

REPORT ON MEASURES TO COMBAT DISCRIMINATION

Directives 2000/43/EC and 2000/78/EC

COUNTRY REPORT/UPDATE 2005

Slovak Republic
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INTRODUCTION

0.1 The national legal system

Explain briefly the key aspects of the national legal system that are essential to understanding the legal framework on discrimination. For example, in federal systems, it would be necessary to outline how legal competence for anti-discrimination law is distributed between different levels of government.

The Slovak Republic is a country with the parliamentary form of government and a statutory law system, its basic law being the Constitution¹ which lays down the scope of guaranteed basic rights. The Constitution represents the framework and basis of all other laws; no law can be in conflict with the Constitution (should such a law be enacted, the Constitutional Court can, upon a proposal, repeal it, using the prescribed procedure). Furthermore, it is important to note that international treaties on human rights and fundamental freedoms, international treaties for the exercise of which no other law is necessary, and international treaties which directly confer rights or impose duties on natural persons or legal persons and which were ratified by the Slovak Republic and promulgated as prescribed by the law, take precedence over national laws.² Slovakia is a party to the European Convention on Human Rights³ (hereinafter "ECHR") as well as the International Convention on the Elimination of all Forms of Racial Discrimination⁴

Article 1 paragraph 1 of the Constitution provides that the Slovak Republic is a sovereign democratic state governed by the rule of law. It is not bound by any ideology or religion.

Article 12 includes the declaration of the equality of all human beings in their dignity and rights, as well as the general prohibition of discrimination against anybody exercising his or her fundamental rights and freedoms. The Constitutional Court of the Slovak Republic decides in cases of breach of Article 12 of the Constitution provided the conditions stipulated by law have been met.⁵

Along with the Constitution, the Act on Equal Treatment in Certain Areas and Protection against Discrimination ("Anti-discrimination Act" hereinafter)⁶ adopted by the National Council of the Slovak Republic (the Slovak parliament) on May 20, 2004, has established the basic legal framework of the Slovak anti-discrimination law. The Anti-discrimination Act came into force on July 1, 2004. The Act in its provisions stipulates in more detail the constitutional guarantees of equal treatment. It extends, in some aspects, the scope of the anti-discrimination regulation over the fundamental rights and freedoms guaranteed by the

¹ Ústava Slovenskej republiky č. 460/1992 Zb. v znení neskorších zmien

[The Constitution of the Slovak Republic No. 460/1992 Coll. as amended] (Ústava Slovenskej republiky), ("Constitution" hereinafter). The English text of the Constitution can be found at www.concourt.sk. All other laws published in the Collection of Laws from 1998 onwards can be found in the Slovak language at www.zbierka.sk.

² Article 7, paragraph 5 of the Constitution that entered into effect on 1 July 2001, in the wording of the latest amendment in February 2001 - Constitutional Statute No. 90/2001 Coll. Until then, the precedence of international human rights instruments over the national law was guaranteed only if the international law provided for "broader fundamental rights and freedoms" than the relevant national law.

³ Oznámenie Federálneho Ministerstva zahraničných vecí č. 209/1992 Zb

[Announcement of the Federal Ministry of Foreign Affairs No. 209/1992 Coll.], Slovak Republic signed, but has not yet ratified Protocol No. 12 to the ECHR.

⁴ Oznámenie Federálneho Ministerstva zahraničných vecí č. 95/1974 Zb. [Announcement of the Federal Ministry of Foreign Affairs No. 95/1974 Coll.]

⁵ The Constitutional Court decides under Art. 127 of the Constitution on constitutional complaints lodged by natural persons or legal entities pleading the infringement of their human rights or fundamental freedoms provided another court shall not decide on protection of these rights and freedoms.

⁶ Zákon č. 365/2004 Z. z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (Antidiskriminačný zákon) [Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination, amending and supplementing certain other laws (Anti-discrimination Act)]

Constitution. The statutory obligation to observe the principle of equal treatment within the areas stipulated by law applies to government authorities, local government authorities and self-governance bodies of interest groups and associations, as well as to natural persons and legal entities. The Act defines the principle of equal treatment and determines the legal procedure to be taken in cases of infringement, to be decided on by the courts of the Slovak Republic. Moreover, the duty to observe the principle of equal treatment in particular spheres of life is regulated also by other laws additional to the Anti-discrimination Act.

0.2 State of implementation

List below the points where national law is in breach of the Directives. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report.

Has the Member State taken advantage of the option to defer implementation of Directive 2000/78 to 2 December 2006 in relation to age and disability?

Having adopted the Anti-discrimination Act the Slovak Republic implemented the following Directives referred to in the Anti-discrimination Act in the Annex titled The List of the Implemented Legal Acts of the European Communities and the European Union:

1. Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Official Journal L 180, 29/07/2000)

2. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (Official Journal L 303, 02/12/2000)

3. Council Directive 96/97/ES of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes (Official Journal L 046, 17/02/1997).

- The Anti-discrimination Act meets minimum standards determined by both Directives.⁷
- Together with laws providing for other grounds on which the prohibition of discrimination is applicable, the Slovak anti-discrimination law goes beyond the scope of the Directives.
- The Directives were implemented as from July 1, 2004, including Directive 2000/78/EC in relation to age and disability. Regarding age discrimination there was exact transposition of the Directive without further political or public discussions.
- In the author's opinion the provision of Section 8, paragraph 2 of the Anti-discrimination Act breaches the principles stipulated by Art. 4 para. 1 of the Council Directive 2000/78/EC. The provision says that in case of registered churches, religious societies and other legal entities whose activities are based on the religion or belief, differences of treatment based on age, sex, religion or belief and ascertainment of sexual orientation shall not constitute discrimination when they are related to

⁷ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework of equal treatment in employment and occupation (hereinafter "Directives").

employment by or to carrying out activities for such organisations. (See more in Chapter 4.2)

- Despite the principle set in Art. 6 para. 2 of the Council Directive 2000/43/EC by the adoption of the Anti-discrimination Act the level of protection against discrimination was reduced in the area of access to goods and services. Although the legal standards are fully implemented with the Council Directive 2000/43/EC, the scope of the Consumer Protection Act⁸ was broader before the adoption of the Anti-discrimination Act. (See more in Chapter 3.2.9)

0.3 Case-law

Provide a list of any important case-law within the national legal system relating to the application and interpretation of the Directives. This should take the following format:

- a. Name of the court
- b. Date of decision and reference number (or place where the case is reported). If the decision is available electronically, provide the address of the webpage.
- c. Name of the parties
- d. Brief summary of the key points of law (no more than several sentences)

➔ Please use this section not only to update, complete or develop last year's report, but also to include information on important and relevant case law concerning the equality grounds of the 2 Directives, even if it does not relate to the legislation transposing them (e.g. if it concerns previous legislation unrelated to the transposition of the Directives)

There is still no complete electronic or printed database of the decisions of courts available to the public⁹, except for the decisions of the Constitution Court available on the www.concourt.sk, site and for some selected decisions of higher courts published in printed version in the Collection of Decision and Opinion of Slovak Courts. The sources of information available to the public do not contain any decisions of courts concerning the application and interpretation of anti-discrimination Directives. It is very likely that the legal actions taken since the adoption of the Anti-discrimination Act are still pending before the courts of the first instance.

One decision of the District Court in Zvolen of June 11, 2003 No. 7C 190/02-309, based on the anti-discrimination provisions of the Labour Code, was made before the adoption of the Anti-discrimination Act. It was brought to the authors' knowledge via the non-governmental organization Aliancia žien Slovenska (Alliance of Women of Slovakia), which provided legal consulting in one case of discrimination in the field of labour relations. The plaintiff (a woman)¹⁰, a research worker with more than 20 years long working experience in the field of forestry filed an action against her employer to the court since she was excluded from the position of a coordinator of a project, even though she worked out the project proposal and she was mentioned as the coordinator of the project in the project documentation. The employer decided on her exclusion without consulting her and he appointed another employee, a less experienced man with lower qualification, to be a coordinator. This change in the position affected also the woman's income. The plaintiff sustained that such decision constituted an act of direct discrimination under the Section 13 of the Labour Code. The

⁸ Zákon č. 634/1992 Zb. o ochrane spotrebiteľa v znení neskorších predpisov [Act No. 634/1992 Coll. on Consumer Protection as amended]

⁹ An electronic database accessible to the public should be introduced in the course of the year 2006. It will include final decisions of the Regional and District Courts in Slovakia. The case-law of the Supreme Court is excluded.

¹⁰ The copy of the decision was handed to the author with names of the participants deleted

District Court in Zvolen decided in favour of the plaintiff and declared the change in the personnel engagement invalid. It was stated in the Court's decision that:

"The evidence introduced to the Court has made the Court sure that the defendant has not proved that there was no breach of the principle of equal treatment with the plaintiff. (...) The decision of the director, who failed to discuss the fact that the plaintiff would no longer stay in the research team with the plaintiff, even though she worked out the characteristics, objectives and reasoning of the winning project, should be considered a breach of the principle of equal treatment. On the other hand, the Director personally discussed this issue with Ing. ... [a colleague who was subsequently appointed as the coordinator of the project] (...). The plaintiff as the research worker that is highly experienced in research work and qualified was replaced by Ing ... with lower research qualification than the one of the plaintiff.

