25 C 192/2007 – 585
Case no.: 8107231252

[*Slovak national emblem*]

JUDGMENT
IN THE NAME OF THE SLOVAK REPUBLIC

The District Court for Prešov, sole Judge JUDr. Katarína Vorobelová presiding, in the legal matter of the plaintiffs – **1st**: ___; **2nd**: ___; **3rd**: ___; **4th**: ___; **5th**: ___; **6th**: ___; **7th**: ___; and **8th**: ___ – **represented by Mgr. Kristína Babiaková**, an attorney with registered office in Bratislava at Ul. 29. augusta no. 38, versus the defendants – **1st: The Town of Sabinov**, Námestie slobody 57; and **2nd: The Ministry of Construction and Regional Development of the Slovak Republic**, Prievozská 2/B, Bratislava 26 – **on violation of the principle of equal treatment**, has thus

d e c i d e d:

the 1st and 2nd defendants, in relations with the 1st through 8th plantiffs, **v i o l a t e d** the principle of equal treatment;

the 1st and 2nd defendants **are o b l i g a t e d**, jointly and severally, to compensate each of the 1st through 8th plaintiffs specifically for non-material damages in the sum of €1,000 within three days from this judgment entering into legal force;

in its excess portion, the petition is **d e n i e d**;

litigation expenses shall be decided upon via a separate judgment.

J u s t i f i c a t i o n

By means of their petition of 28.12.2008, the 1st through 8th plaintiffs requested that the court rule that, in relations with them, the 1st and 2nd defendants violated the principle of equal treatment emerging from Article 12 sections 1 and 2 of the Constitution of the Slovak Republic and from §5(1) and §5(2)(b) of Act no. 365/2004 Coll. on Equal Treatment in Several Fields and on Protection against Discrimination (hereinafter the "Anti-discrimination Act"), and that they simultaneously breached the defendants' rights to privacy guaranteed by Article 19 of the Constitution and by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In light of this breach, the plaintiffs demanded of the defendants that they jointly and severally rectify the unlawful situation by providing an autobus link between the Sabinov's town center and Severná Street in Sabinov five times per day, by providing an access road to Severná Street in Sabinov with two lanes and sidewalks on both sides, and by providing a shop with basic goods for daily consumption on Severná Street in Sabinov. The 1st and 2nd defendants would also be obligated jointly and severally to rectify the unlawful

situation by providing for the plaintiffs an overpass or underpass for the roadway link with the Town of Sabinov to the planned 1/68 Sabinov bypass, the shifting of the road on the day of opening of the 1/68 Sabinov bypass and the shifting of the road into operations. The plaintiffs also demanded that the defendants, jointly and severally, pay each of them non-monetary compensation in the amount of SKK 100,000.00.

The plaintiffs substantiated their petition by showing that they lived as tenants in dwellings on Námestie slobody in Sabinov. In June 2006, these residents were relocated from these dwellings to dwellings of a lower standard on Severná Street in Sabinov in an area known as Telek. The 1st defendant informed them that they would not be able to live in the dwellings where they had resided to date and that they would be moved to the fringe of the town where new homes were being erected for them, with that if they did not consent, they would be thrown out on the street. In light of this fact, the plaintiffs signed an agreement to the terms of a future lease to a council dwelling of a lower standard. This agreement gave the terms of the future lease and also the terms for the conduct of work on the erection of lower-standard dwellings on Severná Street in Sabinov.

The defendants did not agree with the complaint.

The court conducted an examination by taking testimony from the parties to the proceeding and by examining: an agreement of 1.8.1984 on the handover and acceptance of a dwelling between the Sabinov Municipal Housing Authority and the 2nd defendant; a lease contract between the Town of Sabinov and the 2nd defendant dated 29.6.2007; the minutes record for handover of a dwelling at Námestie slobody no. ___ in Sabinov; a letter from the 3rd and 4th plaintiffs dated 20.7.2005; the lease contracts of the other plaintiffs with the Municipal Housing Authority and/or the Town of Sabinov; a report from a conference of the regional government published on 30.12.2005 and focusing on the construction of lower-standard rental dwellings; statements from the respondents to the petition; the magazine *Program for Social Integration of the Roma*, published by the Town of Sabinov, issue no. 31 of 12.4.2007 and issue no. 61 of 30.8.2008; Decree no. V-1/2004 of 23.12.2004 from the Ministry of Construction and Regional Development of the Slovak Republic on the provision of subsidies for the development of housing; Directive no. 2/2004 of the Ministry of Construction and Regional Development of the Slovak Republic, by means of which rules were set for the provision of subsidies for the purchasing of rental dwellings; the full wording of the Town of Sabinov's generally-binding regulation no. 3/2006 as amended by generally-binding regulation no. 2/2007; evidentiary papers for the calculation of payments for use of the dwellings by the plaintiffs; the agreements on dwelling lease termination between the Town of Sabinov and the plaintiffs from June 2005; a decision of the Town of Sabinov as the appurtenant building authority dated 12.10.2005; the plaintiffs' lease termination notices; an application for provision of a subsidy for procurement of rental dwellings dated 24.2.2005; a building permit of the Municipality of Ražňany dated 23.2.2005; the plaintiffs' response of 6.6.2008 to the defendants' statements; a building permit of the Town of Sabinov dated 18.2.2008; information from the 2nd defendant on the provision of subsidies for the procurement of rental dwellings and related technical facilities for

purposes of this proceeding dated 4.9.2008; a contract of mandate between the Town of Sabinov and Sabyt s.r.o., Sabinov, dated 5.2.2003 as well as annexes 1 through 3 to this contract; the minutes of the meeting of the Town Council in Sabinov of 26.9.1996; a petition against the construction of new Roma dwellings in the Husí hrb area; the minutes of the proceedings of the Town Council of 4.9.2003; the minutes from the closing meeting on the timetable of the Town's tasks to resolve the problem of integrating the Roma dated 11.10.2004; the minutes from a meeting of the Town Council dated 24.2.2005; the testimony of witnesses Ing. Peter Molčan, Anna Bagiová, Jaroslav Falata and Anna Karnišová; a decision of the Town of Sabinov from 16.9.2008 on permitting the use of the structure of a multi-purpose building for the 1st phase of commercial operations; the withdrawals of motions at the inception of proceedings in the files of this court (file nos. 15 C 244/07, 12 C 241/07 and 11 C 241/07); an agreement on out-of-court settlement of a tenancy dispute regarding one-room dwelling no. 1 at Námestie slobody no. 43 dated 27.8.2007; the records of meetings on 7.8.2006 and 28.8.2006; an evidentiary letter from the development program for support of housing construction dated 12.7.2006; the decision of the Municipality of Ražňany on permitting the use of a structure in the Telek area; a security agreement concluded between the Town of Sabinov and the Ministry of Construction and Regional Development dated 10.8.2007; a partial extract from Title Deed no. 2214 in the cadastral territory of Sabinov; a contract for work between the Town of Sabinov as customer and EKO SVIP s.r.o. Sabinov as supplier from 25.2.2005; a copy of the cadastral map for the Town of Sabinov; an extract from Title Deed no. 3004 in the cadastral territory of Sabinov; a copy of plat book insert no. 2575; as well as other file materials, and found the following factual state:

Until 31.5.2006, the 1st and 2nd plaintiffs were joint tenants, as spouses, to a dwelling at Námestie slobody no. ___ in Sabinov. The subject dwelling was assigned to them on the basis of a Decision on Assignment of Dwelling by the former Town National Committee in Sabinov dated 19.6.1984. On 29.6.2005, the lessor Town of Sabinov and the 2nd complainant ___ concluded an agreement on cessation of lease to a dwelling according to §710(1) of the Civil Code. According to this agreement, the lease to the original dwelling at Námestie slobody no. ___ in Sabinov shall cease upon the conclusion of a contract between the lessor and the lessee for lease of a council dwelling in a newly-erected residential building in the Telek area. On 24.2.2006, the 1st and 2nd plaintiffs were delivered a lease termination notice for the subject dwelling under §711(1)(e) of the Civil Code. A lease contract was concluded on 29.6.2006 between the Town of Sabinov as lessor and ___ as the tenants. The subject of lease was dwelling no. ___ of the second category, with an area of 50 m^2 in building no. ___ at Severná Street no. ___ in Sabinov. According to the plaintiffs' own statements, they had for a long time duly and regularly paid the rent and fees for services connected with occupancy. However, when they learned that they would be moved to the new Telek area, they partly refused to pay the rent and the fees for services provided with the use of the dwelling. The 1st defendant showed that on 31.12.2007 it had record of an account receivable from the 1st and 2nd plaintiffs in the amount of SKK 10,620.00 for the local charge for communal and minor construction rubbish disposal.

