

**IN THE LIGHT OF SUBSTANTIVE EQUALITY: ANALYZING
TEMPORARY BALANCING MEASURES IN THE CONTEXT OF
SLOVAKIA**

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Author's Declaration

I, the undersignedPatricia Patkanova..... hereby declare that I am the sole author of this thesis.

To the best of my knowledge this thesis contains no material previously published by any other person except where due acknowledgement has been made. This thesis contains no material which has been accepted as part of the requirements of any other academic degree or non-degree program, in English or in any other language.

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Abstract

Temporary balancing measures (TBM) stemming from the concept of substantive equality is considered to be an enabling legitimate tool to ensure genuine equality. In many countries, it is a standard tool for creating opportunities for disadvantaged groups to participate equally in the labor market and the education system. By implementing them properly, Slovakia could possibly start solving Roma issues from a broad perspective. However, by analyzing relevant documents it was revealed that although the legislation opened up the possibility for the provision of TBM, there is still a certain ambiguity surrounded by TBM. It therefore lacks support from the elite and general populace. In addition, the current legislation lacks relevant guidelines and strategies to undertake further steps.

Key words: temporary balancing measures (TBM), substantive equality, Roma, Slovakia

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Introduction

Temporary balancing measures (TBM) or in the context of the US *affirmative action* or for the EU *positive action* is the latest international trend in fighting discrimination. They are hindered by several factors such as differences between concepts and methods, differences between definitions of the programs and mostly different political determination to put them into practice. There is no generally accepted legal definition. The UN Progress Report defines TBM as measures which are aimed at improving the access of members of disadvantaged groups into the existing social and economic structures to achieve equality in practice. They might be adopted by governments, municipalities and private institutions usually in the area of employment, education, housing and health (Bossuyt, 2002).

In Slovakia, the debate on adopting such measures began to appear about a decade ago in the context of marginalized Roma communities. In practice, there are programs such as teaching assistant, zero grade, and social benefits which can be characterized as provisions of the TBM. Legislative options for the adoption of TBM, however, were for a long time limited, especially in terms of their recipients - members of an ethnic or national minority. This condition was probably related to the lack of understanding of substantive idea of equality, which is the basis for the adoption of TBM. According to Fredman (2002) substantive equality differs from more traditional understanding of formal equality. While formal equality expects equal treatment in accordance of qualifications, substantive equality looks at the past, gender or social disadvantages under which the members of certain groups were discriminated and are de facto disadvantaged in comparison to those who belong to ethnic, racial or religious majority.

The aim of this paper is to argue that since TBM are in many countries a standard tool for creating opportunities to participate equally in the labor market and the education system for disadvantaged groups, such as women or racial groups, by implementing them properly, Slovakia could possibly start solving Roma issues from a horizontal perspective. However, the research for this paper has shown that the process of adopting TBM, which started in 2004 by introducing the Anti-discrimination law into the Slovak legislation, has complicated this possibility. Due to conservative politicians and confusing interpretation of the principle of equality by the Constitutional Court, the same Constitutional Court ruled out that the provision of TBM were unconstitutional. This fact has complicated various projects aimed at increasing the number of Roma people for instance in labor structures, such as teaching assistants. Nevertheless, later on the amendment of the Anti-discrimination law from February 2013 opened the possibility to provide provisions of TBM based on ethnicity and nationality. But even though this was a positive development towards Roma inclusion in Slovakia, there are still some uncertainties towards this policy which is mostly related with the clarity and essence of TBM and substantive equality in general. Therefore, the research question of this paper is: *What are the factors that eliminate the provision of the TBM in Slovakia even though the legislative modification of the Anti-discrimination law from 2013 allows the provision of TBM on ethnic and national basis?*

This paper will argue that the legislation guarantee is necessary but not sufficient in itself because it still lacks support from high-level officials. Still present ambiguity of substantive equality and TBM complicates the proper implementation which this paper will attempt to explain. Thus, the state should prepare guidelines for the authorities and municipalities on how these measures should look, plus properly motivate the private sector to take advantage of these measures. Therefore, the analysis of the paper will provide recommendations for the Slovak

government under which conditions should the TBM work in order to start with further implementation. Presented examples of TBM from the US and Romania will offer support for the argument that TBM are measures which can ensure the genuine equality and the reasons why these measures should be taken seriously in the process of Roma integration.

Methodology

This study is a single case study. Slovakia was selected because it is a case in which we can derive a holistic understanding of the discourse of the principle of equality from substantive perspective.

Since this paper does not rely on raw data from field research or any existing survey data set, there is no need to code any variables. In order to answer the research question, the research applies method document analysis. This research relied on primary sources such as literature by renowned thinkers Fredman (2002) and Bossuyt (2002) which offered conceptualized framework of equality and TBM. In addition it uses documents which encompass review of the Anti-discrimination amendments. Apart of this, the research relied on secondary sources which contain published journals and articles easily accessed on the CEU online journal database as well as the online Slovak newspaper archive. Moreover, it uses recommendations and evaluations of reports written by NGOs and think tanks with a focus on policy research.

Roadmap

The structure of the paper will be divided in the following way. Chapter one will discuss the conceptual framework of temporary balancing measures (or in the literature the term frequently used is ‘affirmative action’) on the light of equality discourse. The basic conceptual

framework for the paper is based mainly on the theory of substantive equality, promoted by scholars and lawyers in the field of equality, such as Fredman (2002) and Bossuyt (2002), . This chapter will analyze the various arguments surrounding TBM and will establish the argument that TBM is the best mechanism to cope with existing socio-economic disparities although it carries a notion of controversy. Thus, TBM is a means to genuine equality.

Chapter two will examine the successful practices in light of TBM from abroad, particularly from the US and Romania. This chapter will look at the area of education and employment and will demonstrate that TBM in those countries were enabled to provide equal opportunities stemming from substantive approach to equality. The second part of this chapter will bring examples of several projects from Slovakia founded by the state and containing some elements of TBM so therefore the controversy surrounded by TBM is surprising.

The third chapter will be devoted to analyzing legislation ambiguity of TBM in Slovakia which caused a long time limitation of provision TBM on ethnic and national basis. It will further provide the brief of current situation of TBM and its status quo.

The last chapter four will leave space for try to solve this status quo by offering examples which could be taken into consideration in further development of legislation. It will also present conditions under which TBM taken on ethnic and national basis might work best in practice.

Chapter one: Temporary balancing measures and equality

There are many puzzles about temporary balancing measures because one would think that this violates the principle of equality. The aim of this chapter is to give a conceptual framework of what temporary balancing measures constitute. However, the bottom line of this chapter is to give an explanation to the assertion that when properly understood, TBM is an effective way of ensuring genuine equality.