The decision of the defendant, who excluded the plaintiff from the research team without discussing such change in the position with the plaintiff, represents a decision which put the plaintiff into a disadvantageous position in terms of moral, as to her research carrier, but also in terms of her wage level assignment. Such change was not necessary; there was no real need for it. The Defendant knew that the project was accepted even though the implementation of the project was postponed; (...) there was no reason to exclude the plaintiff from the position of the project manager and to assign any other person to solve tasks solved subsequently by the plaintiff. (...) Such practice does not prove that the principle of equal treatment has been observed and the defendant failed to prove that it was a necessary decision justifiable by objective reality. "

The Supreme Court of the Slovak Republic has made another decision¹¹ based on the anti-discrimination provisions incorporated in the Labour Code. The Supreme Court decided upon an extraordinary judicial remedy for a woman employee who, while on maternity leave, was notified of the termination of her employment (nurse in a public hospital). The reason for the job termination was her failure to take an oath of office according to the new law on public service. The employer informed the employees of their obligation through the notice board in the work place. The dismissed employee did not get any information since she was at home with her baby on regular maternity leave. The District Court declared the dismissal invalid. However, the court of second instance (Regional Court) changed the decision of the District Court and confirmed the termination of her employment. The Supreme Court, examining the Regional Courts' decision, stated: *"Since the employer did not create relevant opportunity for taking the oath of office, the employment has not been terminated under Article 54, par. 2 of the Act on public service. ...The conduct of the defendant towards the petitioner is also to be considered as discriminatory. The defendant put at a disadvantage a certain group of its employees who were on maternity or further maternity leave, when it did not inform them, as it informed the other employees, about the date of taking the oath and about changes in their employment. Therefore it acted in contradiction to the prohibition of discrimination, which is regulated by Art. 13 of the Labour code. In the intention of the principle of equal treatment, indirect discrimination shall be taken to occur where an apparently neutral instruction, decision or practice puts at a disadvantage a substantially higher proportion of persons, when this instruction, decision or practice is not appropriate and necessary and cannot be justified by objective reasons. "*

Taking into consideration the relevant jurisprudence of the Constitutional Court, it is clear beyond any doubt that its interpretation of the term "discrimination" in all cases is identical. In these cases the Court ruled that the legislator presumed that the meaning of the word is clear (i.e. that it means everything connected with "being put at a disadvantage"). Interpreting

¹¹ Decision of the Supreme court of the Slovak republic of August 26, 2003, No. 2 CDO 67/03

the general principle of equality laid down in Article 12 of the Constitution, the Constitutional Court stated:

“Article 12 Para 2 of the Constitution ensures the universal nature of the equality of all people in fundamental rights and freedoms, regardless of differences in persons or in their positions. The differences accepted by the Constitution in relation to the preservation of equality in fundamental rights and freedoms cover gender, colour, language, belief and religion, political affiliation or conviction, national or social origin, belonging to a national minority or ethnic group, property, lineage or other status....Therefore, the Constitution recites indicatively the particular grounds which may support natural inequality of people, providing the space for avoiding any harm, favouring, putting at a disadvantage of any person on the mentioned grounds.” (Finding of the Constitutional Court of the Slovak Republic, No. PL. ÚS 37/95 of September 12, 1996, published in the Collection of Laws of the Slovak Republic as No. 286/1996)

The concept of positive action interpreted by the Constitutional Court of the Slovak Republic is mentioned in Chapter 5.

1. GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

a) Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?

b) Are constitutional anti-discrimination provisions directly applicable?

c) In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?

The principle of equal treatment of all persons is guaranteed under Article 12 of the Constitution, which states in paragraph 1 that, "people are free and equal in dignity and rights". Paragraph 2 of the same Article says that, "fundamental rights and freedoms are guaranteed in the territory of the Slovak Republic to every person regardless of sex, race, skin colour, language, belief, religion, political affiliation or conviction, national or social origin, nationality or ethnic origin, property, lineage or any other status. No person shall be denied their legal rights, discriminated against or favoured on any of these grounds". Paragraph 3 of the Constitution guarantees free choice of nationality (ethnicity), and paragraph 4 states that, "no person shall be prevented from exercising his or her fundamental rights and freedoms". This means that the choice of nationality is under the discretion of any person in any moment of his or her life, and that no-one can be persecuted due to this choice. This article of the Constitution on equality is perceived not as an independent but merely an accessory right. As the Constitutional Court of the Slovak republic stated in one of its decisions: “The provision stated in Article 12, paragraph 2 of the Constitution is of a general, declaratory nature instead of the nature of a fundamental right or freedom. It can be claimed only in connection with the protection of particular fundamental rights and freedoms listed in the Constitution.” (Finding of the Constitutional Court of the Slovak Republic, No. I. ÚS 17/99 of September 22, 1999).

According to the Constitutional Court, Article 12 paragraph 2 of the Constitution represents, by its nature, only a general clause which presupposes the implementation of individual rights laid down in the Constitution.¹² In other words, this Article, which guarantees equality, can only be implemented in practice through legal provisions stipulating, in concrete terms, the consequences that a discriminatory act may have for basic rights or freedoms of the petitioner.

¹² See also decisions of the Constitutional Court US 19/98, I US 34/96, I US 14/98.

For example, it is not possible to allege discriminatory treatment regarding equal access to property within free market competition (decisions on various public tenders, privatisation of any kind...), because the Constitution¹³ guarantees merely the protection of the already existing property (not access to property).

In other words, one cannot press charges and seek a remedy in respect of discrimination alone. A person may bring charges and seek a remedy only where he or she is able to prove the breach of a specific basic right in combination with the general obligation of equal treatment. Thus, as far as the Constitution is concerned, the anti-discrimination clause is ground-specific, and the same level of protection is offered regarding these grounds. However, there are grounds mentioned in Directives on equal treatment that are not explicitly listed in the Constitution. These grounds are sexual orientation, disability and age. It can be stated that grounds not mentioned explicitly in the Constitution are covered by reference to "any other status." However, this inclusive statement of anti-discrimination grounds in connection with sexual orientation has never been tested in practice.

Thus far, an expressis verbis prohibition of discrimination is provided for at the level of the Constitution, which does not allow any "negative" differences concerning the level of protection. As far as positive action is concerned, the legal system based on special provisions of the Constitution (Art. 38 and 41) allows certain preferential treatment of women, pregnant women, disabled people and minors (See Chapters 4.7.2 and 4.9).

The Constitution refers to public and indirectly as well to private sector. Despite the fact that the courts are obliged to consider constitutional provisions and international regulations in their decisions, in practice it is often complicated to claim for a direct application of the constitutional provisions if there is no act which includes substantial provisions which would constitute the basis for the court to decide. As mentioned before, the constitutional law allows the prohibition of discrimination to be applied only in connection with other fundamental rights stipulated by the Constitution. This fact determines the scope of the constitutional provisions regarding anti-discrimination. This means that the constitutional protection against discrimination covers not only the areas protected by the Directives, but also other spheres of fundamental rights and freedoms as stipulated in Chapter 2 of the Constitution of the Slovak Republic, covering civil and political rights, minority rights and rights of ethnic groups, economic, social and cultural rights, the right to protection of environment and cultural heritage and the right to judicial and other legal protection. After the adoption of the Antidiscrimination Act the constitutional equality guarantee in the areas covered by the Directives can be enforced equally against public and private sectors by the same legal action set up by the Antidiscrimination Act. In other areas, e.g. exercising freedom of religion or freedom of assembly or association, equality is to be enforced by different means depending on whether the perpetrator is of a public or private character. Articles 35 to 42 of the Constitution of the Slovak Republic regulate the spheres covered by the anti-discrimination Directives. Art. 35, par. 1 of the Constitution stipulates that every person has "the right to

¹³ See the decision of the Constitutional Court US 44/96. The case in question concerned the right to conclude a purchase agreement with the state within the privatisation process, based on a Resolution of the former Government; the purchase agreement in question was annulled by the new Government. (The Government which replaced the "second" Government of Mr. Mečiar in 1994 decided to change the system of "direct" privatisation and cancelled relevant decisions on direct privatisation taken by the previous Government. The court ruled, *inter alia*, that no discrimination occurred because no other constitutional rights were infringed - the right to the protection of property guaranteed under Article 20 of the Constitution is not identical with the right of access to property granted on the basis of political will. Similar reasoning about the necessity to combine the obligation of equal treatment with another basic or statutory right is found in the decision of the Constitutional Court US 42/96. On the other hand, in the case US 18/97 the Court ruled that, "the concept of damage to property under Article 12 paragraph 4 cannot be linked only to the impossibility to exercise the already acquired right. Thus, the concept of damage to the rights must be understood also as any other restriction of the acquisition of a right, if it results in the violation of the constitutional principle of equality under Article 12 paragraph 1 of the Constitution as the exclusive and only consequence of the previous implementation of one of the fundamental rights or freedoms."

choose freely his or her profession and to receive appropriate training, as well as the right to earn his or her living through entrepreneurial or other gainful activities.”

In Art. 35, par. 3 the Constitution guarantees the right to work and material welfare, within reasonable limits, of those who cannot enjoy this right through no fault of their own. Article 36 of the Constitution reads as follows:

“Employees shall have the right to fair and satisfactory conditions of work. The law shall ensure, in particular:

- a) The right to wages for the work performed, sufficient to secure a dignified standard of life,
- b) The protection from arbitrary dismissal and discrimination at work,
- c) The protection of safety and health at work,
- d) The setting of maximum working hours,
- e) Appropriate rest time after work,
- f) The minimum admissible length of paid vacation,
- g) The right to collective negotiations. “

Art. 37 ensures every person the right to associate freely with other persons to protect their economic and social interests and explicitly prohibits any restrictions on the number of trade unions, and any favouring of specific unions over other trade unions. Art. 39 laid down the right of citizens „to adequate material security in their old age, as well as in cases of incapability of work and death of the breadwinner of a family. Any person suffering material need shall have the right to such kind of assistance that is necessary to secure his or her basic standard of life. “The Constitution guarantees in Art. 40 the right to health care. „The citizens shall have the right to free health care and medical tools on the basis of medical insurance under the terms to be laid down by a law.“ Art. 42 of the Constitution guarantees everyone the right to education. Free education is guaranteed at elementary and secondary schools, and „depending on the abilities of the individual and the potential of the society also at universities. “

The common denominator of the fundamental rights listed within the spheres identical with those covered by the Directives, is the fact that the scope of their implementation is bound to the adoption of the law specifying particular fundamental rights. This requirement is given by the Art. 51, par. 1 of the Constitution: “The rights defined in Articles 35, 36, 37 par.4, Articles 38 to 42 and 44 to 46 of this Constitution may be claimed only within the limits of the law providing for the exercise thereof.” Therefore, the effect of the above mentioned provisions is just a declaratory one until the relevant legislation is adopted; however, the provisions of the Constitution oblige the government to adopt the relevant laws.

The quoted articles of the Constitution show that the Constitution of the Slovak Republic basically covers all the spheres regulated by the Directives except for the access to goods and services and access to housing, which the legislator did not include under the fundamental economic and social rights of citizens. However, this does not mean that these rights cannot be granted or exercised upon other laws or statutory regulations (See below). The Constitution also does not use the term “social benefits” and regulates only the right of reasonable social security in specific social situations.

2. THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination

Which grounds of discrimination are explicitly prohibited in national law? All grounds covered by national law should be listed, including those not covered by the Directives.

Except for the constitutional grounds of discrimination mentioned above¹⁴, the basic law in the area of anti-discrimination is the Anti-discrimination Act. This Act stipulates the grounds for the prohibition of discrimination within particular spheres (See the excerpts from the Anti-discrimination Act below) and at the same time refers to special regulations, which may prohibit discrimination on additional grounds. This makes the anti-discrimination law quite complex, splitting the grounds of discrimination to several different laws.

According to the Anti-discrimination Act, prohibition of discrimination on the grounds of sex, race and national or ethnic origin shall apply only in combination with the rights of persons laid down in laws regulating access to and provision of

- a) social assistance, social insurance, state social support¹⁵ and social advantages
- b) health care,¹⁶
- c) education,¹⁷
- d) goods and services including housing provided to the public by legal entities and natural persons - entrepreneurs¹⁸

This means that the right not to be discriminated against, as an abstract principle, is to be applied in the areas listed above and only by invoking the specific rights laid down by acts existing in these areas.

In employment relationships, similar legal relationships and related legal relationships, any discrimination shall be prohibited on the grounds of sex, religion or belief, racial, national or ethnic origin, disability, age and sexual orientation. This principle of equal treatment shall apply only in combination with the rights of natural persons provided for under laws regulating

- a) access to employment, occupation, other gainful activities or functions, including recruitment requirements and selection criteria and modalities ("employment" hereinafter),¹⁹
- b) employment and conditions of work including remuneration, promotion and dismissal,
- c) access to vocational training, professional upgrading and participation in active labour market policy programmes including access to vocational guidance services²⁰, or
- d) membership and activity in employees' organisations, employers' organisations and organisations associating persons of certain occupations, including the benefits that these organisations provide to their members.

The adopted Anti-discrimination Act has amended a number of legal regulations which extend the grounds for the prohibition of discrimination in particular fields.

In the area of employment relationships, in addition to the grounds of gender, religion or faith, race, national or ethnic origin, disability, age and sexual orientation listed in the Anti-

¹⁴ The grounds under Article 12, par. 2 of the Constitution are: sex, race, skin colour, language, faith, religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, lineage or any other status

¹⁵ For instance, Zákon č. 195/1998 Z. z. o sociálnej pomoci v znení neskorších predpisov, Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov [Act No. 195/1998 Coll. On Social Assistance as amended, Act No. 461/2003 Coll. on Social Insurance as amended]

¹⁶ For instance, Zákon č. 277/1994 Z. z. o zdravotnej starostlivosti v znení neskorších predpisov [Act No. 277/1994 Coll. on Health Care as amended]

¹⁷ For instance, Zákon č. 131/2002 Z. z. o vysokých školách v znení neskorších predpisov, Zákon č. 386/1997 Z. z. o ďalšom vzdelávaní v znení neskorších predpisov, [Act No. 131/2002 Coll. on Higher Education as amended, Act No. 386/1997 Coll. on Further Education as amended]

¹⁸ For instance, Zákon č. 634/1992 Zb. O ochrane spotrebiteľa v znení neskorších predpisov [Act. No. 634/1992 Coll. on Consumer Protection as amended]

¹⁹ For instance, Zákonník práce č. 311/2001 Z. z. v znení neskorších predpisov, Zákon č. 312/2001 Z. z. o štátnej službe a o zmene a doplnení niektorých zákonov v znení neskorších predpisov [Labour Code No. 311/2001 Coll. as amended, Act No. 312/2001 Coll. on Civil Service and on amending and supplementing certain other laws as amended]

²⁰ For instance, Zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov v znení zákona č. 191/2004 Z. z. [Act. No. 5/2004 Coll. on Employment Services and on amending and supplementing certain other laws as amended by Act. No. 191/2004 Coll.]

discrimination Act, specific laws stipulate also the following grounds: *marital and family status, colour, language, political or other opinion, trade union involvement, national or social origin, property, lineage or other status*. These acts are: The Labour Code²¹, the Act on Civil Service²², the Act on works in public interest²³, the Act on State Service of Customs Officers²⁴, the Act on Military Service²⁵, the Act on State Service of Members of the Police Force, Slovak Intelligence Service, Corps of Prison and Court Guard of the Slovak Republic and Railroad Police²⁶, the Act on Fire and Rescue Service²⁷, the Act on Licensed Trades (Small Business Act)²⁸, the Act on Prosecutors and Prosecutors Candidates²⁹ and the Act on Employment Services³⁰. Each of these acts refers to the Anti-discrimination Act as a general rule which is to apply when it comes to discrimination. Specific rights laid down by these acts shall therefore be guaranteed without discrimination on the grounds set by the Anti-discrimination Act as well as by the respective acts.

In the area of education the Act on Higher Education³¹ and Act on the System of Primary and Secondary Schools (the School Act)³² extend the grounds of sex, racial, national and ethnic origin contained in the Anti-discrimination Act to “*religion or belief, marital and family status, colour, language, political and other opinion, trade union involvement, social origin, disability, age, property, lineage or other status*.” Identically, the Act on Health Care states, that the right to health care provision shall be guaranteed equally to every person and that any discrimination shall be prohibited also on the grounds of “*religion or belief, marital and family status, colour, language, political and other opinion, trade union involvement, ethnic or social origin, disability, age, property, lineage or other status*.”

The above listed grounds make it clear that no political agreement has been reached regarding the expressis verbis prohibition of discrimination on the grounds of sexual orientation in the sphere of social security, education, health care, access to goods and services and housing³³. The compromise solution based on the general “other status” clause could cover also other grounds of discrimination. However, from the view point of a potential complainant it gives less certainty in claiming discrimination based on other grounds than those explicitly specified.

²¹ Zákoník práce č. 311/2001 Z. z. v znení neskorších predpisov [Labour Code No. 311/2001 Coll. as amended]

²² Zákon č. 312/2001 Z. z. o štátnej službe a o zmene a doplnení niektorých zákonov v znení neskorších predpisov [Act No. 312/2001 Coll. on Civil Service and on amending and supplementing certain other acts as amended]

²³ Zákon č. 552/2003 Z. z. o výkone prác vo verejnom záujme [Act No. 552/2003 Coll. on works performed in public interest]

²⁴ Zákon č. 200/1998 Z. z. o štátnej službe colníkov [Act. No. 200/1998 Coll. on State Service of Customs Officers]

²⁵ Zákon č. 370/1997 Z. z. o vojenskej službe v znení neskorších predpisov [Act. No. 370/1997 Coll. on Military Service as amended]

²⁶ Zákon č. 73/1998 Z. z. o štátnej službe príslušníkov Policajného zboru, Slovenskej informačnej služby, Zboru väzenskej a justičnej stráže Slovenskej republiky a Železničnej polície v znení neskorších predpisov [Act. No. 73/1998 Coll. on State Service of Members of the Police Force, Slovak Intelligence Service, Corps of Prison and Court Guard of the Slovak Republic and Railroad Police as amended]

²⁷ Zákon č. 315/2001 Z. z. o Hasičskom a záchrannom zbore v znení neskorších predpisov [Act No. 315/2001 Coll. on Fire and Rescue Service]

²⁸ Zákon č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov [Act No. 455/1991 Coll. on Licensed Trades (Small Business Act) as amended]

²⁹ Zákon č. 154/2001 Z. z. o prokurátoroch a právnych čakatel'och prokuratúry v znení neskorších predpisov [Act No. 154/2001 Coll. on Prosecutors and Prosecutors Candidates as amended]

³⁰ Zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov v znení zákona č. 191/2004 Z. z. [Act. No. 5/2004 Coll. on Employment Services and on amending and supplementing certain other laws as amended by Act. No. 191/2004 Coll.]

³¹ Zákon č. 131/2002 Z. z. o vysokých školách v znení neskorších predpisov [Act No. 131/2002 Coll. on Higher Education as amended]

³² Zákon č. 29/1984 Zb. o sústave základných a stredných škôl (školský zákon) v znení neskorších predpisov [Act No. 29/1984 Coll. on the System of Primary and Secondary Schools (the School Act) as amended]

³³ Against the explicit determination of the sexual orientation, as the ground of discrimination, were especially political representatives of the governmental political party, the Christian-Democratic Movement.

2.1.1 Definition of the grounds of unlawful discrimination within the Directives

- a) *How does national law on discrimination define the following terms: racial or ethnic origin, religion or belief, disability, age, sexual orientation?*
- b) *Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law (e.g. the interpretation of what is a 'religion')?*
- c) *Are there any restrictions related to the scope of 'age' as a protected ground (e.g. a minimum age below which the anti-discrimination law does not apply)?*

Racial or ethnic origin

The Slovak law provides no definition of racial and ethnic origin. However, these terms are used in the provisions of many laws, especially in connection with anti-discrimination provisions or provisions prohibiting demonstration of racism and intolerance. The criminal law in particular approached the definition of race, where legal literature and commentaries on the Criminal Code state that race shall mean a group of people differing from others due to various typical features, especially those body-related (e.g. colour of skin), as well as temperament etc. regardless of the fact that the members of the race concerned live within a territory of a state. Nationality shall mean, according to the commentaries, an individual's membership in a particular nation as a historically established community of people characterized, first of all, by a common historical development, specific culture, common language, relation to a particular territory etc.³⁴

Moreover, the Slovak Republic ratified the International Convention on the Elimination of all Forms of Racial Discrimination³⁵, which provides an extensive definition of race in Article 1 defining "racial discrimination" as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

In June 2001, the National Council of the Slovak Republic adopted the amendment to the Criminal Code³⁶ No. 253/2001 Coll., which added the expression "ethnic group" to the expression "race" in each provision containing the expressions "nationality" and "race". This addition was made upon the initiative of the Ministry of Justice as a number of problems occurred in judicial practice in the qualifying of racially motivated crimes, with the application of the expression "race" to the qualification of crimes based on anti-Roma hatred. *However, the expression „ethnic group“ has no interpretation in Slovak law or related commentaries. An ethnic group is in general understood as a community of people with special features – common historical background, culture, language, but without a specific territory. (such as Kurds, Roma)*

In the case of I.P (the accused), heard by the Regional Court in Banská Bystrica in 1998-2000, where the aggrieved party was a Roma student attacked because of his Roma ethnicity, the court of first instance used a grammatical and a very restrictive interpretation of the relevant text of law (contrary to item 6 of the recital of the Directive). The court ruled³⁷ that

³⁴See e.g., Stiffel, H., Kočica, J.: Trestný zákon, Stručný komentár (Criminal Code, Brief Commentary), 2001, Bratislava, p.403 and 406

³⁵ Oznámenie Federálneho Ministerstva zahraničných vecí. č. 95/1974 [Announcement of the Federal Ministry of Foreign Affairs No. 95/1974 Coll.]