Until 31.5.2006, the 3rd and 4th plaintiffs, as spouses, were joint tenants of a dwelling at Námestie slobody no. 71 in Sabinov on the basis of a lease contract with the Sabinov Municipal Housing Authority dated 1.6.1994. The 3rd and 4th plaintiffs duly and regularly paid the rent and fees for services connected with occupancy. The Town shown no debt owing from them in connection with the lease or with fees for services connected with occupancy, nor for local charges for communal and minor construction rubbish disposal. On 24.2.206, the 3rd and 4th plaintiffs were delivered a lease termination notice for the subject dwelling according to §711(1)(e) of the Civil Code, with that the lease to the dwelling would terminate on 31.5.2006. The 3rd and 4th plaintiffs signed an agreement on the terms of a future lease to a municipal dwelling of a lower standard, but they wished to withdraw from the agreement via a notice dated 20.7.2005, which they delivered to the Town Hall in Sabinov for the reason that the resolution offered did not suit them. For this reason, they did not work off any of the necessary portion of costs for the dwelling. At present, the 3rd and 4th plaintiffs are joint tenants of dwelling no. ___ of the second category, with an area of 50 m2, in building no. 1991 at Severná Street no. ___ in Sabinov. Thenceforward, they are paying the rent and the fees for services connected with the use of this dwelling duly and on time.

Until 31.5.2006, the 5th and 6th plaintiffs, as spouses, were joint tenants of a dwelling at Námestie slobody no. ___ in Sabinov based on a lease contract dated 1.7.1994. The lease was concluded for an indefinite period. The floor area of the subject dwelling was 69 m2. On 24.2.2006, a lease termination notice for the subject dwelling was delivered to the 5th and 6th plaintiffs according to §711(1)(e) of the Civil Code, with that the notice period would expire on 31.5.2006. At present, the 5th and 6th plaintiffs are tenants of dwelling no. ___, of the second category and with an area of 50 m2, in building no. ___ at Severná Street no. ___ in Sabinov. A lease contract was concluded, just as with the other plaintiffs, for a fixed period of one year with the option to extend for another year. The 1st defendant shows an account receivable owing from the 5th and 6th plaintiffs in the amount of SKK 16,210.00 for the local charge for community and minor construction rubbish removal.

Until 31.5.2006, the 7th and 8th plaintiffs, as spouses, were joint tenants of a dwelling at Námestie slobody no. ___ in Sabinov on the basis of a lease contract dated 8.12.1993. The lease contract was concluded for a fixed period through 8.12.1994. The 7th and 8th defendants utilized the subject dwelling also after the passage of this period. On 24.2.2006, the 7th and 8th defendants were delivered a lease termination notice for the subject dwelling according to §711(1)(e) of the Civil Code. As of 31.12.2007, the 1st defendant had record of an account receivable owning from the 7th and 8th defendants in the amount of SKK 3,140.00 for the local charge for communal and minor construction rubbish removal. On 29.6.2007, the 1st defendant and the 7th and 8th plaintiffs concluded a lease contract by means of which the 7th and 8th defendants became the tenants of dwelling no. ___, of the second category and with an area of 50 m2, in building no. ___ at Severná Street no. ___ in Sabinov.

In testimony, the 1st and 2nd defendants stated that they lived on Námestie slobody for 22 years. They duly paid for the dwelling where they were tenants. Only later when

they learned that they would be relocated did they stop paying for the dwelling. There thus arose against them a debt in the amount of some SKK 10,000. They are not satisfied in the dwelling where they are living at present. The neighborhood has not been completed, even though they were promised that additional infrastructure would be built. They had properly furnished the dwelling on Námestie slobody, and had themselves refitted the bathroom and hallway. They stated that pressure was applied to them from the Town Hall to sign the new lease contract, because if they did not then they would be evicted from the dwelling.

The 3rd and 4th plaintiffs stated that they did not consent to the relocation to the Telek area. In light of the fact, however, that they would not lose housing, they ultimately did consent. In the past they had applied for assignment of a rental dwelling in other areas as well, but this was not approved since they do not have sufficient income. The other plaintiffs also testified similarly.

Lease termination notices were delivered to the 1st through 8th plaintiffs by Sabyt s.r.o. Sabinov, which was a mandatary based on a contract of mandate dated 5.2.2003 concluded with the 1st defendant. On the basis of this contract, in addition to other activities, there was agreed also the administration of the buildings, dwellings and non-residential facilities shown in annex no. 1 to that contract, as well as the leasing of the administered dwellings and non-residential facilities.

With regards to the tenancy relationship, the plaintiffs stated that according to the provisions of §676(2) of the Civil Code in force until 31.8.2001, in the event that they had an agreed-upon lease contract for a fixed period, this would be extended by a further year (though if a lease for a shorter period were agreed to, for that period) if no navrh na vydanie veciXXX or to vacate the premises was submitted. For this reason, the individual plaintiffs' lease contracts were extended for fixed periods. After this date (from 1.9.2001), in accordance with the provisions of §686(2) of the Civil Code, if a lease term is not agreed upon it is assumed that a lease contract was concluded for an indefinite term. From this provision, the plaintiffs abstract the fact that their tenancy relationship was agreed upon for an indefinite period. With regard to the lease termination notices, the plaintiffs stated that they did not receive lease termination notices, though the 1st defendant later submitted copies of delivery advice documents which corresponded with the originals as well as the individual notices themselves, whereupon the plaintiffs confirmed that these notices were delivered to them and that the signatures on the delivery advices were the signatures of their own hands. They received the lease termination notices in conformance with §711(1)(e) of the Civil Code.

In their statements, the plaintiffs said that only Roma were relocated to the Telek area. Because of this, in their opinion, their segregation occurred, which is one of the manifestations of discrimination when it concerns the severance of a certain group from social relations, its isolation or physical separation. Segregation also marks the process of settlement and the settlement of people with social and other like characteristics. Segregation may manifest itself in various spheres, such as housing, working relations and social functions. In the plaintiffs' opinion, the Town was acting discriminatorily and

in a manner promoting segregation when it created a community outside the Town in which only Roma people live and in which it offers housing only to Roma people. The Town labels the construction of dwellings in the Telek area as the construction of dwellings and resolution of the housing situation for inadaptable citizens and non-payers. The Town did not relocate white-complexioned residents to this area, even though there are non-payers and inadaptable persons among them.