This chapter is divided into two main parts. While the first part presents the concept of equality in general and gives an explanation of what TBM has to do with it, the second part will take TBM one step further and look at TBM as a real response to the legacy of social disadvantages.

1.2. Formal equality

Formal equality is commonly known as “symmetrical”, “elementary” and “traditional equality”. It goes back to Aristotle's conception of justice which says that fairness requires consistency in treatment or “treating likes alike and unlikes unlike” (Fredman 2002). By looking at this notion, this statement actually means that equal people should be treated in the same way, while unequal people should be treated in a different way. Although this gives us a general idea of equality, actually the notion is more complex. For example, equal treatment can lead to basic structural inequalities and harmful consequences for individuals' further development (Fredman 2002). This is true because there is a danger that treating people the same may consequently mean treating some wrongly or perhaps perpetuating the already existing disadvantage.

This was the case of *D.H. and Others versus the Czech Republic* (Devroye 2009) when Romani children were treated equally with majority children, but who do not often speak the majority language. While doing an entry exam Romani children scored very low, which resulted in their placement into special schools where the level of education is much lower than in mainstream schools. This case was a landmark decision for the European Court of Human Rights when the court considered the nationhood pattern of discrimination.

Additionally, another limitation of formal equality is the need for a comparator. Here the question arises to whom should a person be compared and under what kind of conditions. Westen (1985) gives an explanation that when comparing two people, they should have qualities that are justifiable for equal treatment. Fredman (2002) further makes the argument that this can be problematic because a general universal individual to whom an individual is usually compared to is “white, male, Christian, able-bodied and heterosexual”. This problem can be illustrated by an example given by Arneson from the public sector. When the state uses the approach of formal equality this means that it is supporting employment by opening jobs exclusively to all social classes. Individuals are evaluated only on the basis of their qualification and abilities. The position then gets the most qualified candidate (2002). Fredman (2002) further argues that formal equality does not take into consideration the fact that people should be treated according to their differences. Possible negative effects of group characteristics are irrelevant.

Carol Bacchi (2004) also sees a limitation of formal equality in its approach. According to her, this approach is one that “rests on an individualistic premise which grounds a gender-blind and race-blind approach to policy” (132). This individualistic approach is grounded on the assumption which Bacchi further develops: “this equal treatment discourse continues to dominate and shape contemporary discussions of affirmative action despite the fact that in many places

there is explicit acknowledgement that ‘different’ treatment will be necessary in some situations in order to achieve equality” (132).

It is clear now that even though this concept is widespread, it suffers from many paradoxes and it is not enough to address the existing societal problems, which mean the social, economic and political reality of life. It is not sufficient to address the problems of inequalities and discrimination. Therefore, there is a need to overcome the traditional view of equality and introduce a substantive approach towards equality.

1.2 Substantive equality

Substantive equality as a different perspective on equality is known as “Equal Opportunity” (Bowie 1998), “Strong Equal Opportunity” (Pojman and Westmoreland 1997), and Relative Equality (Rae et al. 1989) or Moral Equality (Gosepath 2011). Substantive equality is the philosophical basis for accepting TBM. It differs on a fundamental level from the more traditional understanding of formal equality. As explained above, formal equality requires identical treatment based on qualification and merit that does not take into consideration historical, gender and social disadvantage of certain groups in society. Substantive equality, on the other hand, pays attention to the fact that some members of society are at a bigger disadvantage than the majority of society due to past or contemporary discriminatory processes. Substantive equality not only recognizes differences, but also provides disadvantaged members of society with remedies. Thus, having equal opportunities differs from having opportunities to access certain goods and services or reach these goods and services (Fredman, 11-13).

Lajčáková (2008) argues that substantive equality takes into consideration not only the qualification or merit, but also the fact that members of certain minorities are, due to former and /

or ongoing de facto discrimination, disadvantaged in comparison to those who belong to certain ethnic, racial or national majorities. The starting position of the majority is much stronger than for those who are members of certain minorities because of past or ongoing discrimination. From this position it is more difficult for these minorities to compete for a place in the labor market or in access to higher education. They may find themselves in a situation where they do not have sufficient access to education or to a minimum standard of living. They can be easily trapped into a vicious circle of disadvantage, which tends to multiply.

However, the application of a formal approach to equality in practice is not only insufficient to eliminate inequalities, but, on the contrary, may even assist in deepening inequality. Fredman (2002) further explains that the substantive basis of substantive equality is a principle of respect for human dignity. This requires that law enforcement improve, not worsen the situation of individuals.

All in all, equal treatment of substantive equality takes into consideration the different contexts and backgrounds of an individual in addition to an individual's situation and potential disadvantages. It takes into consideration the fact that a female job seeker who was brought up in a poor Roma settlement might have significantly lower chances to get a job than her peer who came from a nearby Slovak family. Because of her ethnicity, language or the poor economic and social conditions of her family, she might have been placed in a special school for disabled children as a minor. However, even though she gets the same education or qualification as her peers, she might face a significant risk of being rejected because she will be treated with prejudice by potential employers or companies. In addition, her chances are also lowered due to the gender stereotypes and female roles in poor Roma communities, many of which expect its members to establish families at an early age. Therefore, TBM is a tool which helps and gives a

chance to young Roma women to get quality education and a professional qualification, or at least partially eliminate the effect of widespread prejudices. Substantive equality is thus unlike formal equality which is actually blind towards current or former disadvantages and injustices.

To sum up, formal equality might work when all factors remain equal but giving the example of systematic disadvantages and discrimination, the substantive approach to equality gives the opportunity to correct existing social differences in income, power, and the other social benefits and by doing so there will be redistribution of resources in society. Equally important, in order to set the proper equality tools and measures, substantive equality is better understood from the perspective of “equality of opportunity” and “equality of results” and selecting one of these approaches determines the choice of the measures taken.

1.3.1 Equality of opportunity and equality of results

The approach to equality of results rejects identical treatment that may in practice reinforce inequality. Equality of results focuses on equitable redistribution of benefits. It requires equality of results, which means proportional representation of members of less privileged groups, such as women or minorities (Fredman 2002). This approach therefore advocates quite radical measures, such as quotas, in order to ensure proportional representation of disadvantaged groups. According to critics, this approach suppresses individual choice and may lead to social tensions and inter-group hostility (Bossuyt 2002). This is because by focusing on results, it does not necessarily lead to the removal of the structures that cause discrimination.