³⁶ Trestný zákon č. 140/1961 Z. z. v znení neskorších predpisov [Criminal Code No. 140/1961 Coll. As amended] As of 1 January 2006 a new Criminal Code No. 300/2005 Coll. entered into effect. In defining racially motivated crimes the new code uses the same terms "race" and "ethnic group".

³⁷Decision of the District Court in Banská Bystrica No. 3T 52/98 of July 1, 1999

Roma people belonged to the same race as ethnic Slovaks and that they are not to be considered as a different national minority, but rather as a different ethnic group. According to the court's reasoning, there was no reason to qualify the criminal act as falling under Section 221, paragraph 2, letter b) of the Criminal Code³⁸, since this provision does not contain the expression "ethnic group". However, the Court of Appeal did not agree with this interpretation and the Regional Court in Banská Bystrica finally recognized the racial motivation which was eventually included into the legal qualification of the offence.

*The Court of Appeal in Banská Bystrica reversed the decision of the Regional Court stating in its reasoning that, "the law makers purposely endeavoured neither to restrictively stipulate any general definition, nor to provide a list of nations, national groups, races or ethnic groups as they were probably fully aware of the fact that the specification of some of them may artificially exclude the others. Therefore, according to the opinion of the Regional Court, the evaluated issue really should not be reduced, but understood in a wider interpretation."*³⁹

Consequently, the existing law, including the Anti-discrimination Act, is based on a wide understanding of the concepts of "race" and "ethnic group" and include race, nationality and membership in an ethnic group as the ground of discrimination.

Religion or belief

The Slovak law provides no definition of the terms of religion and belief.

*The Criminal Code uses rather the expression "profession" which is in commentaries explained as "the active or passive relation to a particular religion as to the general theory of the interpretation of the world presented by a particular church."*⁴⁰

The Act No. 308/1991 Coll. on freedom of religious belief and the position of churches and religious societies uses the concept of religious belief but fails to define it. For the purposes of the Act any person professing some religion is considered a believer. The agreement about religious education⁴¹ between the Slovak Republic and the registered churches and religious societies deals only with religion as it is defined by the doctrine of the church or religious society registered in the Slovak Republic. "Religion and religious education is taught according to the educational programmes and curricula approved by a registered church or religious society upon the statement of the Ministry of Education of the Slovak Republic."⁴² The Slovak legal system makes no clear distinction between religion and belief, however, the wording of the Anti-discrimination Act implies, in terms of equal treatment, the necessity to take into account both, religion and belief, which are always used in the Act in an alternative manner as "religion or belief."

When defining terms "religion or belief" the recent development in the area of the guarantee of the right to freedom of conscience is important. In the course of year 2005 the Ministry of Justice proposed legislation to draw up two agreements: The Agreement between The Slovak Republic and the Holy See and The Agreement between The Slovak Republic and registered churches and religious societies on the right to exercise conscientious objection. During the last few months an intensive public debate has started on the international agreement between The Slovak Republic and the Holy See on reservations of conscience, and an agreement between the Slovak Republic and several registered Christian churches in Slovakia

³⁸ the Section 221, paragraphs 1,2, (b) stated that injury to one's health inflicted on account of political conviction, nationality, race, religious or other beliefs carries higher criminal charge

³⁹ Decision of the Regional Court in Banská Bystrica No. 6 To 594/99 of September 29, 1999

⁴⁰ See e.g., Stiffel, H., Kočica, J.: Trestný zákon, Stručný komentár (Criminal Code, Brief Commentary), 2001, Bratislava, p. 403

⁴¹ published in the Collection of Law as No. 395/2004 Coll. L.

⁴² Article 2, paragraph 7 of the Agreement among the Slovak Republic and Registered Churches and Religious Societies regarding Religious Education

and the Central Union of Jewish Communities in Slovakia on reservations of conscience. The draft legislation has not yet been passed by either the Government or the Parliament.

Under both proposals a member of the Catholic religion, other registered Christian church and the Jewish community might raise a conscientious objection in the area of employment, education, provision of health services and legal services as well as in serving in the armed forces. Conscientious objection is taken to mean "an objection made on the ground of the freedom of conscience under which every person may refuse to do what they consider to be prohibited pursuant to their belief and moral principles" proclaimed by the Magistry of the Catholic Church and by other registered churches which are party to this agreement. The agreements are not self-executing; that is, there would have to be further detailed legal regulation on the application of these rights.

The public debate is focused primarily on whether this kind of agreement is discriminatory towards other citizens who are non-believers or member of other religions or religious societies and whether it gives enough guarantees for the protection of rights of others.

Disability

Neither the Anti-discrimination Act nor other acts include the definition of disability to be used in the area of anti-discrimination. In the Slovak legal system disability is defined by social security and employment regulations for purposes of the respective areas.

The Social Assistance Act⁴³ uses the expression "serious disability" applicable to the citizens with more serious disabilities. The Social Assistance Act sets the rules for evaluation of the so-called level of the functional impairment according to the type of disability specified according to the list of disabilities included into the Annex 4 thereto in order to determine the compensation of the social impact of serious disability. The Act defines a functional impairment as the lack of physical abilities, change sensory abilities or mental abilities of a person exceeding, from the point of view of the disability prognosis, one year. The level of the functional impairment is determined in per cents. A person with the level of impairment equal to or exceeding 50 % is considered a seriously disabled person.⁴⁴

The decision on the level of functional impairment, and on the fact that a person is considered seriously disabled, is upon the respective Bureau of Labour, Social Affairs and Family, which is to decide upon the submitted medical opinion. The Bureau of Employment, Social Affairs and Family in charge issues the Serious Disability Certificate to be used for the purposes of the identification of a disabled person when applying for social compensations and benefits for seriously disabled citizens guaranteed by specific laws.

In the field of social insurance (e.g. for the purposes of the assessment for the entitlement for the disability pension) the Social Insurance Act⁴⁵ determines its own levels of the reduction of the ability to perform gainful activities. According to Section 71 thereof the insured is considered disabled if his or her ability to perform gainful activities has been reduced due to his or her long-lasting unfavourable state of health by more than 40% when compared to a non-disabled person. The long-lasting unfavourable state of health is considered a state of health resulting in the reduction of the ability to perform gainful activities and expected, according to the medical assessment, to last for more than one year. The body authorized to decide on the level of reduction of the ability to work is Social Insurance Company.

⁴³ Zákon č. 195/1998 Z. z. o sociálnej pomoci v znení neskorších predpisov [Act No. 195/1998 Coll. on Social Assistance as amended]

⁴⁴ Section 51 of the Act No. 195/1998 Coll. on Social Assistance as amended

⁴⁵ Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov [Act. No. 461/2003 Coll. on Social Insurance as amended]

The Act on Employment Services⁴⁶, which regulates the system of institutions and measures to support and help the participants in the labour market, considers as a disabled person:

- *a citizen officially acknowledged disabled according to the Social Insurance Act and*
- *a citizen with his or her ability to perform gainful activities reduced minimum by 20 %, but not more than by 40 % (calculated according to the Social Insurance Act)*

It is possible that state authorities, as well as courts, will in some cases base their understanding of the concept of “disability” on the above listed legal definitions. However, we cannot rule out the possibility that even the disability consisting in reduction of the health-state related abilities by less than 20 % or the disability which has not been formally recognized beforehand by the respective state authority may serve as a reason for discrimination if the circumstances prove disability to be a reason of unequal treatment in a particular case. This confirms as well the definition of the Section 6, paragraph 3 (d) of the Anti-discrimination Act which states that discrimination on grounds of previous disability or discrimination against a person who, because of external symptoms, may appear to have a disability shall also be deemed to constitute discrimination based on disability. It follows from the Anti-discrimination Act that the concept of disability should be understood as broadly as possible.

Age and sexual orientation

As to the age and sexual orientation, the Slovak law provides no specific definition determining the understanding of age and sexual orientation. Moreover, the anti-discrimination law determines no minimum age below which the anti-discrimination law would not apply.

2.1.2 Assumed and associated discrimination

a) Does national law prohibit discrimination based on assumed characteristics? e.g. where a woman is discriminated against because another person assumes that she is a Muslim, even though that turns out to be an incorrect assumption.

b) Does national law prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group)? If so, how?

The Anti-discrimination Act prohibits discrimination base on assumed characteristics in general. Section 3, paragraph 2 of the Anti-discrimination Act contains a general clause stipulating that, by determination whether discrimination has occurred or not, no account shall be taken of whether the underlying reasons were based on facts or mistaken beliefs.

Concerning the associated discrimination the Anti-discrimination Act in Section 5, paragraph 3 and in Section 6 paragraph 3(b) states that discrimination on grounds of one’s relationship with a person of certain racial, national or ethnic origin shall also be deemed to constitute discrimination based on racial, national or ethnic origin. Section 6, paragraph 3(c) provides that discrimination on grounds of one’s relationship with a person of certain religion or belief, or discrimination against a natural person without religion, shall be deemed to constitute discrimination based on religion or belief. Assumed discrimination on the ground of disability is specifically defined. According to Section 6, paragraph 3(d) of the Anti-discrimination Act discrimination on grounds of previous disability or discrimination against a person who, because of external symptoms, may appear to have a disability shall be deemed

⁴⁶ See footnote No.30

to constitute discrimination based on disability. The application of these provisions in practice cannot yet be evaluated as they came into effect short time ago.

Similarly in the field of criminal law it is of no importance for finding somebody guilty of a racially motivated crime (e.g. murder or assault grounded on race, colour of skin, belonging to the ethnic group or nationality, defamation of nation, ethnic group or race and belief⁴⁷) whether or not the crime was committed upon mistaken beliefs or facts.