With regard to liability for the 2nd defendant, the plaintiffs held that the Ministry violated the provisions of the ban on discrimination in that, in terms of Decree no. V-1/2004 of the Ministry of Construction and Regional Development on provision of subsidies for the development of housing, it provided the Town of Sabinov a subsidy for 80% of authorized expenses for the construction in the Telek area. From the documentation submitted by the Town of Sabinov, the 2nd defendant had to have known where was the given location for the construction of new rental council dwellings which it was to carry out. From the siting of this area it had to have been clear that this would deepen the spatial and social segregation of the Roma community. The Ministry itself worked up a long-term housing concept for marginalized population groups and a model for the financing thereof, in which it states that the siting of the construction must not deepen spatial or social segregation but must be a means of integrating the population of the affected community. This is measurable by the distance from the municipality and by access to public services utilized in common by the majority and minority community in the municipality. In the provision of subsidies for constructing lower-standard dwellings, that question, with regards to such type of construction being often carried out to resolve housing questions for Roma people, should have been investigated as one of the basic conditions for providing such type of subsidy. The Ministry, as the 2nd defendant, knew and had to scrutinize where the planned construction is located and should have assumed also that members of marginalized groups would be moved into these buildings. It is necessary to point out that disposing of state funds which are used for the creation of a concept which clearly condemns segregation and which are, on the other hand, used by this very same subject as a subsidy for the construction of buildings supporting segregation is wasteful and discriminatory. In this situation, in conformance with §2(3), the Ministry should have rejected the proposed location as generative of segregation. Such a step, according to the plaintiffs, in light of government policy as well as that of the Ministry itself is not only expected but of necessity demanded in the interest of adhering to the principle of equal treatment. The Ministry, however, repeatedly supported the construction of lower-standard dwellings at Telek, whereby it violated this principle and did not take any steps to protect against segregation in the Town of Sabinov.

According to §11(2) of the Anti-discrimination Act, the accused is obligated to show that it did not violate the principle of equal treatment if the complainant informs the court of facts from which it might be reasonably concluded that there occurred a violation of the principle of equal treatment.

In this proceeding, the court held that the plaintiffs informed the court of sufficient facts from which it was possible to reasonably conclude that a violation of the principle of equal treatment occurred. Based upon this, there occurred an inversion of the

evidentiary burden whereby it was upon the 1st and 2nd defendants to show that they did not violate the principle of equal treatment.

It its statements, the 1st defendant moved to dismiss the petition, saying that the Town of Sabinov has an elaborated program for the social integration of Roma people, not for their segregation. The Town stated that, on the contrary, a majority part of the population might take exception to a violation of the principle of equal treatment, owing to the heightened attention which is devoted to the Roma population and their problems. According to the 1st defendant's statements, 1,675 Roma residents live in the Town, which is 13.6% of the total number of residents. The plaintiffs' assertion of intentional segregation is misleading since 265 people live on Severná Street, which is 15.8% of the total number of Roma. The other Roma residents live on Moyzesova street (495 people) and Jakubovanská street (497 people), and the remaining portion on a further 14 streets of the Town, among the majority population. This, according to statistics submitted by the 1st defendant, is 419 people.

In 2004 the Town had a program for Roma integration worked up. Participants in its creation included working groups made up of delegates of the Town Council, members of commissions, employees of the Town's local government, representatives of political parties and movements, civic associations and schools. The fulfillment of the program is monitored on an ongoing basis at the Town Council level. To demonstrate its claims, the Town submitted *Program for Social Integration of the Roma* magazines to the court. In issue 20 of October 2004 on the 7th page of this program (pg. 144), it is stated in the "Housing" chapter that it is the task of the Town Council to adopt a proposal for a site near Telek for the first construction of Roma dwellings, for approval by the Town Council. The deadline is December 2004, and the responsible party is the head of the building department. This is similarly given in other issues of this magazine published by the Town of Sabinov, the 1st defendant.

According to statements from the 1st defendant, the Town never adopted the principle that it was creating a Roma settlement in the Telek area, as is common in a majority of areas in Slovakia with Roma settlements. The program takes account of the decentralization of residential construction and the growing part of the Town at Telek is only one portion of this construction. Where the additional areas might be, the 1st defendant did not state. The Telek area was selected for the reason that after development it would link to an existing area in which a large portion of the Town's Roma population live and which has its own cultural/historic tradition. Its advantage, as compared with other areas, is the accessibility of civic amenities. Here, there is the opportunity to acquire parcels for individual residential construction, which might have been motivating especially for the young, and this concept was approved by the Roma themselves who participated in the resolution of this matter. Later, Town representatives as well as witness Peter Molčan, as Mayor of the Town of Sabinov, stated that this area was also selected for the reason that the parcels upon which the new dwellings in the Telek area were to be built were under Town ownership.

Severná Street is perceived as a new part of the Town. The construction of local roadways, technical infrastructure such as water mains, sewer lines, public lighting, rubbish removal and winter maintenance of access road have been provided for in this part of the Town.

From the minutes of the meeting of the Town Council of 4.9.2003, the court found that on the agenda also were reporting on an appraisal of a study of an alternative housing solution for non-payers and inadaptable citizens, and a tender evaluation. Material was also attached to these minutes regarding resolving the housing problems for non-payers and inadaptable citizens, which laid out four potential areas for the newly-proposed area to be built up: Bujačí dol, Tehelňa, Husí hrb and Langavendy.

According to this study, Tehelňa has an area of 3.7 ha, property parcel no. 2145/2 in the Sabinov cadastral territory. The capacity of the area is counted as 54 residential units and there is here the potential opportunity for expanding the settlement to the west and north out of the defined area. The following were assessed as disadvantages: the separation of a given social group of residents, long distance from the center of the Town and from current Roma settlements, and lack of acceptability for an 80% subsidy from structural funds.

The Husí hrb site has an area of 3 ha plus approximately 16 ares. The area is set for the first phase of construction. Initially, 48 dwelling units were planned, with the potential of expanding up to between 60 and 100 units. This area was in conformance with the Town planning scheme.

For Bujačí dol, no study was conducted; only advantages and disadvantages were evaluated. The area was an acceptable solution for most of the majority population. There should have been excellent living conditions there for a selected social group of residents, and another advantage was the area's large capacity in relation to the possibility of the build-up of residential structures. The disadvantages of this area were: great commuting distance from the built-up area, increased expenses for building technical infrastructure, the utter separation of the residents and moderately uneven terrain with sporadic, perennial undergrowth.

The Langavendy area (now called Telek), about 3.5 ha in area, was set for the first phase of construction. This area was also in conformance with the Town planning scheme. There was capacity for 12 dwelling units plus a further 48 with the possibility of increasing this by double or more. In this study, neither advantages nor disadvantages for the given solution were set forth by the 1st defendant.

In its statements, the 1st defendant compared the Telek area with Svätojánske pole, where the Town offers parcels for sale at SKK 350.00 per m2 for individual dwelling construction, while at the Telek area this is SKK 30.00 per m2. The Svätojánske pole area is farther from the Town's central zone and civic amenities than is the Telek area. None of the Roma residents expressed interest in purchasing property in the Svätojánske pole area.

With regard to the civic amenities, the defendant stated that the Svätojánske pole area, as well as the other areas in the Town, has worse or equal access to basic civic amenities as do residents in the Telek area, that is, from Severná Street. With regard to mass transit, the 1st defendant stated that local mass transit has not been introduced in the Town and that no introduction thereof is planned in the coming years. The 1st defendant stated that the institution of school bus lines for children from Severná Street is itself discriminatory against members of the majority population from the area who are equally or farther situated from the Town center than residents of Severná Street, where there are no such lines.