By defending TBM, Fredman (2002) argues that the more popular and less controversial approach to equality is equality of opportunity. Equality of opportunity is like a middle ground between formal equality and equality of results. According to Bossuyt (2002), proponents of

equality of opportunity believe that a formal approach to equality is again insufficient because true equality cannot be achieved if individuals begin from different starting positions. In contrast, the model of equality in the results disproportionately subordinates individual interests and choices in favor of utilitarian interest in order to secure certain results. Equality of opportunity is, on the other hand, a more individualistic approach. It aims to ensure justice for the individual, not the group. Equality of opportunity requires equal opportunities in access to employment, education and other social goods and services for all, and Bossuyt (2002, p.8) further explains that it “*secures the reduction of discrimination by eliminating/cleansing from the decision-making processes illegitimate considerations based on race, gender or ethnicity which have harmful consequences for individuals*”. This approach seeks to eliminate the factors that cause discrimination or assist in the maintenance of prohibited discrimination of certain groups. TBM are mainly focused on trainings and workshops to ensure that members of underprivileged groups have the ability to compete with the dominant group under the same conditions. In some cases, this positive action may also lead to a partial change of criteria in access to positions.

TBM do not constitute discrimination against the majority of the population. Their aim is to ensure equal opportunities and “equal chances at the beginning”. TBM elevate members of disadvantaged groups to the same starting line to achieve the same as the majority population. When everyone has secured equality of opportunities then fair assessment requires treatment according to individual abilities and merits.

Bossuyt further explains that according to left-wing critics, equality of opportunity unduly focuses on the position of individuals and at the same ignores the relative position of groups (2002). However, Fredman argues that eliminating or removing the barriers from the "start" does

not guarantee equality in results. At least in the methods, equality of opportunity appears to be a more acceptable approach in comparison with the model of equality in the results (2002).

I assume that the political and social situation in Slovakia is more open to the approach of equal opportunity. Even though that it is not a controversial sort of policy, provision of TBM is still at its beginning in Slovakia and the ongoing ambiguity about the nature of TBM is very significant. It would be too early to claim that the access to equality has its broad support even though that some of the TBM elements are already implemented which will be explained in chapter two.

1.3 Temporary balancing measures

TBM might be seemed as controversial topic because part of the controversy comes with the very broad nature of the concept. But the very broad concept can be comprehended from its definition and the scope it covers. Therefore, the following part will give an explanation of the definition and the scope of TBM.

The understanding of the term of TBM varies on the basis of countries, sectors and discriminatory grounds. There has been general terminological confusion about conceptual approaches dealing with possible measures such as positive action, affirmative action or TBM. Each of them has a different legal and societal background: positive action is connected to the European context, while affirmative action is more familiar to the USA and Canada (Krstic, 2003; De Vos, 2007) and TBM is more a human rights notion but the primary idea of this concept has similar objectives (such as to redress past injustices, remedy social/structural discrimination or create diversity (Bossuyt 2002)). All concepts are roughly equivalent but they all come from their own legal and societal backgrounds (De Vos, 2007). However, the creation of

diversity should not be an essential goal for the adoption of balancing measures. Rather, they should be providing rights to groups of people such as women, minorities, handicapped individuals or the elderly, who have been deprived of full participation in society. Such an approach which respects the individual's group identity is based on substantive understanding of equality (Young 1991). This treatment respects that an individual's group identity comes from a substantive understanding of equality and fundamental human rights – the protection of human dignity of every individual (Lajčáková, 2008: 6). In this paper I will use the term temporary balancing measures since it is used in most official documents in Slovakia, and it has a perception of neutrality because it does not carry any notion of discrimination.

Many scholars and lawyers have attempted to define TBM from different perspectives but there is still no clear universal applicable definition. According to Fraser (1995), TBM improves the access of members of disadvantaged groups into the existing social and economic structures. Under international law, they are most often commonly called "special measures". Likewise, Michel Rosenfeld (1991: 42) in his work quoting Greenawalt (1983), describes TBM as: ...*"a phrase that refers to attempts to bring members of underrepresented groups, usually groups that have suffered discrimination, into a higher degree of participation in some beneficial programs"*. Bhikhu Parekh shares a similar view on TBM, but using instead the term positive discrimination by describing it as a very well thought out and comprehensive program of action for disadvantage groups which involves numerous strategies to undertake the diverse but interrelated causes of their disadvantage situation. In addition, his definition includes the causes and effects of past disadvantages and the need for TBM.

Having considered the varying definitions, TBM can be framed as a common term of a broad range of measures which takes the past disadvantage and discrimination into account and

they are furthermore designed to combat the present de facto inequalities and therefore ensure the enjoyment of human dignity, security and development of human personality of the disadvantaged (Bacchi, 2004).

Therefore, for the scope of this paper I will use the definition given by Marc Bossuyt, special rapporteur for human rights protection in the UN Sub-Commission, who set the working definition for TBM saying that TBM constitutes: “...a coherent packet of measures, of a temporary character, aimed specifically at correcting the position of members of a target group in one or more aspects of their social life, in order to obtain effective equality” (Bossuyt 2002:3).

Such measures are directed at eliminating economic and social inequalities by more equitable redistribution of jobs, particularly in the labor market and in education. Therefore, TBM are most commonly adopted in the fields of employment and education, as well as in housing, health, and access to some services. TBM may in this case be adopted by actors such government bodies, state, municipal and private sectors.

TBM are often confused with the concept of positive discrimination. According to some commentators from international human rights agreements, the basic difference between these terms is relatively simple. TBM, in contrast to positive discrimination, does not discriminate disadvantaged groups at the expense of the majority. Measures such as a ramp for people with disabilities is a positive measure that does not discriminate against healthy people. Care and educational facilities such as nurseries and kindergartens for children help to eliminate discrimination in access for mothers to employment. Such measures cannot be considered discriminatory against men (Joseph et. al 2004). For this reason, Bossuyt (2002) suggests not using the term positive discrimination. The notion of positive discrimination is, according to him,

illogical. Discrimination is used exclusively to denote an arbitrary unfair or illegitimate distinction. Positive discrimination in his opinion is therefore a terminological contradiction.

The differentiation between positive discrimination and TBM is conceptually relatively uncomplicated. It is surprising that The Slovak Constitutional Court seemingly did not understand or respect the difference between these two notions, which was why the provision of TBM was limited for almost a decade in Slovakia from 2004 to 2013. This is one of the factors which overcomplicated the situation of TBM in Slovakia and contributed to its current stage.

Chapter two: Temporary Balancing Measures in Practice

One might think how this conceptualized framework of TBM work on the ground thus in order to understand the usefulness of TBM in promoting equality, the first part of this chapter will present several cases from the US and Romania in area of education and employment. Although the US is considered as the mother country of TBM and might be served in many cases as the best comparative example, I consider the case from Romania as more important because the TBM have been used there for many years with Roma minority. The second part will bring cases from Slovakia which demonstrates that certain policies have some elements of TBM so they are not at all new measures and therefore they should not be considered as controversial as it was in case of legislative adoption in Slovakia. This part will briefly mention measures with certain elements of TBM from communist regime in Slovakia and then the end will look at present TBM in Slovakia.