The amendment to the Criminal Code No. 253/2001 Coll. effective from August 1, 2001 removed from the definition of racially motivated crimes the fact that the person aggrieved must be attacked for “his or her” race, nationality or religion. This amendment was made in response to the increasing number of racially motivated attacks against relatives or next of kin of the members of another race. Once this amendment came into force the concept of racially motivated attack was no longer limited to attacks against a person of different race, nationality or religion; this concept also covered attacks against a person attacked for the race, nationality or religion of some other person. However adoption of the new Criminal Code No. 300/2005 Coll. made a retrograde step in this regard. The crimes related to the racially motivated attacks have been again defined through possessive pronoun “his race”, “their belonging to nationality” etc.

Grammatically, the anti-discrimination provisions in the Constitution do not determine either that the ground of discrimination has to be necessarily connected with a person who is discriminated against. However, the Constitutional court has not yet expressed its view on this issue.

2.2 Direct discrimination (Article 2(2)(a))

a) How is direct discrimination defined in national law?

b) Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination? (See also 4.7.1 below).

c) In relation to age discrimination, if the definition is based on ‘less favourable treatment’ does the law specify how a comparison is to be made?

The adoption of the Anti-discrimination Act introduced into the Slovak law a complete definition of discrimination consistent with both Directives. The general definition of discrimination goes even beyond prohibition of defined forms of discrimination. Under Section 2, paragraph 2 compliance with the principle of equal treatment shall consist in the prohibition of discrimination on any grounds, in the exercise of rights and obligations in compliance with good morals, and in the adoption of anti-discrimination measures insofar as the adoption of such measures is necessary in view of the specific circumstances and possibilities of the person who has an obligation to comply with the aforesaid principle.

Discrimination in Section 2, paragraph 2 states that discrimination shall mean direct discrimination, indirect discrimination, harassment, and victimisation. Discrimination shall also mean an instruction to discriminate and incitement to discrimination. Paragraph 3 of the same section contains the definition of direct discrimination in which direct discrimination shall mean any action or omission where one person is treated less favourably than another is, has been or would be treated in a comparable situation. A new definition of discrimination introduced by the Anti-discrimination Act cancelled the definition of the direct and indirect discrimination and harassment introduced by the Labour Code, Section 13, par. 3 and 4.⁴⁸

⁴⁷ § 198, § 219 ods. 2 pís. f) a § 221 ods. 2 pís. b) Trestného zákona č. 140/1961 Zb. v znení neskorších predpisov [Section 198, Section 219 par. 2(f) and Section 221, par. 2(b) of the Criminal Code No. 140/1961 Coll. as amended]

⁴⁸ The original wording of the Labour Code as adopted in 2001 introduced only the definition of indirect discrimination, which was more restrictive if compared with the wording of Directives. The amendment to the Labour Code No. 210/2003

According to specific exceptions the Anti-discrimination Act accepts justified discrimination in general, as well as in particular in connection with specified grounds and spheres, in which different treatment may be applied (regarding ground and area related justified discrimination (See Chapter 4). The general permission of justified discrimination is applicable in the sphere of occupational activities, where in Section 8, paragraph 1 the Anti-discrimination Act provides that differences of treatment shall not constitute discrimination if they are objectively justified by the nature of occupational activities or the circumstances under which such activities are carried out, provided that the extent or form of such differences of treatment are appropriate and necessary in view of these activities or circumstances under which they are carried out.

Concerning age discrimination there is no specification of who or what would be the relevant comparator in assessing whether discrimination occurred or not. As mentioned above the direct discrimination is when one person is treated less favourably than another is, has been or would be treated in a comparable situation (on the ground of age). Because of the fluidity of the boundaries between different age groups, it seems, that the role of comparator is simply to demonstrate causation, i.e. that the reason for the detrimental treatment was the age. It should also be pointed out that according the basic provisions of the Anti-discrimination Act discrimination should mean not only less favourable treatment but also exercise of the rights and obligations against good morals. Good morals is a term used in the Slovak legal system but it has no legal definition. By good morals are understood generally recognized principles of behaviour in legal relationships – honesty, non-abusive rights exercise etc. Although the Slovak courts do not use this category in decision-making very often, good morals can imply certain aspects of legal relationships which are not covered by a strict legal definition.

Making a comparison and the interpretation of the age discrimination provision will be a task of the future Slovak jurisdiction which has yet not been fully developed.

➔ 2.2.1 Situation Testing

- a) *Does national law permit the use of ‘situational testing’? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court.*
- b) *Outline important case-law within the national legal system on this issue.*
- c) *Outline how situation-testing is used in practice and by whom (e.g. NGOs)*

The national law does not use the term “situational testing” or define it. Situational testing can be discussed under two main aspects. One is admissibility of the case before a court. There might be a risk that a court dismisses the action because of “fictive rights” being enforced. It can be a situation when a court dismisses a petition because the victim “expected to be discriminated against” and therefore no harm could have been suffered. But this is only one possible legal interpretation of this issue. Another is that the discriminatory treatment would be examined no matter if the situation was or was not expected by the victim. In this regard it is necessary to wait for the first case-law of the Slovak courts.

The second aspect of situational testing is the admissibility of evidence normally used before the courts – audio recording. The legal regulation applicable to every civil proceeding - Code of Civil Procedure - states in Section 125 that all means by which it is possible to discover the facts relevant to the case may serve as evidence – notably examination of witnesses, expert opinion, reports and statements of bodies, natural persons and legal entities, documents, inspections and examination of the parties. It follows from the above that the Code of Civil Procedure does not exclude any kind of potential evidence. However, the legal interpretation concerning admissibility of recording of private conversations is split. Some courts are rather reluctant to accept audio recordings made during private conversations (e.g. in labour

Coll. of July 2003 introduced the definition of direct discrimination and harassment in the workplace consistent with the principles stipulated by the Directives. These provisions were abolished by the adoption of the Anti-discrimination Act.

relationships), some accept it. The argument against use of recording is found in Civil Code, Section 11 and 12 according to which “natural persons have the right to the protection of personhood, in particular life and health, civil honour and human dignity, as well as privacy, reputation and manifestations of personal nature” (e.g. pictures, drawings, literary outputs etc.). Documents of a personal nature, portrayals, pictures and video and audio recordings related to a natural person or manifestation of their personal nature can be made or used only with consent of the person.

The counter-argument is that using an audio recording exclusively in order to document an illegal action of the defendant before a court does not constitute an interference with the right of protection of personhood under Section 11 of the Civil Code.

Since the adoption of the new Criminal Code effective from 1 January 2006 the situation in terms of producing records as evidence has become even more complicated. Under a new provision in Section 377, whoever breaches confidentiality of privately presented words or other manifestations of a personal nature by means of illegitimate recording and providing this recording to another person or using it in another way and causing by it serious detriment to the rights of a person shall be punished by imprisonment of up to two years.

This provision is strongly criticised by the public, especially by journalists who object to this as an illegitimate restriction of freedom to receive and spread information without interference of the State. This provision could certainly discourage situational testing in recruitment, job interviews etc.

Situational testing has not been practised in Slovakia until recently.⁴⁹ An NGO which fights against racial discrimination (specifically discrimination against Roma people) through situational testing and a subsequent suing for discriminatory behaviour is The Center for Civil and Human Rights (Poradňa pre občianske ľudské práva) situated in Eastern Slovakia. Their first cases taken to court relate mostly to Roma discrimination in access to goods and services and access to employment. The evidence suggested before the courts are testimonies and transcripts of audio recordings made on the spot. All of the cases based on situational testing are still pending before the first instance courts.

2.3 Indirect discrimination (Article 2(2)(b))

- a) How is indirect discrimination defined in national law?*
- b) What test must be satisfied to justify indirect discrimination?*
- c) Is this compatible with the Directives?*
- d) In relation to age discrimination, does the law specify how a comparison is to be made?*

The definition of indirect discrimination introduced by the Anti-discrimination Act is fully compatible with the provisions of both anti-discrimination Directives. Indirect discrimination in Section 2, paragraph 4 of the Anti-discrimination Act shall mean an apparently neutral instruction, provision, decision or practice that would put a person at a disadvantage compared with other persons, unless such instruction, provision, decision or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. Indirect discrimination based on disability also means under Section 7, paragraph 1 of the Anti-discrimination Act the refusal or omission of the employer to take appropriate measures to enable a person with a disability to have access to employment, to work of a certain type, to promotion or other advance or to training. (See also Chapter 2.6)

⁴⁹ Although in some cases discrimination was exposed by testing, the cases usually did not end up before a court. Complaints addressed to the Slovak Trade Inspectorate in cases of racial discrimination in the area of access to goods and services were usually set aside because the inspectorates usually did their own inspections without using e. g. Roma people as testers. According to an interview with a representative of the NGO – the Center for Civil and Human Rights Vanda Durbáková – some inspectorates in Eastern Slovakia are about to start cooperating with Roma people in order to identify illegal discrimination in access to goods and services.

- This does not apply if the adoption of such measures would impose a disproportionate burden on the employer (for details See Chapter 2.6).

The measure shall not be considered as giving rise to disproportionate burden if its adoption by the employer is mandatory under separate provisions.⁵⁰

The findings stated in Chapter 2.2 apply also to the determination of a relevant comparator with respect to indirect discrimination in relation to age.

➔ 2.3.1 Statistical Evidence

- Does national law permit the use of statistical evidence to establish indirect discrimination? If so, what are the conditions for it to be admissible in court.*
- Is the use of such evidence commonly used?*
- Please illustrate the most important case law in this area.*
- Are there national rules which permit data collection? Please answer in respect of all 5 grounds.*

As already stated in Chapter 2.2.1 all legal means which can prove the fact stated by parties to the proceeding can serve as evidence before the court as far as this evidence was gained in a legal way (not stolen etc.). The existing laws do not explicitly mention statistical evidence as a mean of proving indirect discrimination. Nevertheless the general definition of evidence in court proceedings, does not make this kind of evidence irrelevant or prohibit it. Despite this fact, there has not yet occurred any case of discrimination in which the court used, or was approached with, statistical evidence.

