Eurobarometer survey was conducted about issues of discrimination and related problems. The survey included all 25 EU member states.[73]

The survey, *inter alia*, asked about the position of respondents to issues of data protection. One question was whether the respondents would be willing to anonymously give certain personal information if such information was part of a census and was intended to help combat discrimination.[74] The responses showed that the European public, in general, has a high degree of willingness to share personal information under these circumstances. Opposition was relatively low (TNS Opinion & Social 2007: 28). Declaring one's ethnic origin seemed to be the least problematic issue (75% of respondents on average in the EU 25 would provide that information) followed by information about religion and beliefs (74%), health situation (71%) or sexual orientation (65%).

The willingness of the public to provide information about one's ethnic origin ranged from 59% to 88% in individual countries. Estonia (88%), Denmark (88%), Bulgaria (86%), Sweden (83%) and Slovakia (81%) ranked among the countries in which the public was most willing to give information about ethnicity (see Chart No. 1). The

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[73] The survey was taken in summer 2006 and its results were published at the beginning of 2007 (TNS Opinion & Social 2007).

[74] QA15: Would you be in favour or opposed to providing, on an anonymous basis, information about (insert item) as part of a census, if that could help to combat discrimination in (our country)?

willingness to give this information was lowest in Austria (59%), Hungary (64%), Spain (68%), Ireland (69%) and Germany (71%). More than half of the population in all EU countries were willing to provide data about ethnicity. Austria and Hungary had the highest share of those who opposed giving information about their ethnic origin (34% and 30%, respectively).

EU citizens also expressed widespread support for adoption of specific measures which would provide equal opportunity for everyone in the field of employment. One might question, however, how survey respondents understood the "specific measures" in the Eurobarometer question (are they specific legislative measures or social policy measures?). The average support for adoption of specific measures for disabled persons was 87% and for sexual minorities it was 66% (see Table No. 2). Interestingly, the support for specific measures in all 10 new EU member countries was higher than the overall EU average. In the survey 75% of respondents were in favour of giving information on ethnic origin while the EU 15 average was 69% of respondents.

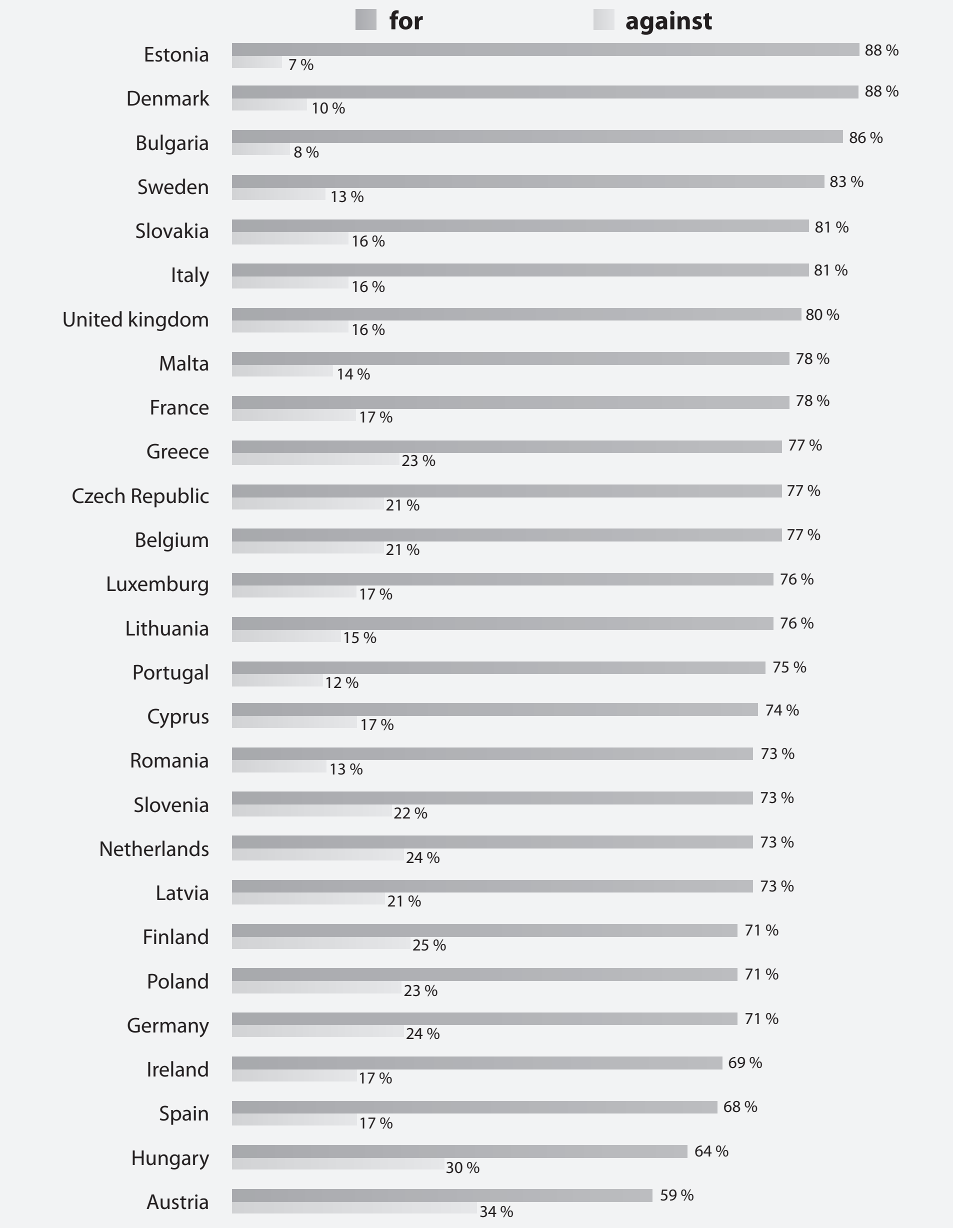
According to a public opinion poll about issues of protection of personal data in Slovakia, 5% of the respondents considered data about racial and ethnic origin and only 4% considered data about nationality to be the most sensitive data in terms of their potential misuse (Ústav pre výskum verejnej mienky pri ŠÚ SR 2007). Most citizens believed that the most sensitive personal data that must be protected from misuse are the following: birth certificate number (76%), data on assets and finance (41%) and data on health conditions (38%). There has not been any major change in these opinions in comparison with surveys conducted two years ago in Slovakia.