2.1 Effectiveness of Temporary Balancing Measures in Education

Beneficial practice and experience from abroad have shown that temporary balancing measures are an effective tool in creating a middle class of disadvantaged groups. One of the most comprehensive studies about affirmative action in US higher education – *The Shape of the River* by Bowen and Bok (1998), has yielded telling results. The study focused on the results of Afro-American and white students during and after studies at universities. One of the key findings showed that racially sensitive admissions criteria increased the number of Afro-American students graduating universities from 5,4% in 1960 to 15,4% in 1995. The number of Afro-Americans graduates in law universities increased from 1% in 1960 to 7,5% in 1995. According to the authors, these affirmative measures have brought a major increase of chance for

Afro-Americans to get prestigious and gainful jobs, which in turn helped to create a significant Afro-American middle class. In addition, the affirmative measures brought a fairer distribution of wealth and prestige among racial groups. The ethnicity factor in admission process was not automatically assigned; however, it was one of the factors which was taking into consideration in selecting students.

Another good example is from Romania, a country where the Ministry of Education employed affirmative action for Roma students. According to the study on affirmative action in Romania (Bojinca et al. 2009), the goal of implementing affirmative action in Romania was to provide equal chances and access to high quality education for marginalized and discriminated minorities, but more importantly to support Roma people's efforts in order to consolidate democratic, civic and cultural representation. Thus the reason for adopting affirmative action in Romania was connected with the history of Roma people in Romania. Therefore, the first order of the Ministry of Education (Order 3577/1998) did not clearly underline discrimination as the main problem, but rather stressed their history.¹

In the beginning of the 90s, the Department of Sociology at the University of Bucharest allocated ten places for Roma students and in 1998 extended this to forty students per year. Then the reserved places were expanded to 149 in all specializations at eight large state universities. A decree in 2000 allows the creation of two reserved places for Roma students in every class with a concrete number of places set by the State School Inspection which eventually made 611

¹ "Roma people are a group with a complex history, often dramatic, which the adepts of democracy cannot consider otherwise but with understanding, respect and availability of civil support. Our Roma co-citizens need educational support these days to build up a natural cultural and civic image, which may allow their integration in a democratic manner within the institutions of the democratic Romania. Under the shield of the European Council and other international bodies, a beneficial action is being deployed for the civil support of Roma people to help them consolidate the democratic civic and cultural representation they need, inclusively by way of positive discrimination. Considering these reasons, to support the efforts of Roma people to build up a qualified civic and cultural representation ..." (Order 3577/1998).

reserved places at forty-nine universities by 2011-2012. Students who are admitted under the policy of affirmative action must score five points out of ten and are free from paying tuition fees for the entire duration of their studies (Friedmen and Garaz, 2013).

However, the findings of the study (Bojinca et al. 2009) showed that 78 percent of beneficiaries in tertiary education would have enrolled even without the affirmative action. In the span of 2000-2006, approximately 1,420 university Roma students benefited from these measures, but it was still 54 times lower than the enrolment rate within the general population. The Romanian affirmative action might be considered to be successful also in increasing education rate in Roma families where higher education was almost absent. According to the study (Bojinca et al. 2009), only 6 percent of fathers and 3 percent of mothers had completed higher education themselves.

Furthermore, in terms of ethnic affiliation, more than half of the beneficiaries indicated pride in being Roma and 42 percent indicated that affirmative action made a considerable contribution in creating self-identification of role models for the Roma community as intellectuals and professionals. In such cases, they are more likely to go back to local Roma communities to perhaps become community leaders or they might facilitate communication between Non-Roma and Roma communities.

In terms of employment, during the period of collecting data, 81% of Roma graduates successfully found jobs. Out of this number, 42 percent worked in the public sector and 45 percent worked in the private sector. However, although this policy helps in creating a middle class, it is not without faults. The allocated places were not filled as only two-thirds of the reserved places were taken. This is due to administrative issues and the distribution of the places

as the demand is usually lower than the number of allocated places that continuously increases every year. According to the collected data, there is an imbalance between students coming from urban and rural areas. Only 20 percent of students came from the countryside, and only 17 percent of beneficiaries declare having Romani language as their mother tongue. The research also shows that even though improving qualification of Roma students helped in getting jobs, there is still ongoing ethnic discrimination.

2.2 Economic effectiveness of affirmative action in the US

Faye Crosby (2004) in her book examines the effectiveness of the US affirmative action from an economic perspective in employment by looking at the various researches done on this topic. She studies two forms of affirmative action, traditional – procurement programs and classical – Executive Order 11246. Procurement programs called “set-aside” was a government contract awarded without competition to a minority-owned business, once legal but it no longer, employed due to certain problems. In this study he evaluates several researches done on the effectiveness of this policy which showed that even though not all minority-owned business enjoyed success, the policy is in general considered to help minority businesses to obtain contracts and clients.

Furthermore, she continues that this policy not only created businesses, but also created jobs for ethnic minority workers. As Bates (1993) in his economic study documented, in twenty-eight metropolitan areas in the 1980s, many Black businesses flourished and helped to get employed minority workers in the urban areas. More than that, even more effective were those programs, which were running in the cities in which the mayor was Black. However, the economist, Marc Bendick (1990), argues that the success of affirmative action is not about bringing the business to

minority-owned or women-owned business, but rather the real success is when those businesses no longer need any economic shelter.

Additionally, more effective programs than procurement programs are, according to Crosby (2004), the hiring policies. Such a the policy called Executive Order 11246 was released in the US in 1965 by President Johnson and might be considered as a classical affirmative action. This policy determined that federal agencies and any firm that is above a certain size and does minimal business with federal government must have affirmative action plans.

Many economists who studyied the effectiveness of this policy came to the conclusion that it had steady and positive effects from its beginning in 1965 until the presidency of Ronald Regan in 1980. However, there was a small difference after 1980 because a change of presidency brought poor enforcement of policy and sanctions for noncompliance were not applied so the effectiveness decreased.

To demonstrate such an argument, Jonathan Leonard (1984) (in Crosby 2004, p.103), made a study on the employment effects of affirmative action. Leonard examined the records of 68,000 establishments in 1974 and 1980, with records on 16 million employees. All in all, among the total employers, between 1974 and 1980, the ratio of Black male earnings relative to White male earnings increased by 2.3 percent, from 0.684 to 0.700 and among the federal contractors, the percentage of employed people increased three times.

Crosby (2004, p.113) concludes that even though there are many reasonable people who have serious doubts about the economic effectiveness of affirmative action, yet the general consensus among economists and policy experts is that it has been effective. The affirmative action in the US has brought women and minorities more and better jobs, and it helped them to

earn higher wages. The success was not always constant but the overall record is good. Moreover, White men were not exposed to undue burden, nor has it cost companies much.