As far as data collection is concerned the basic regulation can be found in the Act on Protection of Personal Data.⁵¹ Apart from data collection arising from the obligation of state agencies set by specific laws⁵², there is a general rule that any operation with personal data including collection can be carried out only with the consent of the person concerned.⁵³

Collection of specific categories of personal data is explicitly prohibited by Section 8, paragraph 1 of the Act on Protection of Personal Data. Under the specific category fall: personal data which reveal racial or ethnic origin, political opinion, religion or belief, membership of political parties or political movements, membership of trade unions and data related to health and sexual life.

This prohibition is irrelevant if the person concerned gives approval to an operation (including collection) with his/her personal data or in the following circumstances:

- Collection or other operations with this kind of data follow from the specific law
- It would be necessary for the protection of vitally important interests of a person or of a person who lacks legal capacity or is physically unable to give written consent and when it is not possible to obtain the written consent of their guardian
- Collection would be carried out within the activity of an NGO, political party or political movement, church recognized by the state, or religious society, provided it concerns only the members of the above organisations or those individuals who have regular contact with the organisation and the collected personal data serve only for internal purposes and will be not provided to any other entity without the written consent of the person concerned,
- Collection concerns personal data which a person has released or when it is necessary for the enforcement of a persons' rights

⁵⁰ Section 7, paragraph 2 a 3 of the Anti-discrimination Act

⁵¹ Zákon č. 428/2002 Z. z. o ochrane osobných údajov v znení neskorších predpisov [Act No. 428/2002 Coll. on Protection of Personal Data as amended]

⁵² E.g. keeping registers of unemployed job seekers, administration of school registers. This is relevant in particular to the category of age and in the school system as well to ethnicity.

⁵³ This report is focused only on the regulation linked to collection of personal characteristics such as racial or ethnic origin, religion, disability, age and sexual orientation and does not provide exhaustive information on the system and regulation of data collection or data protection. The Act on Protection of Personal Data specifies many other situations where no consent of a person is necessary.

- The purpose of collection is the provision of health care and public health insurance when the data are collected by a provider of health care, health insurance company or by the Office for Supervision of Health Care
- Collection is carried out in the area of social insurance, social security of police officers and soldiers, in the provision of social assistance or assistance in material need and it follows from a specific legal regulation
- It is necessary for the fulfilment of the obligation or enforcement of rights of a data collector in the area of employment and employment services, provided, it is set by law.

It follows from the above mentioned that data collection which has not a personal character (collection of data which cannot be matched with a specific individual, e.g. anonymous statistics) are not prohibited. In the national census data such as sex, family status, number of children, citizenship, nationality⁵⁴, religion, mother tongue, education and employment are collected. These kinds of data are not considered to be personal as they are anonymous.

2.4 Harassment (Article 2(3))

a) How is harassment defined in national law? Include reference to criminal offences of harassment insofar as these could be used to tackle discrimination falling within the scope of the Directives.

b) Is harassment prohibited as a form of discrimination?

c) Are there any additional sources on the concept of harassment (e.g. an official Code of Practice)?

Harassment is explicitly prohibited under the Anti-discrimination Act as a form of discrimination.⁵⁵ Under Section 2, paragraph 5 of the Anti-discrimination Act harassment shall mean such treatment of a person which that person can justifiably perceive as unpleasant, inappropriate or offensive and

- a) The purpose or effect of which is or could be violating the dignity of a person and or creating a hostile, degrading or offensive environment, or
- b) The suffering of which a person may consider to constitute a precondition for a decision or for the exercise of rights and obligations resulting from legal relationships.

From the wording „that person can justifiably perceive” is to be understood that in a legal dispute a court will assess the perception of unpleasantness or offensiveness by a particular person who considers him/herself as a victim of discrimination. The court should take into account both the reasonableness standard as well as the perception of the victim.

There is no Code of Practice or other sources providing an additional concept of harassment in the country. In certain forms "unwanted conduct" could be qualified as a crime or minor offence or invoked as a ground for filing a civil defamation suit (action for the protection of "personhood"). The essential fact is that the dignity of a person is protected under the Constitution and the laws. Article 19 of the Constitution states, "every person shall have the right to maintain and protect his or her dignity, honour, reputation and good name. Everyone shall have the right to be free from unjustified interference in their privacy and family life. Anyone has the right to be protected against unwarranted collection, disclosure, and other misuse of personal information." Article 16 of the Constitution protects privacy in general. These general provisions and statements are also reflected in certain provisions of criminal law⁵⁶ (Section 189 - Blackmail, Section 190 – Serious Coercion, Section 360 – Dangerous Threat, 423 – Defamation of Nation, Race and Conviction and Section 424 – Incitement of to Nation, Racial and Ethnic Hatred), administrative law (Section 49 of the Act on Minor Offences) and civil law (Sections 11, 12 and 13 of the Civil Code). In addition to these

⁵⁴ By nationality is meant as well Roma origin and other ethnic minorities such as Hungarian, Ukrainian etc.

⁵⁵ Section 2, paragraph 2 and 3 of the Anti-discrimination Act

⁵⁶ Zákon č. 300/2005 Z. z. Trestný zákon [Act No. 300/2005 Coll. Criminal Code]

provisions of criminal law referring to "unwanted conduct" which affects the dignity of a human being and could be, to some extent, considered as harassment within the meaning of both Directives, there are also racially motivated crimes against physical integrity. In other words, in relation to certain crimes (assault, murder...), a conduct motivated by racial, national or ethnic hatred is considered to be a special motivation and therefore an aggravating circumstance which can carry higher criminal charge and harsher punishment.

"Unwanted conduct", taking the form of unlawful harassment within the meaning of the Directives, also corresponds to minor offences referred to in the Minor Offence Act.⁵⁷ Section 49 of the Act states that, "any person who defames another person by insulting or ridiculing him or her is liable to a pecuniary fine of up to 1.000 SKK." (approx. 26 EUR)

As mentioned above, the dignity of a person (without expressly mentioning discrimination or racial discrimination) is also protected under civil law provisions. Section 11 of the Civil Code⁵⁸ states, "natural persons have the right to the protection of personhood, in particular life and health, civil honour and human dignity, as well as privacy, reputation and manifestations of personal nature." (e.g. pictures, drawings, literary outputs etc.) Section 13 of the Civil Code provides a remedy in case of breach of Section 11 and states, "natural persons have, in particular, the right to request that any unlawful interference with the right to the protection of their personhood be discontinued, that the consequences of such interference be eliminated, and they also have the right to adequate satisfaction." In serious cases, non-pecuniary damages can be sought also in the form of pecuniary satisfaction.

Summarising the above written, unwanted conduct related to racial, ethnic origin, religion or other status, which takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment, can be considered as unlawful acts not only according to the new Anti-discrimination Act but under special circumstances as well under criminal, misdemeanour and civil law. Another problem is that public authorities sometimes refuse to recognise or they underestimate the racial motivation of such unwanted conduct. By examining a committed crime it happens that the investigators do not examine further the intention of potential perpetrators who may insist e.g. they did not know of the race or ethnic origin of the victims and that the attack was pursued for a different reason.

On the other hand, there are not many cases of this kind because the victims of discrimination or racial attacks quite often fail to report their case (they do not press charges or do not complain) or are not able to ascertain that a law has been breached.⁵⁹

2.5 Instructions to discriminate (Article 2(4))

Does national law prohibit instructions to discriminate?

Instruction to discriminate is prohibited as a form of discrimination given by the Section 2, paragraph 2 a 3 of the Anti-discrimination Act. Simultaneously, the Anti-discrimination Act in paragraph 5 of the Section 2 provides a definition of the instruction to discriminate which

⁵⁷Zákon č. 372/1990 Zb. o priestupkoch v znení neskorších predpisov [Act No. 372/1990 Coll. on Minor Offences as amended]

⁵⁸Zákon č. 40/1964 Zb. Občiansky zákonník v znení neskorších predpisov [Act. No. 40/1964 Coll. Civil Code as amended]

⁵⁹ In one case decided by the Regional Court in Banská Bystrica (15 Co 421/04, decision of 19 January 2005) after several appeal proceeding, the appeal court, referring to Article 12 (equality) and Article 19 (protection of human dignity) of the Constitution, Sections 11 and 13 of the Civil Code (protection of dignity and the right to compensation or other remedy), and various international treaties, decided that victims of acts violating human rights (mother of son who was killed because of being Roma) are entitled to effective remedies and to non-pecuniary damages. The court decided to grant the mother of the son that was killed non-pecuniary damages of SKK 100,000 (approx. EUR 3,787) and non-pecuniary damages for the deceased son of SKK 200,000 (approx. EUR 5,280). The court proceeding took more than 5 years.

shall mean the conduct consisting in the abuse of subordinate position of a person for the purpose of discriminating against a third person.

Giving publicly instructions that have the effect of discrimination on account of racial, ethnic origin (such as the prohibition of entry to a pub or restaurant for the Roma, which is quite common in some Slovak regions) could be, under certain circumstances, considered as a crime under Section 424 of the Criminal Code (incitement to racial and ethnic hatred).⁶⁰ If such instruction is issued by a public authority (representative of a state or self-governing body), this act could be considered as an offence - abuse of power of a public authority pursuant to Section 326 of the Criminal Code.

➔ 2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

a) How does national law implement the duty to provide reasonable accommodation for disabled people? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of 'reasonable'. e.g. ➔ does national law define what would be a "disproportionate burden" for employers or is the availability of financial assistance from the State taken into account in assessing whether there is a disproportionate burden?

b) *Does failure to meet the duty count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect discrimination?*

c) Has national law implemented the duty to provide reasonable accommodation in respect of any of the other grounds?

d) *Does national law require buildings and infrastructure to be designed and built in a disability-accessible way? If so, could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing Directive 2000/43?*

The duty to provide reasonable accommodation is in national law implemented through the definition of indirect discrimination within the Anti-discrimination Act. It means that breach of the employer's duty to provide reasonable accommodation for a disabled person is considered to be a breach of the principle of equal treatment. Pursuant to Section 7 of the Anti-discrimination Act indirect discrimination is refusal or omission of the employer to take appropriate measures to enable a person with a disability to have access to employment to the work of certain type, to promotion or other advance or to training. This does not apply if the adoption of such measures would impose a disproportionate burden on the employer. To determine whether the measures give rise to a disproportionate burden, account shall be taken of:

- the benefit that the adoption of the measure would mean for the disabled person,
- financial resources of the employer, including the possibility of obtaining funding or any other assistance for the adoption of the measure, and
- the possibility of attaining the purpose of the measure referred to in paragraph 1 in a different, alternative manner.