Table No 1: Position on personal data.
Question: What personal data do you consider to be the most sensitive to potential misuse other than name, surname and address? (Data in %)

Type of Data	April 2003	March 2005	February 2007
Birth certificate number	67	72	76
Data on assets and finances	34	40	41
Data on health conditions	48	40	38
Biometrical data	18	22	28
Data on psychological condition	21	21	19
Data on court conviction or sentence	10	13	12
Data on sexual life	13	12	11
Data on political belief or political party membership	19	12	10
Data on religious belief	14	10	7
Data on race or ethnic origin	7	5	5
Data on nationality	6	5	4
Data on social identity	3	3	3
Data on physical identity	2	1	2
Data on union membership	1	1	2
Data on cultural identity	1	1	1
Other response	1	1	1

Source: Ústav pre výskum verejnej mienky pri ŠÚ SR 2007

Chart No 1. Public opinion on ethnic information in EU countries
Question: Would you be in favour or opposed to providing, on an anonymous basis, information about ethnicity as part of a census, if that could help to combat discrimination? (Data in %)



Source: TNS Opinion & Social 2007: Table Q15.1

Table No 2. Support for measures to ensure equal opportunities in employment. *Question:* Would you be in favour of or opposed to specific measures being adopted to provide equal opportunities for everyone in the field of employment?

In favour of specific measures being adopted to provide equal opportunities for everyone in the field of employment: (Data in %)	**Comparison on EU averages**		
	EU25	**EU15**	**NMS10**
Disability	87	87	88
Age	84	83	88
Gender	79	78	87
Ethnic origin	70	69	75
Religious beliefs or convictions	70	69	79
Sexual orientation	66	67	63

Source: Eurobarometer (TNS Opinion & Social 2007: 20). The survey was conducted in summer 2006.

CONCLUSIONS AND RECOMMENDATIONS

The fact that collection of ethnic data, *per se*, is not in conflict with laws on protection of personal data and human rights is stressed by both European institutions and international organizations. Many European documents, recommendations and analytical reports have stated that use of data on group characteristics does not violate laws on protection of personal data. On the contrary, many stakeholders (for example, the European Community in Article 15 of the Preamble to the Racial Equality Directive) call for identification of discrimination by any means, including the use of statistical data. However, international and national laws and regulations do establish specific limitations on collection of data and define what types of data and how they must be collected so as to prevent their misuse.

Collection of data in a manner which permits the data to be broken down by ethnicity to indicate social disparities between various groups along the ethnic line is a necessity for public policy planning based on the equal treatment principle. Protection of personal data is also an integral part of human rights protection. For that reason planning and implementation of data collection projects must necessarily take into consideration all legal restrictions. In other words, data protection laws are necessary for data to be collected in a correct manner. Therefore, statisticians, officers responsible for monitoring and researchers should fully cooperate with data protection bodies and representatives of data protection offices should fully participate in planning of data collection policies. It is also important to remember that collection of ethnic data must be based on a self-declaration principle since ethnic-cultural characteristics have a subjective dimension.