2.3 The overview of the temporary balancing measures initiatives in the public sector in Slovakia

The notion of TBM is not a totally unknown policy in Slovakia. There have already been several initiatives which might be called TBM (Čorba, et al.). Significant progress towards Roma minority relations came into being in 1948 and it might be said that it lasted for almost forty years during the communist regime. Due to the communist ideology of equality for all, there were several attempts to improve the situation of Roma in Slovakia. However, some of the measures are today controversial and are considered as violations of human rights (Jurová, 2003). One such measure was the adoption of the Act No. 74/1958 Coll. on the permanent settlement of migrating and partially migrating persons, which was nullified in Slovakia only in 2004 (in 1998 in the Czech Republic) in spite of its clearly racist nature. This law demonstrates that not every initiative which has good intentions to help a certain group of people might be considered affirmative action.

Similarly, the approach of the state in the 1950s and 1960s is today believed to be a policy of forced assimilation (Oravec, 2004). Even if this policy had a positive impact on the Roma community, it is in contradiction with minority rights because it did not respect and most likely even did not care about the positions and interests of the Roma community. Therefore, this aspect is important to take into consideration while creating any policy which will significantly change the situation of Roma and those policies which are made from majority positions should not be considered as a form of TBM.

In the 1970s and 1980s, there were even more intensive attempts at Roma integration into the majority which was mostly significant in education policy and led eventually to an increase of education in Roma communities (Kušnieriková, 2003). However, because of the above mentioned character of the assimilation policy, we cannot consider such a policy as a form of TBM.

Thus, the real space for the enforcement of TBM was opened up after the establishment of the democratic regime in the early nineties. The early post-revolution period, however, was marked by a significant deterioration of the situation of Roma in the Slovak society, which is a quite typical accompaniment during transition processes, but which unfortunately negatively impacted the most disadvantaged groups. Roma people were in fact among the first who lost their jobs. In addition to the worsening situation, there was the added fact of the absence of relevant data on the Roma population in Slovakia, which greatly hampered and still hampers any efforts to design and implement effective measures. Expansion of research and innovation projects with a focus on the specifics of the Roma came in the late nineties, from which actually relatively large attention is devoted to the field of education.

At present, it can be said that several projects are already running with elements of TBM in various areas. All the projects are formulated in the sense that does not focus on ethnicity but on socio-economic criteria, however, since a big proportion of Roma people fit to the criteria of policies, most of the time Roma receive them.

Significant element of TBM contains the position of teaching assistant in primary schools. The position of teaching assistant has been implemented since 2002 in the School Act² in 2002

² By 2010 there were 717 teaching assistants in primary schools (Statistical Yearbook - Institute of Information and

upon a motion by the Ministry of Education of the Slovak Republic within the application of program Support for the Roma minority in the area of education by definition: *“Teaching assistant, according to the requirements of the major teacher, is involved in the implementation of the school curriculum in kindergarten, elementary school and special schools by securing equal opportunities in education and training, overcoming the language, health, social or cultural barriers. Teaching assistant may also act in high schools when it comes to ensuring the education of students with disabilities”* (The School Act)³. However, the wording of the law does not specify that the teaching assistant has to work with Roma children in particular which is actually proven in practice. On the other hand, the position was created as a reflection of the specific needs of Roma children in order to remove any barriers which Roma children face upon entry to school.

Another example from the area of education can be illustrated by the measure called „zero class” (The School Act)⁴. It is not within nine years of compulsory education but it is an optional choice. Zero class is for children that even though reached school age but have not reached school readiness and/or come from socially disadvantaged environment might be placed to this class. This is the same case as teaching assistant as there is not specify that the provision from this measure is taken only by the members of certain ethnic group.

In a similar, but qualitatively very different means of support, are measures so-called social benefits that provide an advantage in relation to the state of deprivation. This is a measure based again on social not ethnic criteria, of which, however, given the economic situation it also benefits many Roma. It can be illustrated by the policy made by the Ministry of Labor, Social

Prognoses of Education - ÚIPŠ)

³ Amended by Act No. 408/2002 Coll.

⁴ Amended by Act No. 350/2008 Coll

Affairs and Family on the provision of a subsidy for meals and school equipment adopted as part of measures to mitigate the impact of welfare reform. This Ministry is the major proponent of the use of particular socio-economic criteria when dealing with Roma issues, which actually rightly points out that not all Roma, have to be helped by the state, and also that even many non-Roma families are in need of assistance as well as many Roma families. This approach might be considered positively since Slovak society tends to be more sympathetic with the poor much more easily than with ethnically defined groups. However, by adopting socio-economic criteria it is not possible to adequately eliminate inequality between Roma and Non-Roma in its various forms (weaker knowledge of the state language, different cultural norms, largely xenophobic attitudes of the majority population, structural and institutional racism, etc). Therefore, the provisions of TBM on ethnic and national basis might start to solve these issues.

By presenting all this cases, I wanted to point out that TBM work properly on the grounds and there is no need of ambiguity from the Slovak politicians and the Constitutional Court. In order to understand their concerns, the following chapter will give an explanation of the reasons which limited the provisions of TBM.

Chapter three: Legal and Policy Framework of Temporary Balancing Measures in Slovakia

This chapter will examine the legal and policy framework of TBM in Slovakia which I consider to be very important in order to understand the background of TBM in Slovakia. The state power for almost ten years did not clearly understand that the principle of respect for human dignity requires creating conditions for members of minority not only for an equal access to culture and language but also to eliminate social and economic inequalities. This requires not only prohibition of discrimination in the social and economic sphere but also to ensure de facto or substantive equality. As it was explained in the first chapter, generally accepted tool to compensate such inequalities is receiving TBM. Therefore, this chapter will explain the reasons why the TBM was and still is a controversial and not clearly understood policy by the legislators and policy makers. It will further examine whether the Slovak legal framework is hostile towards TBM or is more open. The end of this chapter will further present the current situation of TBM.

3.1 Legislative and Policy Context of Temporary Balancing Measures in Slovakia until 2013

The first time that Slovak politics came across the concept of temporary balancing measures was in 2003 when Slovakia adopted a document regarding Roma integration called “*Basic Positions in the Integration of Roma Communities in Slovakia*” (The Slovak Government Resolution 278/2003). The essence of this policy document was provisions of TBM on ethnic and socio-economic basis. By this document the government reacted to the enormous disproportion of Roma and Non-Roma people saying that TBM aims to help the Roma minority in overcoming dramatic social and economic disadvantages and to remove institutional discrimination.

Legislative framework for accessing the TBM in Slovakia was opened in 2004 by adopting the Anti-discrimination law which contained the provision of equal treatment in certain areas and protection against discrimination by explaining: “*With a view to ensuring full equality in practice and compliance with the principle of equal treatment, specific positive actions to prevent disadvantages linked to racial or ethnic origin may be adopted*”. But since its beginning, it has been tainted in that it is believed to constitute ‘positive discrimination’.