The measure shall not be considered as giving rise to disproportionate burden if its adoption by the employer is mandatory under separate provisions.⁶¹

⁶⁰ There are some villages and places in the region where Roma are not allowed to enter pubs or bars. However, in most cases this is an "informal" rule (there is no formal instruction or rule), and Roma people do not attempt to act against this "custom".

⁶¹ For example the obligation of the employer, as stipulated by the Act No. 5/2006 Coll. on Employment Services, to employ an employee for a specified period of time if the state contributed to the creation of the job or the establishment of a so-called protected workshop, the obligation to observe the requirements relating to the construction of buildings and service lines for people with the reduced ability to move as stipulated by the Regulation No. 523/2002 Coll.

Comparing the wording of Art. 2(2)(b)(ii) of the Employment Equality Directive with the wording of Section 7, paragraph 1 of the Anti-discrimination Act the obligation to accommodate a person with disability applies only to the *employers*. This formulation theoretically may exclude other persons or organisations to which the Anti-discrimination Act applies (e.g. natural and legal persons providing further education, training etc.).

Nevertheless the Anti-discrimination Act sets out in its basic provision the general characteristics of the principle of equal treatment. According to this provision (Section 2 paragraph 1 of the Anti-discrimination Act) compliance with the principle of equal treatment shall consist of the adoption of anti-discrimination measures insofar as the adoption of such measures is possible in view of the specific circumstances and within the compass of the person who has an obligation to comply with the aforesaid principle.

From this principle it can be inferred that the duty to provide reasonable accommodation applies not only to the employers and to the disabled in the area of employment but to all other areas and grounds which are regulated by the existing laws prohibiting discrimination.

Case-law dealing with the application of reasonable accommodation does not exist.

Nor has there been measures taken or discussions started on what would be the appropriate ways to implement reasonable accommodation duty.

Employers' duties in this regard are prescribed also by the Labour Code. Sections 158 - 159 of the Labour Code states that, "Employers shall be obliged to employ persons with disabilities in suitable positions, to enable them to receive training or to study with a view to acquiring necessary skills, and shall also be obliged to support the upgrading of these skills. Furthermore, employers shall be obliged to create conditions allowing these employees to assert themselves through work, and shall improve workplace facilities in order to enable these employees to obtain, wherever possible, the same work results as other employees, and to facilitate their work as best they can. As regards employees with disabilities who cannot be employed under usual working conditions, employers may set up for them sheltered workshops or sheltered workplaces." Moreover, "Employers shall enable their employees with disabilities to receive theoretical or practical training (retraining) aimed at maintaining, upgrading, expanding or changing their qualifications, or adapting it to technological progress with a view to safeguarding their employment." In these activities, employers must cooperate with trade unions or representatives of employees.

Employers thus have a duty to provide reasonable accommodation for disabled persons. Assessment of the employers' failure to provide reasonable accommodation is dealt with under the provisions of the Anti-discrimination Act. Article 9 of the Labour Code reads that, "Employers may neither disadvantage nor harm their employees who exercise their rights arising from employment relationships." Similarly, Section 14 of the Labour Code states that, "Disputes between employees and employers concerning claims arising from employment relations shall be heard and decided in court."⁶² However, it should be emphasized that the application of the above mentioned provisions of the Labour Code is limited to the existing labour relations. Therefore, a person that was refused access to a job or some activity on the ground of his or her disability cannot claim their enforcement. This means that the Anti-discrimination Act, compared to the Labour Code, provides disabled people with a wider scope of protection.

Buildings and infrastructure are to be designed and built in a disability-accessible way according the Regulation Determining Details on General Technical Requirements on

⁶² According to Section 80, letter b) of the Code of Civil Procedure, a petition to commence judicial proceedings may be filed also to seek a ruling on the fulfilment of a statutory obligation, obligation under a legal relationship or obligation resulting from the violation of a law.

Construction.⁶³ Buildings which do not meet criteria set by the Regulation should not get the approval from the respective building office. In the case there is a building not accessible for the disabled even though it was built after 1 December 2002, it could be considered as discriminatory.

It is not yet possible to answer an eventual question as to how the courts determine whether accommodation is "reasonable" or whether it imposes a "disproportionate burden" or to give an example of the application of the duty of reasonable accommodation by the court. Since no complaints have been brought and no jurisdiction has yet been created, it is hard to predict how the courts would deal with potential cases and how they would apply the criteria laid down by the new Anti-discrimination Act.

➔ 2.7 Sheltered or semi-sheltered accommodation/employment

- a) *To what extent does national law make provision for sheltered or semi-sheltered accommodation/employment for disabled workers?*
- b) *Would such activities be considered to constitute employment under national law?*

The Act on Employment Services No. 5/2004 Coll. defines in Section 55 “sheltered workshop” and “sheltered workplace”. These are workplaces established by a legal entity or a natural person where at least 50 % of the employees have a disability and are not able to find employment in the open labour market. Working in a sheltered workshop or sheltered workplace is considered to be employment under the Anti-discrimination Act. “Sheltered workshops” or “sheltered workplaces” are also considered to be those places where the disabled are schooled and where working conditions and working requirements are accommodated to their abilities. “Sheltered workplace” also means each individual workplace established or accommodated for an individual with a disability. Such workplace can also be established in the household of a disabled person. Those who learn special skills and those employees who, because of health problems, are temporarily not able to carry out their original work and their employer has no other suitable work for them may also work in a sheltered workshop or at a sheltered workplace. The Act on Employment Services established several kinds of State support for sheltered workshops and workplaces. There is a subsidy for establishing a sheltered workshop or workplace, subsidy for supplementary expenses (such as equipment for workshops with special tools or machines and their installation) and a subsidy for operational costs and transport of employees. The actual amount of the subsidy for establishing one workplace in a workshop and for supplementary expenses can be up to 100 % of the cost of one employee’s labour during 24 months. The requirement for the provision of a subsidy is that a sheltered workshop operates for at least three years. The subsidy for operational costs and transport for one disabled person is a maximum of seven times the minimal monthly cost of labour. State bodies responsible for providing this type of support are offices of labour, social affairs and family.

3. PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

⁶³ Vyhláška Ministerstva životného prostredia SR č. 532/2002 Z. z. ktorou sa ustanovujú podrobnosti o všeobecných technických požiadavkách na výstavbu a všeobecných požiadavkách na stavby užívané osobami s obmedzenou schopnosťou pohybu a orientácie. [Regulation of the Ministry of Environment of the Slovak Republic No. 532/2002 Coll. Determining Details on General Technical Requirements on Constructions a on General Technical Requirements on Buildings used by Persons with Restricted Ability to Movement and Orientation]

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2) Directive 2000/43 and Recital 12 and Article 3(2) Directive 2000/78)

Are there residence or citizenship/nationality requirements for protection under the relevant national laws transposing the Directives?

Protection against discrimination in national legal system is not conditioned by somebody's citizenship or nationality. The Anti-discrimination Act has no specific requirements in this regard. However, Section 4, paragraph 1(b) of the Anti-discrimination Act explicitly laid down that the provisions of the Anti-discrimination Act shall not apply to differences of treatment resulting from the requirements for entry and stay of aliens in the territory of the Slovak Republic, including the treatment of these aliens provided for under separate provision.⁶⁴ This provision indirectly eliminates some of the provision of the Anti-discrimination Act, as long as an alien obtains the relevant permissions for residence, employment etc. Moreover, separate acts require for specific professions or employment to be a citizen of the Slovak Republic.⁶⁵

Art. 35 of the Constitution guarantees the right to choose his or her profession and appropriate training freely, the right to conduct entrepreneurial or other gainful activity, as well as the right to material welfare of those who cannot enjoy this right without their own fault. Paragraph 4 of the same Article states that the law may provide a different regulation of these rights for aliens (E.g. The Act No. 48/2002 Coll. on the Stay of Aliens and on amending and supplementing certain other laws as amended, Act No. 480/2002 Coll. on Asylum and on amending and supplementing certain other laws.).

3.1.2 Natural persons and legal persons (Recital 16 Directive 2000/43)

Does national law distinguish between natural persons and legal persons, either for purposes of protection against discrimination or liability for discrimination?

The Slovak Anti-discrimination Act introduced a general provision according to which the principle of equal treatment is binding for state bodies, self-governing local and regional bodies, self-governing interest groups, natural persons and legal entities. The obligation to observe the principle of equal treatment is therefore applicable equally to legal entities, natural persons, private and public legal entities.

In the Anti-discrimination Act the distinction between natural persons and legal entities for the purposes of protection against discrimination is reflected in Section 2, paragraph 9, where discrimination against a legal entity is also included. This provision states that discrimination against a legal entity is the failure to treat this entity equality on the ground of sex, religion or belief, racial origin, national or ethnic origin, disability, age or sexual orientation with respect to its members, associates, shareholders, members of its bodies, employees, persons acting on its behalf or persons on behalf of which such legal entity is acting.

3.1.3 Scope of liability

What is the scope of liability for discrimination (including harassment and instruction to discriminate)? Specifically, can employers or (in the case of racial or ethnic origin) service-providers (e.g. landlords, schools, hospitals) be held liable for the actions of employees? Can

⁶⁴ e.g. Zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov, Zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov v znení neskorších predpisov [Act. No. 48/2002 Coll. on the Stay of Aliens and on amending and supplementing certain other laws as amended, Act. No. 480/2002 Coll. on Asylum and on amending and supplementing certain other laws as amended]

⁶⁵ e.g. high state officials, civil servants

they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?

The Anti-discrimination Act doesn't give a direct answer as to who is held liable for the unlawful action breaching the principle of equal treatment. It uses only a term "the person violating the principle of equal treatment."⁶⁶ Section 11, paragraph 1 of the Anti-discrimination Act states that "the plaintiff is obliged to identify the person that has allegedly violated the principle of equal treatment."