With regard to the construction of a shop with basic goods, the Town Council, through its act no. 61 of 30.8.2007, approved the sale of parcels amounting to 120 m2 to a Roma couple for the construction of such a shop, with that they will provide for the construction of this building within two years from the signing of the contract. At the time of filing of the statements, they had applied for the issuance of a building permit. In the course of the proceeding, the 1st defendant submitted photographic documentation on the construction of this building. The 1st defendant compared the accessibility of other shops with commercial areas or areas farther from the center of the Town, stating that accessibility is equal or comparable.

With regard to the access road from Severná Street, the 1st defendant stated that this is worked out in the first phase as a provisional, single-lane service road with C3-class lay-bys. Following the completion of the residential construction and resolution of the planned goal of a bypass, the Town will work out a definitive access road from the consolidated high school. As for how the linkage to the planned access to the 1st-class road 1/68 (which now leads directly through the central zone of the Town and the traffic capacity of which is already exceeded) will be resolved, it is now too early to tell. With regard to the plaintiffs' demand for construction of an overpass or underpass, the 1st defendant stated that it cannot plan to build the bypass and cannot provide for the construction of such an overpass or underpass, because this is not within its competence. Project documentation is being worked up by Dopravoprojekt, a.s., Bratislava. If the construction shall be decided upon, the investor will be Slovenská správa ciest, Bratislava. On this matter, the Town will only express an opinion. According to the 1st defendant, the plaintiffs' claims that the Town, by the construction of the bypass, is artificially trying to separate the minority from the majority, is unqualified and mistaken.

The 1st defendant further stated that although the plaintiffs have certain claims against them, the plaintiffs themselves are not fulfilling their obligations. Other than the 3rd and 4th plaintiffs, the other plaintiffs are not meeting their obligation set by law and such as is given above, as of 31.12.2007. For the 1st, 2nd, 5th, 6th, 7th and 8th defendants, the Town shows arrearages on local charges for communal and minor construction rubbish removal. They did not have arrearages for rent.

Regarding the construction of the dwellings on Severná Street, the defendant stated that, just like other municipalities, it took advantage of the opportunity to apply for

the provision of a subsidy for the acquisition of lower-standard rental dwellings to provide housing for town residents whose income opportunities do not enable them to or do not guarantee they will meet obligations connected with leasing a rental dwelling of the ordinary standard. For this, it had to meet all of the requirements stipulated by relevant regulations, which also specify the standard for equipping the dwellings. The council rental dwellings which were leased to the complainants fully corresponded to this standard. Witness Peter Molčan, Mayor of the Town of Sabinov and thus the 1st defendant, stated in his testimony that the dwellings were also provided to the plaintiffs for the reason that they had received notice under §711(1)(e), and thus they were substitute dwellings.

The 1st defendant stated that the majority of the Town's residents of Roma origin as well as the plaintiffs are still living in the past, when they would be allocated residences. However, in the defendant's opinion, the Town has neither the obligation to allocate nor to procure dwellings. According to §4(3)(j) of Act no. 369/90 Coll. on Municipalities, a municipality shall cooperate in creating suitable conditions for housing. What this means in practice is that it provides and approves a program for housing development, prepares the area for the construction of dwellings and, after their construction, provides for its further governmental functions in the relevant area. The plaintiffs lived in dwellings on Námestie slobody, which in 1993 was declared a historical zone. As the owner of them, there did not arise on the part of the Town a legal obligation to transfer dwellings or the residential places in which they were situated to the personal ownership of their tenants under Act no. 182/93 Coll. on the Ownership of Dwellings and Non-residential Facilities, as amended, since this Act regulated the method and conditions for obtaining ownership of dwellings in apartment buildings. According to the Act on Municipalities and Act no. 138/91 Coll. on Municipal Property, as amended, the Town is obligated to make use of and to maintain its property for the reason that, over the course of time, many dwellings, sometimes by means of the occupancy of individual tenants, fell into very bad condition which demanded their unavoidable reconstruction.

The plaintiffs' claims that the defendant and/or its staff threatened them with eviction to the streets or that their rental relationship with their then-current dwellings would be terminated was deemed a falsehood by the 1st defendant. The plaintiffs' claims were also contradicted by witnesses employed with Sabinov's Town Hall.

According to the 1st defendant, the plaintiffs as well as other residents of Námestie slobody were urged at repeated meetings that if they did not want the offered rental dwellings, they could resolve their housing questions in a different fashion. Severná Street, where the plaintiffs are currently living, thus need not have been be a final solution for any of the complainants. If they have the possibility to create better housing conditions, the Town would only welcome this, since young Roma from other families especially are interested in residences on Severná Street.

The 1st defendant stated that demanding intangible damages from the Town is a provocation against other Town residents, saying that in place of a single dwelling, the

Town assigned the 1st, 2nd, 7th and 8th plaintiffs two dwellings in order to improve their housing conditions, given the high number of people who were living in a single dwelling on Námestie slobody. The 3rd and 4th plaintiffs, who were inhabiting a dwelling measuring 29 m2, were offered a substitute dwelling by the town measuring 50 m2. The 1st defendant submitted a summary of the dimensions and numbers of persons living in the plaintiffs' dwellings. For the 5th and 6th plaintiffs, the size of the dwelling was 69.5 m2. This was a single-room dwelling, and the number of people living in it was 13. For the 1st and 2nd plaintiffs, theirs was a two-room dwelling measuring 71 m2, they were assigned two dwellings and the number of resident persons was 10. For the 3rd and 4th plaintiffs, their one-room dwelling measured 29.4 m2 and the number of residents was nine. The 7th and 8th defendants had 81.02 m2 and were assigned two dwellings, since 17 people lived in the original dwelling.

In its statements, the 1st defendant said that after examining the technical condition of the buildings in which the plaintiffs' dwellings were located and the financial expenditures which repairs to them would require, the Town decided to put these buildings on sale in a public auction. In the terms for the public sale, which were submitted by the 1st defendant, it was stated that parties interested in purchasing a subject building on Námestie slobody would have to submit a timetable for reconstruction and rebuilding work to the multi-purpose building in conformance with the building code, with that the future owners would have to carry out reconstruction of the buildings in the shortest period possible. Despite the poor condition of these buildings, there was great interest in purchasing them. None of the plaintiffs, however, applied to purchase a building. Following an evaluation of the auction, the Town Council approved the sale of the buildings to the bidders who won the contest. The court ascertained from a decision of the Town of Sabinov (as the competent building authority) of 12.10.2005, that the Town mandated that the administrator of the residential buildings, Sabyt s.r.o. Sabinov, carry out essential repairs to the buildings' structures, consisting of roof repairs and unavoidable structural modifications owing to the condition of the residential building. On the basis of this decision, the residential building administrator had to give notice to the individual tenants according to §711(1)(e). The building permit for the execution of this work was not submitted to the court. The construction work was being conducted by the subsequent owners of the subject properties because the Town did not have sufficient funds for carrying out these repairs.

With regards to Ms. ___, the non-Roma tenant, who the plaintiffs stated was not moved to Telek because she is not of Roma origin, the 1st defendant stated that it did not assign a dwelling on Severná Street to this individual because she by herself was making use of a 34.7 m2 dwelling, while the offered substitute dwelling for her had 15.7 m2 of floor space. Contrarily, the assignment of a 50 m2 dwelling at Telek would have been unfairly advantageous to her. Insofar as she is a person who might be called inadaptable and because she had already wrecked a further two dwellings, the Town did not want to assign a new dwelling to her. This individual, though she was registered into the dwelling together with her husband and son, has not lived with them for a long time.

From the minutes of the meeting of the Sabinov Town Council on 26.9.2006, the court ascertained that, under the "Miscellaneous" agenda item, Ing. Molčan (Town Mayor, 1st defendant) informed members of the Town Council of an incoming petition from citizens from the north-western part of the Town against the resolution of the problems of inadaptable citizens in the Bujačí dol area. The petition is to be deliberated upon, with citizen participation. The 1st defendant additionally submitted a petition against the construction of new Roma dwellings in the Husí hrb are dated 9.7.2003, to which there were 375 signatures from Town residents.