To make clear further elaboration of the TBM complications and the result of the Constitution Court in 2005, one should understand the irony of positive discrimination from the communist regime in the former Czechoslovakia. Jarábik (2003) says that positive discrimination has negative connotations for those generations who grew up in the communist regime because they had to watch situations when the communists gave their preferences to “their” people. That is why, such abuse of the concept of equality made by communists brought a general antipathy towards any preferential treatment in Slovakia.

Shortly after the adoption of the Anti-Discrimination law in 2004, Minister of Justice, Daniel Lipšic, a member of the Christian Democratic Movement (KDH), considered it unacceptable and argued that the TBM went against the Slovak Constitution (Pisárová, 2004). He referred to the provision in Article 12, Section 2 of the Constitution, which states: “*Fundamental rights and liberties are guaranteed on the territory of the Slovak Republic to all people regardless of their sex, race, color, language, faith and religion, political or other opinion, national or social origin, nationality or ethnic origin, wealth, gender, or other status. **No person can be harmed, given preference or discriminated on these grounds.***” At last, in 2005, the Constitutional Court ruled that the provision of the TBM in Article 7 of the law was unconstitutional and was therefore repealed (Dimitrova, Rhinard: 2005, 14).

Yet, in fact the Anti-discrimination law itself is an executive norm and explanatory regulation for implementation standards and interpretation of Article 12, Section 2 of the Constitution. And since it explicitly prohibits any preferential treatment, it could indicate that the preferential treatment of a certain group in Slovakia is unacceptable. However, this is a case only if we understand that the nature of such initiatives is a privilege or preferential treatment. But as was explained in the conceptual framework, the purpose of the whole concept is not to give someone preferential treatment, but to reach equality *de facto*, which is not always possible only by applying the principle of non-discrimination.

The decision of the Constitutional Court has brought chaos and uncertainty in accepting any integration policy regarding the Roma. It was not clear whether the target group of government and municipal policies can be regarded as belonging to a national minority. Public administration then turned to measures targeted at socially disadvantaged groups based on socio-economic criteria (Lajčáková, 2008), already illustrated by measures of teaching assistant or zero class. So the first attempt to accept the TBM failed predominantly due to clarity of aim, no elite support, and no ground support.

Very interesting in this regard is a counterargument which point out the failure of the Constitution itself, which spreads the idea of equality, but it is unable to effectively guarantee it because the members of a minority are confronted with discrimination in their everyday life. Another important argument from the Minister of Justice was that the law “degrades the human dignity and strengthens stereotypes of certain groups of people” which means that it would label the targeted group as inferior or less capable (Pisárová, 2004). Certainly, it is a serious reservation, which is, however, more related to the philosophy of the nature of TBM than with its constitutionality.

The most controversial in this debate was the question of acceptability of quotas as a means of TBM. Most of the experts on this issue disagreed with the minister's conviction of unconstitutionality, but they admitted that quotas are an unacceptable form of positive discrimination. As a legitimate form they referred to affirmative action (Oravec, 2004). This argumentation just proves that the terminology of TBM and its meaning were totally unclear for many experts and politicians which even overcomplicated the whole process of the adoption.

But then, later on, the government tried to reverse the problematic and inconclusive decision of the Constitutional Court by amending the Anti-discrimination law which would allow the adoption of TBM. Therefore, in 2008, the National Council of the Slovak Republic adopted the new regulation allowing the provision of TBM, which was aimed at “removing the forms of social and economic disadvantages as well as age and disability disadvantages in order to ensure equality in practice.”⁵ Such provision may be adopted under the Anti-Discrimination Act where there is a demonstrable inequality. They aim to reduce inequality and at the same time they are appropriate and necessary to achieve that objective. This amendment was also insufficient and absurd for further Roma integration because if a member of Roma community wanted to profit from such measures then a person would have to fit to all conditions of disadvantages such as social, economic, health and age.

By all this analysis of legislative and policy framework I wanted to point out one important aspect of the whole problem. Seemingly, the legislators had a main concern with recipients of TBM and clear defining policy on ethnic and national basis.

⁵ Section 8 of Act 85/2008, amending and supplementing Law no. 365/2004

3.2 The Current Situation of Temporary Balancing Measures in Slovakia

The above analysis chronologically described the problematic adaptation of the TBM in Slovakia from its beginning in 2004 until the amendment from 2008. However, the situation of the legislative framework of TBM was changed last year. Everything started with a letter from the European Commission saying that the transposition of EU directive 2004/113/ES was incorrect and that Slovakia had to acknowledge and re-evaluate the negative intention of the TBM. So the current government composed by social democrats in coalition took a different direction than their predecessors and propose to accept TBM including provision on the ethnic and national basis. Thus, in late February 2013, the Slovak Parliament passed an amendment to the existing anti-discrimination legislation which extends the power of those who provide the ‘Slovak-style’ of TBM, as well as the scope of those who benefit from them (Terenzani-Stanková, 2013). The amendment started to be in force from the 1st of April 2013, allows *“adopting the TBM by public authorities or private sector to secure equality of opportunities in practice and to ensure adherence to the principle of equal treatment, temporary balancing measures may be adopted to prevent disadvantages related to racial, ethnic, national, gender, age and handicap origin”* (Act no. 365/2004 Coll.).

According to the bill, TBM are measures that:

1. focus on removing or eliminating social and economic disadvantages by which members of disadvantaged groups are affected
2. help disadvantaged people to get decent access to employment, education, culture, and health care services

3. are directed to provide equal access to employment, education, health care services and housing by providing targeted preparation programs for members of disadvantaged groups or spreading information about these programs, or proving possibilities to apply for jobs or places in the education system.

This latest amendment which was this time prepared by the experts from fields other than politics, offers more possibilities in the process of Roma integration. The amendment clearly shows the drawbacks of the previous statute. The new articulation of the TBM has brought a better chance of enforcing equal treatments for Roma in Slovakia especially in connection with access to education and employment. Unfortunately, according to the report from Decade for Roma Inclusion Secretariat from 2013, this policy has no political backing, which means that none of the key high level officials promote its active implementation. In addition, the missing part of the amendment is actually how to proceed with further implementation.

The legislative framework finally after long time opens door to take provision of TBM on ethnic and national basis which is a crucial part of any integration policy targeted at Roma in Slovakia. However, as explained above legislation does not have a support from elite, nor concrete steps are included in legislation which would move the policy forward. Therefore, the next chapter will introduce and analyze the conditions under which the policy works best and concrete steps for legislation.