The key problem of the situation in Slovakia is the absence of a strategic documents for collection of ethnic data. The surveys related to ethnicity issue conducted until now were not part of policy planning and their realization was initiated by unplanned circumstances. That was a cause of fragmentation, mutual data incompatibility and limited synergetic effect.

The state administration, human rights organizations and activists in Slovakia perceive a shortage of ethnic data as an ongoing deficit and as a significant problem. This is also a definite hurdle for development of effective social policy as the government has insufficient information necessary to establish targeted measures which would eliminate the problems of poverty and discrimination.

Monitoring and ethnic data are needed for the policy of equal opportunities as well as for the policy of social inclusion. That is why we propose certain recommendations related to policy planning, strengthening of institutional capacities, interlinking data from various sources and a creative approach to collection and use of data in the process of public policy development.

The main task for Slovakia seems to be development of a national strategy document for ethnic data collection, accompanied by action plans, which would permit a better understanding of the situation in the areas of equal opportunities and discrimination monitoring. A strategy document could, for example, assess institutional capacities of bodies responsible for human rights and data protection; examine methodological issues of data collection, plan methodology and frequency of surveys; determine the availability of data from administrative registers; review issues of storage of data and their processing, and the like. The concept document could also tackle, for example, questions like whether—for collection of ethnic data in the medium-term —the method of adding sample boosters of the Roma population to regular sample surveys (for example EU SILC) is more suitable or that preference should be given to separate sample surveys among the marginalized Roma population. Presently, it appears that in the future the latter is more likely to be accepted because it permits drawing from and following up with experience from the past data collection practices.

Innovative ways of collecting data should be sought. Wider use of the testing method should also be considered and its advantages and limitations should be discussed. Relevant public bodies and state administration authorities could use multi-disciplinary approaches which use various methods and data sources and synthesize them into a comprehensive picture.

Detached data sources such as qualitative researches, data about court cases, data from sample surveys and the like cannot satisfy all monitoring needs. For that reason, it is necessary to develop and support legal mechanisms which permit interlinking of data. There are several examples of how data from combined types of databases can be used for public policy planning. The simplest way of using combined data sources is by using the available and existing research materials of various kinds. For example, available information of court rulings could be summarized.

As for institutions, the key seems to be further strengthening of capacities of specialized bodies involved in the areas of equal treatment and human rights so that they can implement their monitoring functions in accordance with the law. The Slovak National Centre for Human Rights could collect information on numbers of complaints concerning discrimination from institutions which can accept such complaints, for example, the Slovak Trade Inspection, Labour Offices, Courts and so forth. The Centre could categorize collected complaints based on the grounds of the discrimination and publish the information in its annual reports which would then be a useful source of data indicating types of submitted complaints and their development.

Ethnic data, just like all other data which back up public policies, should be beneficial to society. Ways of anonymous diversity monitoring in the workplace should be developed in order to head towards a system known in other countries in which a statutory obligation for certain employers to promote equality is established. Without monitoring, employers do not know if they are successful in promoting equality or not.

The development of all these aforementioned opportunities depends greatly on understanding and support from the public at large. For that reason, all levels of decision-makers as well as civil society, and especially Roma organizations, should promote strengthening of Roma identity. Towns and villages should be encouraged to develop social-demographic profiles of their communities.

Interaction between statistical and monitoring bodies on one hand and final users of data on the other should be deepened. A survey questionnaire could be conducted among end users of data, experts and policy makers in order to determine the kinds of data (and their level of detail) considered to be necessary. Experts should also discuss accessibility to statistical data and the need of their further use.

Although it may appear that public in Slovakia believe that ethnic data are not needed and that they are concerned about their misuse, public opinion polls do not confirm that collection of data is perceived as a great problem by the Slovak public. To the contrary, according to Eurobarometer survey, the eight-one percent support within Slovakia ranks it among countries whose citizens are most willing to provide information about their ethnicity. This public support provides enough room and legitimacy for adoption of steps to improve the situation in the field of ethnic statistics and data.

Opening a discussion on the need and use of ethnic data is a task for the immediate future. The discussion on the need for ethnic data could be accompanied by a campaign for increased public awareness of issues related to protection of data, the necessity for collecting data and the benefits resulting from its collection.

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This report presents policy makers and the broader public with a review of ethnic data collection policies and practices in Europe, as well as an analysis of the situation in Slovakia. We draw a set of conclusions and recommendations from a comparative analysis of the debates, strategic policy documents and legislations in three contexts, namely European, Slovak and that of selected EU countries. UNDP hopes that this publication becomes a useful source of information that can be used to combat poverty, social exclusion and discrimination.

ISBN 978-80-89263-09-7

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