From the minutes of the closing meeting on the task timetable for resolving the problems of Roma integration on 11.10.2004, the court ascertained that, in the housing section of agenda item 2, a task was ordered to prepare a proposal for the Langavendy area for the first phase of construction of Roma dwellings for approval by the Town Council. According to statements from the 1st defendant's representatives, the Telek area was ultimately selected for the reason that this area was fully under the ownership of the Town of Sabinov, whereupon which they also submitted an extract from the title deed and a copy of the original plat book insert 2575, from which it is clear that this area has been under the Town's ownership since 1930.

Witness Peter Molčan, Mayor of the Town of Sabinov (the 1st defendant), stated in his testimony that in the selection of the areas, the individual companies that worked on the construction studies did not take into account the ownership of the individual areas, but rather the guiding Town planning scheme. The witness stated that he has no awareness regarding whether the plaintiffs did not consent with relocation to the Telek area. The witness stated that, in his opinion, the Husí hrb area, from the integration perspective, would certainly not have been better, since ongoing experiences are convincing him that there are constant problems there, and conflicts between the majority and minority population groups.

The court ascertained from copies of withdrawals of motions at the start of the proceeding that proceedings were carried out in the present court on the invalidity of lease termination notices under case nos. 15 C 244/07, 11 C 241/07 and 12 C 241/07. The plaintiffs in these cases submitted petitions to nullify the notices. They, also, were tenants of dwellings on Námestie slobody in Sabinov. The reason for the withdrawal of these motions was the fact that the 1st defendant concluded an out-of-court settlement with the plaintiffs in these proceedings and provided them, according to their statements, with adequate substitute housing near the center of the Town of Sabinov, not in the segregated, Roma Telek area.

The court ascertained from the testimony of witness Anna Bagiová, head of department at the Sabinov Town Hall, that she was present at the meetings with the future tenants (e.g., the plaintiffs) at the time when they were informed that the construction of new rental dwellings was beginning. At these meetings, it was explained to the tenants why they would be relocated: that it was due to the poor technical condition of their dwellings. At these meetings, they signed contracts to work off specific percentages of the construction of the new residential dwellings. The witness stated that no threats were

made at these meetings regarding the forcible eviction of the tenants from the dwellings. She stated that they were instructed as to where the dwellings are located, in what condition they would be, what the level of rent and the terms of the lease contracts would be, and so on. The witness stated that during the time which she has been working at the Town Hall, some 34 years, the Town of Sabinov has never left any of its citizens – even those of Roma origin – on the street. To the question as to why the Telek area was selected, the witness stated that this was arranged over the course of years. The Town had had a number of alternatives, but these had come into contact with resistance from citizens against such construction. Ultimately, this area was approved also by committees in which representatives from the Roma community participated. This area was, according to the witness, clearly chosen for the reason that it was the closest to the settlement on Moyzesova street and Jakubovanská street, and that it was also the area where there was the most suitable linkage to technical infrastructure. The witness stated that she knows the plaintiffs, particularly the 1st, 2nd, 3rd and 4th. The 1st and 2nd plaintiffs' dwelling on Námestie slobody was properly furnished and was not wrecked. They made proper use of the dwelling. The same was the case also for the 3rd and 4th plaintiffs, with that though the dwellings themselves were not devastated by use, the building in which the dwellings were located was in poor technical condition. With the 5th and 6th plaintiffs, according to the witness, the dwelling was wrecked purely by the tenants' usage of it. The witness stated that the non-Roma resident, Ms. Rakačová, was not assigned a new dwelling because she had already previously wrecked two of them. She said that Ms. Rakačová's dwelling was similarly wrecked as was the dwelling of several of the Roma citizens who received assigned dwellings at Telek. To the question as to why that was so, the witness stated that it was clearly in order to improve the Roma residents' housing.

In her testimony, witness Anna Karnišová stated that some of the plaintiffs, specifically the 5th and 6th, lived in rather poor conditions. The dwelling was damp and invaded by mildew. The Town frequently sent containers to collect household waste, since the courtyard was dirty. A large number of people were living there. Nighttime noise complaints from citizens were frequently addressed. She was personally at an inspection of the 1st and 2nd plaintiffs' dwelling. They had the dwelling properly furnished and maintained its cleanliness. The witness stated that in deciding upon the relocation, the Town did not address the question as to whether the plaintiffs and their neighbors are adaptable or inadaptable citizens. The main question was to reconstruct the buildings on the square and move out from there the people who lived there. These were moved to the Telek area. Not all were moved there. Some of them filed a petition to invalidate the lease termination notice, and they were assigned different dwellings because the Town did not want to get into a legal contest with them. The witness stated that, from the housing perspective, the dwellings in the Telek area were better for the plaintiffs since they were newly constructed. With regards to her alleged statements to Združenie Dženo (doc. no. 49), the witness stated that she never made such statements, nobody form the media came to her and she did not provide an interview. As regards the relocation, insofar as she recalls, at some point in 2005 most of the tenants from Námestie slobody were looking forward to the move. She admitted, however, that some of them objected because of the greater distance from the Town.

The 2nd defendant submitted a motion for dismissal in relation to itself for the reason it feels it does not have standing in the case. It stated that it provides subsidies for the acquisition of rental dwellings upon fulfillment of the criteria set forth in conformance with Act no. 524/2004 on Budget Rules in Public Administration and in conformance with Decree no. V-1/2004 of 23.12.2004. It proceeded likewise in this case as well, after registering the application for provision of a subsidy for the acquisition of rental dwellings in the Telek area. This application was registered by the Regional Building Authority in Prešov on 28.2.2005. It does not emerge from this application whether it concerned Roma people or not. In the sense of the cited Decree, the subsidy is not being provided for the development of the Roma minority, but rather for the acquisition of rental dwellings for natural persons who meet the requirements for the provision thereof. The applicant for provision of the subsidy must pledge that the dwelling will be rented to a natural person whose monthly income and the monthly income of the persons living with him/her (whose incomes are taken measure of jointly according to special regulation) does not exceed three times the minimum wage applicable upon the 31st of December of the preceding calendar year, computed for the tenant and for the persons whose incomes are considered jointly.

From the above, it emerges unambiguously that no sort of membership in a race, ethnicity, nationality or citizenship is relevant. The 2nd defendant stated that in judging the applications it takes absolutely no account of these details, because they have no effect on the decision to allocate the subsidy or not. It speaks of Roma residents only when a part of the funds might be provided from their own resources, via an agreement to conduct work by the future tenants or by residents of a Roma settlement. This, however, applies only for existing Roma settlements which are registered in the state statistical findings of the Government Office of the Slovak Republic. The term "resident of a Roma settlement" thus presumes the existence of the settlement itself, which is not applicable in this instance. On the contrary, the 2nd defendant stated that this population group is, in the end, positively discriminated for, in that the 2nd defendant will provide a subsidy subsequently as well to an already-existing settlement, even despite the fact that the construction of the technical facilities should have preceded the construction of the dwelling itself, and will help the applicant such that part of their funds set for co-financing of the project are covered by mutual aid, whereby it may provide a subsidy up to the level of 80% of authorized expenses as opposed to the ordinary 70%. This case, however, concerned the construction of initial technical facilities according to §6(1)(b) of the Decree and the construction of new rental dwellings in the sense of §2 of the Decree, for which social status – and not membership in a nationality, race or ethnicity – was taken into account.