Chapter four: Analysis of Possible Solutions of Temporary Balancing Measures

As explained above, the current Slovak government took a different direction from the previous one and amended in 2013 the Anti-Discrimination law with the provision of TBM also on ethnic and national basis. But, still, in order to make the most from the amended law, the political will and support from elite is crucial step to move forward with this policy. On the other hand, even though that the amendment indentified the subject which would provide such provision, the further steps of implementation are missing. Therefore, the first part of this chapter will introduce the concrete steps which could legislation include and the second part will identify conditions under which this policy could work best in practice.

4.1 Recommendations for the Current Legislation

Fredman (2002) advises that since the goal of such policy is to promote equality, the possibility of taking these measures should have subjects who are the best placed to achieve this objective. The amendment identifies public authorities and private sector which I consider as operators who are best placed to support the provision of equality in practice. These subjects are also those who are legitimized for accepting TBM. When such decisions are made, there are crucial also types of TBM which the subject may take. Bossuyt (2002) adds that some forms of TBM are more effective than others and they depend on the context and political will to implement them. In addition we have to keep in mind that they must always comply with the principle of non-discrimination. The ensuing part will provide four types of TBM which will be illustrated by already running programs but also ideas for further considering.

Bossuyt (2002) divides TBM into three types:

1. *Affirmative or balancing mobilization* in which the aim is a quite aggressive support for the target group when through affirmative recruitment these groups are encouraged to apply for a job or a place in an educational institution. Such measures are trainings or preparation programs aimed to support target groups. In the Slovak context, this category can include the implementation of teaching assistants, and zero grades. In addition as recommendation for the future, this category can fit for instance a program preschool special module to help students in the successful inclusion into schools.

2. *Affirmative fairness* – the aim is to ensure effective and credible mechanisms for receiving complaints of discrimination or anchoring detailed internal rules on compliance. This can also include diagnostic tests for prevention, automatic placing of Roma children to schools for mentally disabled children which examine whether the placement was right or not.⁶

3. *Affirmative preference* – these are measures which take into account someone's ethnicity in granting or withholding of social goods, such as a job or a place in an educational institution. In order to satisfy the requirement of proportionality and necessity and to avoid automatic awarding points, it is important that ethnicity is not the only factor. The examples from the US and Romania demonstrate the use of this measure.

McCrudden (1996) added to affirmative mobilization and affirmative preferences also measures which eliminate forms of economic and social disadvantage, by which are

⁶ The problem is that many Roma children before enrolment to primary school are diagnosed as mentally disable and placed to “special schools” for mentally disable children. The problem behind this is that many Roma children are raised in socially disadvantaged environment with very low conditioned families, no pre-school education and without any knowledge of Slovak language. Then it usually turns out that repeated diagnosis shows that a child is completely normal.

disproportionately affected members of certain racial or ethnic groups. Such measures have their particular sense in situations where nationwide measures did not ensure equal opportunities in practice. In the case of the Roma minority in Slovakia, programs can be included social benefits provided by the state.

From the public sector, in addition to the government, it would be definitely a local government which has the competence to adopt and implement measures of the fourth type in particular. Furthermore, from private sector those are legal entities, in particular employers and schools that have the competence to promote equal opportunities in practice through the first three types of measures.

4.2 Conditions of Successful Temporary Balancing Measures in Practice

Every measure of TBM should have strictly defined temporariness, necessity and proportionality in order to not discriminate others, clear communication, endorsement from politics and officials, self-identification, active participation of Roma and last but not least collecting data on ethnic basis because in order for TBM address the policy then we have to clearly identify the problem.

The endorsement from the executive position is very important in order for many policies to be successful, including TBM. Such a success might be achieved by higher level of legitimacy which will bring needed resources to implement them. The survey of affirmative action officers in the US made by Berry (2004) showed that support from high-level officials was ranked as the main and the most important condition of successful affirmative action in the US.

Another crucial condition to the success of TBM is clear and persuasive communication about the goals, the mechanism and timing of TBM grounded with clarification. This should have the objectives of the measures and the time period for achieving the desired effects. Because without proper communication of arguments for having TBM in Slovakia, these policies might seem to be unjustifiably privileging Roma minority, so eventually this might lead to dissatisfaction in the society. Bojinca et al. (2009) noted this problem in their study about affirmative action in Romania. Even though the policy has been running for a couple of years, it still lacks the full clarification and grounds at the legislative level, as well as administrative level where a challenge is still present in terms of reaching Roma students with more social and economic disadvantages. This condition was also noted by Pratkanis and Turner (1996), who argue that organizations benefit from TBM by making clear the qualifying criteria for any position, as well as how well qualified all applicants are for the position. In addition, it must identify prior and continuing barriers of not exhausting all talent and show how the effects of TBM can take apart the barriers. The best communication is also when organizations emphasize benefits of no beneficiaries from TBM which often invoke social responsibilities. Sufficient communication is also emphasized by the study of three Arizona police forces, which stressed the importance of high level communication (Allen et al. 2003). Successful implementation of TBM depended on honest involvement of those in the front ranks, and an open dialogue between such people and policymakers.

In the case of the legislative definition of TBM, it is important to include the monitoring of TBM. For this reason, the state can have a use for institutions such as the Slovak National Center for Human Rights which is an umbrella for Anti-discrimination law, to monitor accepted measures in the public and private sector. The center might offer consultation and methodological

guidelines for people who may take measures in order to ensure that the measures were adequate. Preventing the misuse of TBM, the law could impose an obligation on the part of the monitoring of those who adopted such measures.

The legislation should be accurate also in the case of recipients who will be defined on ethnic, national or race origin. Slovak citizens' affiliation to an ethnic group or national minority is, according to the Slovak Constitution, based on self-identification. The implementation of TBM on the basis of ethnic or national origin should be the most respected individual freedom of expression belonging to a minority. There are several ways to deal with this requirement. A fundamental starting point is that TBM cannot be implemented without the approval of the group to which they are concerned. This requirement may be applied to concrete measures in two forms. Measures should be designed and implemented in practice with active participation of communities and members. In addition to this requirement, it is necessary to bear in mind that the choice of each individual to belong to a particular group is respected.

The fulfillment of both requirements is in the case of measures defined as affirmative mobilization quite simple. Preparation of retraining courses and preparatory courses should be done in consultation with members of the minorities. Whether someone is actually interested and has the potential to register for that depends on individual choice.

In the second case – affirmative fairness, which is not exclusively focused on a particular group, is the question of self-identification and is not relevant. The use of this mechanism in the case of misdoubt of discrimination is also based on individual choice.

In the case of affirmative preference it is more difficult to fulfill the criterion of self-identification. That is why the consent of targeted members of groups have to be given. However,

it can be done in several ways. For instance, advertisements for positions should have to include in the description or call for the position that preferential treatment will be given. Likewise the application, survey, curriculum vitae based on which the institution decides, should give an option to include or not the ethnic origin.

In the case of social and economic projects, which are probably the most spread in the context of the Roma minority in Slovakia, the most important will be again the question of active participation. The participation of the community will ensure that this particular community is in favor of the measures, agrees with them and is involved in their preparation and implementation.

Despite the fact that the approach of self-identification might seem to be problematic, in practice it can be assumed that the misuse of TBM will be more problematic and related benefits to non-members of minority. But since it has not been implemented yet and we do not know what the situation in practice will be this paper will not try to examine it. Apparently, practice will show what type of measure will be misused most. What can help avoid such a problem is another kind of criterion which is for instance mother tongue. However, this criterion might also not be the most appropriate in the case of the Roma minority in Slovakia for various reasons, for instance assimilation in the past and that is why many Roma people do not speak Romani language. Yet, it is too early to examine this hypothetical concern.

More importantly, the actual and more current problem in Slovakia is the issue of collecting data on an ethnic basis. Slovakia does not allow collecting data based on ethnicity. Any statistical data concerning ethnicity are made on a voluntary self-identification basis. So there are no accurate numbers of the total Roma population because in the last official census⁷

⁷ More information can be found: <http://portal.statistics.sk/files/tab-10.pdf>

only 2% declared Roma ethnicity, while non-official numbers talk about 8-10% (Vaňo, 2002). In this regard, if the TBM try to address the policy then we have to clearly identify the problem. Data collection is also necessary to identify the necessity and effectiveness of the adopted measures. Because equality of opportunity as such is quite difficult to measure, what can be done is to watch the results of certain measures which come from equality of opportunities. Collecting data is also necessity in elimination of discrimination so it is actually in accordance with international law (Lajčáková, 2008). But it would be beyond the scope of this paper to further elaborate this issue. However, it is important to know that if collecting data is in made with the consent of the investigated person and proper lessons on how the results will be used then it is in accordance with the principle of self-identification.

Additionally, it should not be forgotten that TBM might also be a “two-edged weapon”. Because unemployment is still high in Slovakia, to benefit one group in access to work can mean to disadvantage others. To benefit one group when there is a general lack of means it can again disadvantage others. The following aspects need to be thought through, and proceed with caution, especially in regions where unemployment concerns almost every social class and ethnic group.

It is also important to bring up the issue of stigmatization of the target group which is usually an argument which comes together with accepting TBM. The already mentioned study done by Bowen and Bok (1998) does not talk about stigmatization of Afro-American students stemming from affirmative action at prestigious universities. They argue that if it had been a truth that their career results would be worse than the results of those who studied at the lower quality universities with equally qualified white peers without any advantages in admission process. On the contrary, the research showed that the Afro-American alumni of prestigious universities had better and more successful careers than their peers from lower quality universities.

However, it might not be avoided the risk of potential derision and stigmatization by which Roma students would have to face it once. But I think it is not a relevant argument that the policy makers have to deal with once they decide whether this group will be finally empowered and will have access to prestige and power. Ultimately, the reason for accepting TBM is not only the spread of discrimination towards the Roma community, but also the recognition of past injustices such as forced assimilation during the period of Maria Teresa in the Austro-Hungarian Kingdom, the Roma holocaust, the forced assimilation in the Communist regime and involuntary sterilization of Romani women. This is why, once again is crucial to consult any future form of TBM with members of the targeted group, the Plenipotentiary office for Roma Community in Slovakia and Roma NGOs sector.

When designing TBM in Slovakia, it should not be forgotten that TBM do not need to be necessary targeted only at Roma from marginalized communities who are discriminated not only on ethnicity, but also by their socio-economic situation. For instance, TBM which will be taken by prestigious universities in Slovakia might be attractive and relevant for already “integrated” Roma who have managed to finish high school. As was mentioned already above, TBM as a policy might help to create a strong middle class of Roma and their gradual empowerment.

Conclusion

The concept of substantive equality and temporary balancing measures might be seemed as very controversial and complex because part of the controversy is related to its meaning and application. This is just until we understand the differences between traditional formal approach to equality and substantive approach to equality. While formal equality gives us the first step in non-discrimination, substantive equality goes little bit further and gives opportunities for disadvantaged groups in society that traditional one is unable. A practical tool of substantive equality is TBM which stem from this concept and aims to ensure substantive equality for all members of disadvantaged groups. Thus, TBM represents a standard tool for creating opportunities to participate equally in the labor market and the education system for disadvantaged groups. Therefore, I consider TBM as a very solid tool in creating any integration policy regarding Roma in Slovakia which according to the research for this paper is still a problematic and unclear issue.

The legislative and policy provision of TBM on ethnic and national basis was limited for almost a decade since the adoption of the Anti-discrimination law in 2004. However, everything was changed by the amendment of the Anti-discrimination law in 2013 which allows these provisions and moreover it determines the subjects of adopting these measures for recipients. This amendment might be considered as open door to any integration policy towards Roma minority in Slovakia. Nevertheless, after the amendment, there is still lack of any guidelines, action plan and concrete strategies. Above all, the political determination to put them into practice, which is in this regard very crucial, is at present very passive. The success of TBM relies also on institutional support during the implementation process which means creating,

introducing, monitoring and evaluating. By the engagement of the Slovak National Center for Human Right, this process could be possibly implementable. Furthermore, in order to respect constitutional principle of self-identification, the legislative definition of TBM on ethnic and national basis is not easy, therefore as the contribution to the existing legislation; this paper presents several types of TBM which identifies conditions under which TBM could be further developed and clearly defined.

The preliminary hypotheses of the research were following: it assumed that the lack of clarity of the meaning and applications of TBM were one of the burdens of limiting the TBM. Then it assumed that political determination and will to put them into practice was again one of the reasons of the limitation and the present status quo of the policy. Furthermore, the general confusing interpretation of the law by the Constitutional Court did not add the value of TBM. All the factors of difficulties around TBM were confirmed by analyzing relevant literature on concept of substantive equality and TBM by understanding the differences between formal and substantive equality. In addition, by analyzing relevant laws, policies, reports and newspapers about the issue around TBM revealed that even though there are ongoing policies carrying certain elements of TBM regarding Roma integration in Slovakia, the current legislation and policies still lack guidelines for further implementation.

Despite the fact that TBM might be concealed by controversy, it is a very important tool to achieve equal chances for all. In Slovakia there are vast disparities between chances available to the Slovak majority and chances available for a significant number for members of Roma minority. The presence of this disparity therefore justifies provision of TBM for Roma. The political preferences of the current leading party in the Slovak government do not predict reliance

on populism in Roma issue. TBM offer a decent basis for any policy aiming integration marginalized Roma communities which this paper attempted to demonstrate it.

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