The provisions of §16(1) of the Decree also provide the applicant the opportunity to co-finance a project under municipal ownership via mutual aid. In such a case, a declaration regarding the mutual aid is a mandatory part of the attachments to the application for allocation of the subsidy: in this case, the future tenants' agreement that they would work off 20% of the acquisition costs through mutual aid. These agreements were concluded with all of the plaintiffs and were submitted to the applicant for provision

of the subsidy (e.g., the 1st defendant), whereby the 1st defendant complied with the requirements for provision of the subsidy. In these agreements, the plaintiffs were identified by means of a number of pieces of information, but not by information showing that they are Roma. According to statements from the 2nd defendant, it did not, therefore, look into details of membership in an ethnicity in the process of evaluating and approving the subsidy, nor should it have looked into these facts, in conformance with the Decree.

Insofar as concerns the statements that the distance of the new residences from the original ones is about 1 km and that the 1st defendant, by means of this construction project, wanted to get rid of the plaintiffs, this is misleading, since the plaintiffs themselves state that the 1st defendant constructed an asphalt road and enabled even adults to travel via a school bus intended for students. This and other concessions to which it was not obligated were granted by the 1st defendant. Additionally, the construction of family houses is planned for this area. The grocery story requested in the petition and an ecumenical center are being built. There are also other projects planned for this area, for reason of which the complaint appears to be markedly premature.

The 2nd defendant also stated that from no law does there emerge an obligation on the part of the 1st defendant to allocate dwellings. The 1st defendant, in conformance with the Act on Municipalities, collaborates in the creation of suitable conditions for housing. If it does procure dwellings for its own ownership, it is an equal owner just as any other legal or juridical person, and, in conformance with appurtenant regulations, determines under which terms it will lease its property. In this case, also under the terms set by the Decree of the Ministry (the 2nd defendant), the decision as to what and where to build is in the competence of the Town and its appurtenant bodies. In a building proceeding, a building authority carries out activities in conformance with the building code and refuses the building permit if the erection or use of the structure might endanger public interests protected by this law and by special regulations, or might disproportionately constrain or threaten the rights and authorized interests of participants to a greater extent than was accounted for in land-use planning decisions. In the relevant decision, the Municipality of Ražňany, as the building authority, permitted the construction and, in reconsidering the permit, no reasons were found to not permit the construction. Neither, however, did the 2nd defendant intervene in this proceeding, nor could it, because it is the central body of state administration in matters of building regulation and land-use planning. It would only rule in appeals proceedings on a prospective appeal against a decision of a building authority, in the event that, here, the regional building authority would not oblige.

In light of all of these facts, the 2nd defendant made a motion that it be excluded from the proceedings for lack of standing.

According to §2(1) of the Anti-discrimination Act, adherence to the principles of equal treatment encompasses a ban against discrimination for reason of gender, religious denomination or faith, race, national or ethnic group membership, handicap, age, sexual orientation, marital or family status, skin color, language, political or other views, national or social origin, assets, native land or other status.

According to §2(3) of the Anti-discrimination Act, adherence to the principles of equal treatment also encompasses the adoption of measures to protect against discrimination.

According to §2a(1) of the Anti-discrimination Act, direct or indirect discrimination, harassment, sexual harassment and unjust sanction are discrimination; directives to discriminate and incitement to discriminate are also discrimination.

According to §2a(2) of the Anti-discrimination Act, direct discrimination is an act or omission where a person is treated less favorably than another person is treated, has been treated or might be treated in a comparable situation.

According to §2a(3) of the Anti-discrimination Act, indirect discrimination is an outwardly neutral prescription, decision, directive or practice which disadvantages a person in comparison with another person; there is no indirect discrimination if such prescription, decision, directive or practice is objectively justified by the pursuit of a rightful interest and is reasonable and unavoidable for the attainment of such interest.

According to §3(1) of the Anti-discrimination Act, everyone is obligated to adhere to the principle of equal treatment in the field of employment and similar legal relationships for social welfare, health care and provision of goods and services, and in education.

According to §3(3) of the Anti-discrimination Act, in judging whether or not there is discrimination, neither grounds which led to or emerged from circumstances, nor from an erroneous assumption shall be taken into account.

According to §5(1) of the Anti-discrimination Act, in conformance with the principle of equal treatment, it is prohibited to discriminate against persons for reasons given in §2(1) in social welfare, healthcare, the provision of goods and services and in education.

According to §5(2) of the Anti-discrimination Act, the principle of equal treatment according to subsection 1 applies only in conjunction with the rights of persons established by law in the fields of access to and provision of

a) social assistance, social insurance, retirement pension savings, supplemental pension savings, state social support and social advantages;
b) healthcare;
c) education;
d) goods and services, including housing, which are provided to the public by juridical and natural persons operating as businesses.

According to §9(1) of the Anti-discrimination Act, everyone has the right to equal treatment and protection against discrimination under this act.

According to §9(2) of the Anti-discrimination Act, anyone may claim their rights in court if it is suspected that there is or has been an infringement on their rights, legally protected interests or liberties by means of violation of the principles of equal treatment. This can be claimed especially if the person who did not adhere to the principle of equal treatment ceased their activity, if that is possible, rectified the unlawful status or provided reasonable redress.

According to §9(3) of the Anti-discrimination Act, if the reasonable amends were not sufficient, especially if by violation of the principles of equal treatment the dignity, social reputation or social functioning of a person are lowered in a marked fashion, such person may also claim monetary compensation for intangible damages. The sum of monetary compensation for intangible damages shall be determined by the court, with account taken of the seriousness of the intangible damages that have occurred and of all circumstances that led to the occurrence thereof.

According to §12 of the Anti-discrimination Act, the legal enactments of the European Community and the European Union given in an appendix are adopted by means of the Act.

According to Article 11 section 1 of the Constitution of the Slovak Republic, people are free and equal in the dignity of their rights. Fundamental rights and liberties are unalienable, indefeasible, not subject to lapse over time and indissoluble.

According to Article 7 section 5 of the Constitution of the Slovak Republic, international treaties on human rights and fundamental freedoms, international treaties for the performance of which no legislation is necessary and international treaties which directly establish rights or obligations for natural or juridical persons, which have been ratified and promulgated in a manner established by law, have priority above legislation.

According to Article 33 of the Constitution of the Slovak Republic, membership in any national minority or ethnic group shall not be prejudicial to anyone.

According to Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination, the states parties especially condemn racial segregation and apartheid and undertake, in the territories falling under their jurisdictions, to prevent, prohibit and eliminate all practices of such type.

According to §712(2), a replacement dwelling is a dwelling which, by its size and furnishing, provides a humanely dignified residence to a tenant and members of their household.

According to §712a(1), if a tenancy relationship terminates for cause under §711(a), (e) or (f) or for cause under §711(1)(b) for a tenant who ceased to perform work for which tenancy in a service dwelling is fixed for cause by an employer or for a cause which the employer is bound to under special legislation, the tenant has the right to a substitute dwelling which, by virtue of the size of the living area, furnishings, location

and level of rent is a reasonable dwelling; such tenant must vacate, and do so with account taken of their living and working needs.

In the proceeding at hand, the court took it as demonstrated that the 1st defendant, the Town of Sabinov, as a lessor of dwellings, for the sake of ejecting residents of Roma origin from the central part of the Town, violated the principle of equal treatment. The 1st defendant only relocated Roma residents to this area. According to statements by representatives of the Town of Sabinov, the town wanted the Roma population in its buildings moved outside the town center and the fact that Roma remain living in the town center is only due to the fact that not all of the buildings are owned by the town. In conformance with the provisions of the anti-discrimination act, there was an evidentiary burden upon the defendants, the Town of Sabinov and the Ministry of Construction and Regional Development of the Slovak Republic, to demonstrate that no discrimination occurred. In the court's judgment, however, the defendants did not sustain the evidentiary burden and did not demonstrate beyond any doubt that their actions did not bring about discrimination against the plaintiffs. The 1st defendant separately submitted documentary evidence which suggested that though they officially claimed that in the Telek area there was only construction for inadaptable citizens or non-payers, what really happened was the construction of Roma residences such as is shown in the magazine *Program for Social Integration of the Roma*, and such also as was presented at meetings of the Town Council in Sabinov, to which the relevant minutes testify.

The court holds that insofar as there is a real procedural criterion for membership in an ethnicity or a nationality, it is considered a "suspect criterion". In judging whether discrimination occurred, there is then conducted a highly-qualified inquiry into the excusableness of the different treatment ("strict scrutiny"). This is applied also by the European Court of Human Rights. In the case *DH, et al. v. Czech Republic*, the European Court of Human Rights stated of the obligation to conduct strict scrutiny of the excusableness of the measures of the state: "The Court again repeats that different treatment is then discriminatory when it lacks objective and rational justification, when it does not pursue a legitimate goal and if there is no justified ratio of proportionality between the means used and the goal which is to be achieved. Where there is different treatment based on race, color or ethnic origin, the need for objective and rational justification must be interpreted just as strictly as can be." Setting the members of this group of residents apart, outside the built-up area of the Town, according to plaintiffs' arguments with which the court also fully identifies, and thus causing their segregation, is not in fulfillment of the tendency and goals of integration of this group of residents and it is not possible in any case to consider it as conduct justified and in pursuit of any legitimate goal. Renovation or rebuilding of the given buildings is not sufficient objective and rational justification for action such as was conducted against the plaintiffs.

The 1st defendant, in testimony that it did not act discriminatorily, submitted to the court the lease termination notices for individual plaintiffs; however, as is clear from the established judicial practice, for a termination of lease under §711(1)(e) of the Civil Code it is necessary that in giving notice for reason of necessary reconstruction for a term longer than six months there be issued an appurtenant administrative document – in this

case, a building permit (decision of the Supreme Court of the Slovak Republic case no. 3 Cdo 118/01). This, however, did not occur. At the time when the lease termination notices were given to the individual plaintiffs, there was a public bidding competition underway to sell off the properties in which the subject dwellings were located. It was not until afterward that the new owners began renovations.

Although the Town was obligated to provide the Námestie slobody tenants with substitute dwellings in conformance with the provisions of §712(2) and §712a(1) of the Civil Code, in the court's view they were not provided for properly. The dwellings were erected with the aid of subsidies from the state for non-payers and inadaptable citizens, and in their furnishings and area did not meet the criteria that a substitute dwelling must fulfill. The court points out that, for example, the 3rd and 4th plaintiffs were provided with a dwelling, though in conformance with an Agreement on Working Off the Necessary Part of the Costs of a Dwelling, they did not work off this specifically-determined share for the reason that they did not consent to be relocated. From this, then, it emerges that the Town had the intent to relocate the plaintiffs to this area even though they had fulfilled the agreed-upon conditions. To this end, as shown above, the Town "combined" a number of legal regimes (obtaining a lease for a dwelling of a lower standard, and allocating a substitute dwelling), whereby, however, its actions only obfuscated matters to a marked degree. For example, though according to the Town the matter concerns substitute dwellings under contract for lease for an indefinite period, the Town provided the plaintiffs with dwellings in conformance with the requirements which applied for the provision of the subsidy, and so concluded a lease contract with the plaintiffs for a defined period of three years at most, with that in the lease contract there also had to be established the tenant's right to renewal of the lease for the dwelling upon adherence to the conditions in the lease contract in §711 of the Civil Code.

The 1st defendant, the Town, stated in its testimony that it was not obligated to undertake the construction of the dwellings and did so really at the expense of other residents of the Town, with that it could have utilized those funds otherwise. The Court, however, points out that inasmuch as the Town gave lease termination notices to tenants who had valid lease contracts, it was obligated to provide them with substitute dwellings in the fashion established by law. In what fashion the Town was to provide these leased dwellings which would serve as substitute dwellings is a matter for the Town alone.

Though the 1st defendant produced dwellings in conformance with the Ministry's decree which, from the formal perspective, did not cause an infringement upon the plaintiffs' rights, the 1st defendant should have acted proactively and so should have given the plaintiffs the opportunity to modify the dwellings such that they would be fit for use. Instead, the plaintiffs were relocated to dwellings which were still not fit for use.

The 1st defendant stated that the reason it did not offer other accommodations to the plaintiffs outside the Telek area was that, at the time, it did not have any other substitute dwellings. As is clear, however, from the withdrawal of motions in proceedings regarding the invalidity of the termination notice, the residents who began defending against such relocation via the legal route received substitute dwellings from the Town

with which they were satisfied. Thus, the claim of the Town, the 1st defendant, was misleading, and testifies to the intent of the 1st defendant to relocate residents from Námestie slobody to this area.

The court points out that the dwellings were built in an area which is located outside the presently built-up area of the Town of Sabinov. On the grounds for such siting, the Town stated that this was the only location under the Town's ownership and that the Town did not want to increase the costs of construction by the purchase of individual parcels from private parties. In this section as well, however, the court holds that the 1st defendant did not sufficiently meet the evidentiary burden to demonstrate that the Langavendy (Telek) area really was the only possible site for the construction. Since, as the 1st defendant itself showed, studies were made for it of various localities such as Husí hrb and Tehelňa, and these studies themselves pointed to the potential advantages as well as disadvantages. For the Tehelňa site, which coincides in its dimensions with the Telek site, the chief disadvantage given was the large distance from the center of the Town and from existing Roma settlements, and, accordingly, the separation of a given social group of residents. The Bujačí dol site was likewise evaluated as unsuitable. The defendant did not submit an evaluation of the study regarding the Langavendy site. However, with reference to the assessment of these sites (1: Tehelňa, which is directly linked with the currently built-up area, and 2: Bujačí dol, which would have been either closer or comparably close as the present Langavendy area), the defendant should have also taken into consideration those circumstances shown as disadvantages in these localities also in the case that, in the study of the Langavendy site, it did not have those disadvantages evaluated.

As a further circumstance of violation of the principle of equal treatment, and which the plaintiffs also argued, the Court took note of the fact that only Roma were relocated to this area. Even though the Town's representatives claimed that inadaptable citizens are only those of Roma origin, as is clear from the record there also lived on Námestie slobody a female citizen of non-Roma origin who was inadaptable and who, according to statements from the Town's representatives, had devastated several dwellings. The 1st defendant, further, did not proceed according to the declared criteria of inadaptability, since Ms. _____, the non-Roma female resident, was neither provided nor offered residence at Telek even though she was an inadaptable citizen. The plaintiffs claimed that residents are living in dwellings in the Telek area both alone and in pairs; consequently, the 1st defendant's statements that it did not allocate a subject dwelling to this non-Roma woman for the reason that they did not want to favor her does not pass muster in the Court's view. The Town did not show or contradict in sufficient fashion the plaintiffs' claims that dwellings in the Telek area were allocated to individuals as well as to groups of two people. The Town submitted no evidence to contradict this claim.

In the Court's view, indirect discrimination also occurred, since though the 1st defendant claimed that it erected dwellings for non-payers or for inadaptable citizens and in such fashion obscured its actions by means of outwardly neutral prescriptions, it was clear from statements by the 1st defendant's representatives that the 1st defendant knew that the majority of such residents are of Roma origin.

The 1st defendant did not show in sufficient fashion whether citizens' petitions against construction at a site other than Telek had no effect on the change in the Town's decision regarding construction of the dwellings. Though the Town declares that it has a program for Roma social integration, that it relocated Roma residents from Námestie slobody and the fashion in which it did so, in the court's view, resulted in their segregation.

As to the standing and liability of the 2nd defendant, the Court holds in conformance with the plaintiffs' argumentation that, on its part as well, there occurred a violation of the provisions of the prohibition against discrimination by means of the provision of a subsidy to the 1st defendant for the development of residences. Even though the 2nd defendant stated that in providing the subsidy it was guided only by the relevant edicts of the Ministry of Construction and Regional Development and further legal regulations, in the Court's view it is the Ministry's task as the pivotal organ of state administration to also adhere to the international commitments by which the Slovak Republic is bound as well as the provisions of the law, and that the Anti-discrimination Act in §2(3) provides that adherence to the principles of equal treatment lies in the adoption of measures for protection against discrimination.

One international treaty to which the Slovak Republic is bound is the International Convention on the Elimination of All Forms of Racial Discrimination, which prohibits segregation. These treaties also include the International Covenant on Economic, Social and Cultural Rights (120/1976 Coll.), which in Article 11 section 1 reinforces the obligation of a positive commitment of the state in the protection of the right to privacy such that it binds states – the states parties to the Covenant – to respect the right of each individual to an adequate standard of living for themselves and for their families, including sufficient food and clothing, housing, and the continual improvement of their living conditions. The states parties are to undertake corresponding steps in order to provide for the realization of this right, giving respect in the attainment of this goal to the fundamental importance of international cooperation founded upon free consent.

In connection with the implementation of the International Covenant on Economic, Social and Cultural Rights by the member states, the Commission for Economic, Social and Cultural Rights produced a commentary which establishes criteria for adequate housing, which are: legal assurance of housing; the availability of services, materials, facilities and infrastructure; financial availability; habitability; accessibility; siting; and cultural suitability. Thus, what is important is not merely the provision of housing, but also to take into account the quality of living.

Government Resolution no. 63/2005 of the Slovak Republic sets forth a long-term concept of housing for marginalized groups of residence and a model for the financing thereof. The objective of this resolution is to adopt principles and to define requirements to increase the standard of housing for some marginalized groups of residents. It emerges from this resolution that the siting of construction projects must not deepen spatial and social segregation, but must be a means of integrating the residents of the affected

community. This is measurable by the distance from the municipality and by access to public services utilized jointly by both the majority and minority communities in the municipality.

With reference to these facts, then, it is the court's opinion that the Ministry should have comprehensively investigated the entire intention behind the construction of new dwellings by the 1st defendant and not have been guided merely by subordinate regulations (decrees and directives). In the court's view, the Ministry did not in sufficient manner show that it was not aware or could not have been aware of the circumstance that the matter concerned the construction of dwellings for the Roma population. The court identified with the plaintiffs' suggestion that had the Ministry investigated in sufficient manner for what population group the construction would be and where it would be sited, it would have itself also fulfilled the positive obligation of the state to take measures for protection against discrimination. It would have then determined what sort of impact the provided subsidy might have upon the given population group and would not have or should not have provided the subsidy, whereby given the financial situation of the 1st defendant, the construction would not have taken place, since, without the subsidy, the 1st defendant could not have financed this construction alone. With regard to this, then, the Court holds that the 2nd defendant is also responsible for the violation of the principles of equal treatment toward the plaintiffs.

The Court additionally identified with the plaintiffs' argumentation that the defendants took only formal equality into consideration, though this model of equality is already obsolete. If equality were to be apprehended purely formally as the defendants are doing, it might then occur that not even such action as would treat everyone equally badly would be considered to be discrimination. The defendants' arguments also that the other locations in Sabinov are far from the center of the Town and do not have such facilities as Telek, that the quality of the dwellings was in conformance with the Ministerial decree, that, thus, other parties also do not have equal provision for the realization of their rights, cannot turn the discrimination proceeding back against the plaintiffs.

As shown above, the state has a positive obligation to increase the standard of living of individuals, to secure housing for them at a level of quality established by international treaties and may not justify such of its actions which breach all of these obligations by stating that other people are also living in similar conditions and that it is acting in conformance with instituted provisions.

In consideration of these facts, therefore, the Court has decided that a violation of the principles of equal treatment occurred. With regard to the plaintiffs' demands put forth in the petition to provide for the construction of a two-lane access road, to provide for the construction of a shop with basic goods, to provide for a bus route between the center of the Town of Sabinov and Severná Street five times per day, to provide an underpass or overpass for the roadway link from the Town of Sabinov, there is no legislation from which there emerges a power of the Court to accommodate such by means of entitlement. Even in the event the Court had such power, it considers these

demands unreasonable with respect to the harm caused to the plaintiffs. With regard to the access road, according to the 1st defendant plans exist to build one following the completion of the Sabinov bypass. A shop with basic goods is presently under construction. As for the overpass or underpass for the roadway connection with the Town, in light of the fact that the Town bypass is a properly leveled two-lane road, the court holds that it would not be necessary, in this section either, to accommodate the petition and lay the fulfillment of such obligations upon the defendants. With respect to this, the court refuses these claims.

The court does hold, however, that it is in a position to grant the plaintiffs compensation for intangible damages. It does not, however, identify with the level of the proposed compensation for intangible damages. With measured regard to the manner in which their dignity and social reputation was reduced and in which the plaintiffs' social functioning was infringed upon, intangible damages in the amount of €1,000 are, in the court's view, adequate. The court rejects the excess portion of this as unjustified.

According to §151(3) of the Code of Civil Procedure, in complex cases and especially for reason of a greater number of parties to the proceeding or a greater number of claims brought forward in the proceedings, the court may rule that it shall rule upon the costs of litigation following the attainment of legal force of the decision in the matter itself; the provisions of §166 are not being applied. The provisions of sections 1 and 2 reasonably apply, with that the period of three working days shall elapse from the date of the attainment of legal force of the decision in the matter itself.

The payment of legal fees shall be decided upon following this judgment's attainment of legal force.

Guidance: An appeal may be submitted against this decision within 15 days from the date of its delivery, by way of the present court, to the Regional Court in Prešov.

Under §205(1) of the Rules of Civil Procedure, alongside the general circumstances (§42(3) of the Rules of Civil Procedure), it must be shown in the appeal against which decision it is directed, in what scope it is challenged, in what fashion this decision or court proceeding is considered erroneous and what the appellant claims.

Under §205(2) of the Rules of Civil Procedure, an appeal against a decision or a ruling by means of which matters were decided upon by their merits can be justified only in that:

a) there occurred faults in the proceeding as given in §221(1) of the Rules of Civil Procedure;
b) the proceeding has another fault which could have resulted in an erroneous decision in the matter;
c) the court of first instance incompletely ascertained the factual status of the matter, because it did not conduct the petitioned-for evidence-gathering necessary for the ascertainment of deciding criteria;

d) the court of first instance, based on the evidence gathered, arrived at erroneous factual findings;
e) the factual status thus far ascertained no longer pertains, because there are further facts or other evidence which have not been brought to bear thus far (§205(a) of the Rules of Civil Procedure);
f) the decision of the court of first instance emerges from an erroneous legal appraisal of the matter.

Under §251(1) of the Rules of Civil Procedure, if an obligor willingly does not comply with what an executable decision imposes upon him/her/it, the obligee may submit a petition to carry out an execution according to special law.

At Prešov, 15.6.2009

[*stamp*][1]

For the accuracy of the preparation [*illegible signature*]
Viera Oščipovská

JUDr. Katarína Vorobelová
sole judge

[1] Round stamped seal of the District Court at Prešov with central Slovak national emblem device