According to general provisions of the Civil Code⁶⁷ regarding liability for damages, the damage is caused by a legal entity or a natural person providing it was caused during their business and by the people engaged to perform the business. It is of no importance whether a person performs an activity in the frame of an employment relationship, self-employment, or on the ground of another type of legal relationship. According to the Civil Code, individuals acting on behalf of a legal entity or a natural person are not liable for damages without prejudice to their liability for damage as stipulated by labour regulations. Moreover, Section 192 of the Labour Code makes the employer responsible towards the employee for the damage occurred to the employee due to the breach of legal regulations or due to intentional behaviour in breach of good morals during the work performance or in a direct connection with such behaviour. The employer is liable towards the employee for damages occurred due to the breach of legal obligations by the personnel performing the tasks of the employer on behalf of the employer.

The above mentioned shows that anybody acting on behalf of himself or herself (individual discriminator, harasser - be it an employer or a self-employed person) is responsible for his or her breaching of the principle of equal treatment. In case an individual acts on behalf of a legal entity or a natural person, considering the fact that such acts are not always necessarily based on a labour relationship, the responsibility falls upon the person on behalf of whom the person acted.

The person or entity responsible for the infringement of the principle of equal treatment may enforce, according to respective labour regulations⁶⁸ or according to general damage regulations⁶⁹, the reimbursement of the claim against the person who caused the damage due to the breach of his or her duties.

3.2 Material Scope

3.2.1 Employment, self-employment and occupation

Does national legislation apply to all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office?

According to Article 1 of the Labour Code (Articles 1 - 10 are basic principles of labour law, however, their legal enforceability might be questionable), "Natural persons shall have the right to work and to the free choice of employment, to fair and satisfying working conditions and to protection against unemployment. These rights belong to them without any sort of

⁶⁶ Section 9, par. 2 of the Anti-discrimination Act

⁶⁷ Section 420, par. 2 of the Civil Code No. 40/1964 Coll. as amended

⁶⁸ The employee is responsible towards the employer for the damage occurred due to the intentional breach of his or her duties within the performance of his or her assignment or directly related to such breach. (Section 179 of the Labour Code). Similarly, any civil servant liable for damage is obliged to indemnify the authority that he or she serves in the real amount of damage in cash, unless he or she did so via the restoration (Section 115, par. 1 of the Act. No. 312/2001 Coll. on Civil Service)

⁶⁹ Under Section 420, par. 1 of the Civil Code anybody is responsible for the damage occurred due to breach of his or her legal obligation.

restriction and direct or indirect discrimination on grounds of sex, marital and family status, race, colour of skin, language, age, state of health, belief and religion, political or other conviction, trade union activity, national or social origin, national or ethnic group affiliation, property, lineage or other status, with the exception of cases established by law, or where there are substantive reasons resulting from job requirements or nature of work to be performed".

Section 13 of the Labour Code directly obliges the employer to treat employees equally in compliance with the principle of equal treatment laid down by the Anti-discrimination Act for the area of employment and other similar legal relationships. Paragraph 2 of the same Section states that in addition to the grounds laid down by the Antidiscrimination Act, discrimination is also prohibited on the grounds of marital and family status, colour of skin, language, political or other opinion, trade union activity, national or social origin, property, lineage or other status. A potential victim can thus invoke the grounds both by the Anti-discrimination Act's provision as well as by the Labour Code's provision.

The same applies to the legal relationships resulting from the Civil Service Act No. 312/2001 Coll. in which Section 3, paragraph 2 reads: "Rights laid down by this Act shall be guaranteed equally to all citizens when joining and serving in the civil service in conformity with the principle of equal treatment in labour relations and similar legal relations laid down in a special act", which is the Anti-discrimination Act. Identical provisions introduce special acts on civil service in bodies with special tasks in the public sphere – customs officers, soldiers while performing military service, police officers, members of the Slovak Intelligence Service, Corps of Prison and Court Guard and Railroad police officers, members of Fire and Rescue Service while performing civil service (See footnotes No. 24-27). Moreover, these acts extend the grounds constituting the base for the prohibition of discrimination within the performance of the civil service (See Chapter 2.1)

Act. No. 455/1991 Coll. on licensed trades (Small Business Act) which regulates the conditions for performing licensed trade by self-employed persons states in Section 5a that the rights provided for under this Act shall be guaranteed equally to all persons in conformity with the principle of equal treatment in labour relations and similar legal relations provided for under separate provisions of the Anti-discrimination Act.

However, regarding the material scope of anti-discrimination law, the most important is the Anti-discrimination Act, which sets the definition of employment for the purpose of protection against discrimination and the minimum standard of protection in the employment relationships. Under Section 6 of the Anti-discrimination Act the principle of equal treatment shall be applied in employment relationships, similar legal relationships and related legal relationships. The principle of equal treatment shall apply in combination with the rights of natural persons provided for under special laws regulating employment, occupation and other gainful activities or functions (See Chapter 2.1). Accordingly, employment for the purpose of the Anti-discrimination Act means a complex of legal relations resulting from labour, service, contractual and other relations relating to gainful activities. The Anti-discrimination Act in Section 3, paragraph 1 says that the obligation to observe the principle of equal treatment applies to state bodies, bodies of territorial self-government, self-governing bodies interest groups, natural and legal entities. Thus it covers the entire sphere of employment, self-employment and occupational relationships in the public and private spheres.

In paragraphs 3.2.2 - 3.2.5, you should specify if each of the following areas is fully and expressly covered by national law for each of the grounds covered by the Directives.

➔ 3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))

Is the public sector dealt with differently to the private sector?

Pursuant to Section 6, paragraph 1 and 2 (a)(b) of the Anti-discrimination Act the principle of equal treatment on the grounds of gender, religion or belief, racial, national or ethnic origin, disability, age and sexual orientation is applicable to the rights of natural persons under the provisions of acts regulating access to employment, occupation, other gainful activities or functions, including job requirements, selection criteria, modalities and promotion. In other words, the Anti-discrimination Act refers to the existing laws in the area of employment, self-employment and occupation without making any distinction between legal relationship in private or public sector.

Article 6 of the Labour Code generally forbids gender discrimination as far as access to employment, salaries, promotion, vocational training and working conditions are concerned. General prohibition of discrimination in pre-employment relationships is laid down in Section 41 paragraph 8 of the Labour Code. This provision states that, "When recruiting a natural person, an employer must not violate the principle of equal treatment concerning access to employment." The Labour Code, Section 41, paragraph 5 and 6 sets the following rules to be applied to avoid discrimination in the field of access to employment: the employer may request the natural person applying for his or her first job for no information but that relating to the job concerned. Paragraph 6 of the same Section forbids the employer to request the natural person for information regarding:

- pregnancy,
- his or her family background,
- his or her integrity, except for a job in which a clean criminal record is required under special regulation or if the integrity requirement derives from the nature of the job which the natural person is to perform,
- his or her political, trade union or religious affiliation,

Act. No. 5/2004 Coll. on Employment Services which introduces a system of institutions and instruments providing the participants in the labour market with support and assistance in their search for employment, changing employment, filling job vacancies and implementation of active measures within the labour market, stipulates the following in Section 14, paragraph 1: "Citizen⁷⁰ shall have the right to access to employment without any restrictions in conformity with the principle of equal treatment in labour relations and similar legal relations provided for under the Anti-discrimination Act. In conformity with the principle of equal treatment, except for the grounds laid down by the Anti-discrimination Act, any discrimination is prohibited also on the grounds of marital and family status, colour, language, political and other opinion, trade union involvement, ethnic or social origin, property, lineage or other status. Exercising rights and obligations resulting from this Act must be in compliance with good morals. No person may abuse such rights and obligations to the detriment of another citizen. According to Section 62, paragraph 1 of the Employment Services Act the employer can recruit the staff in the required number and structure using the employer's own recruitment capacity or using the assistance of the respective bureaus allocated all over the Slovak Republic. Simultaneously, employers are prohibited from "publishing job advertisements that impose any restriction or discrimination on the grounds of race, colour, sex, age, language, religion or belief, disability, political or other opinion, trade union activities, national or social origin, belonging to a national minority or ethnic group, property, lineage, marital or family status." The unmentioned ground "sexual orientation"

⁷⁰ A legal position equal to the one guaranteed to the citizens of the Slovak Republic is guaranteed also to a foreigner who has been granted a labour permit and temporary residence permit for employment purposes. (Section 21, par. 1 of the Act. No. 5/2004 Coll. as amended). A citizen of the EU member state and his or her relative are guaranteed the same legal position as the citizen of the Slovak Republic. (Section 2, par. 2 of the Act No. 5/2004 Coll. on employment services as amended)

reflects the divided political will whether or not to include (especially in the area of employment) sexual orientation as a ground of prohibited discrimination. However, after the adoption of the Anti-discrimination Act this provision must be read together with the provision of the Act which prohibits discrimination on the ground of sexual orientation in employment including job requirements. This quite complex legal regulation and the necessity to interpret two laws in combination does not make the anti-discrimination provisions clear and easily understandable for the public.

The employer within the recruitment procedure must not demand information related to nationality, racial or ethnic origin, political opinion, religion, sexual orientation, information which are not in conformity with good morals and personal data, which are not necessary for performing the duties of the employer provided for by a separate law. The employer is obliged to prove upon the citizen's demand that it is necessary to provide the specific information requested.⁷¹ The staff recruitment criteria must ensure equal opportunities for each person.”⁷²

The above quoted laws stipulate specific provisions concerning access to employment. (See footnotes No. 22-27 and No. 29).

Selection procedure for the position of a judge, under Section 28, paragraph 3 of the Act. No. 385/2000 Coll. on Judges and Lay Judges, shall be carried without regard to sex, race, belief, religion, political or other opinion of applicants, their national or social origin, or belonging to a nationality or ethnic group. The Act on Judges and Lay Judges is an example of the imperfect and complex anti-discrimination law in Slovakia. The Anti-discrimination Act has amended several other laws in the areas where the Anti-discrimination Act is applicable. These laws refer to the Anti-discrimination Act as a basic anti-discrimination regulation which is to be respected and most of these laws extend the grounds on which discrimination is prohibited in their respective areas. The Act on Judges and Lay Judges was not amended and stayed in its original wording. Although this law is compatible neither with the Anti-discrimination Act, nor with the Employment Directive because age, disability and sexual orientation are not included, it is to be interpreted by the Anti-discrimination Act according to the principle *Lex posterior derogat priori*. Therefore all the grounds mentioned in the Anti-discrimination Act should also apply to the selection procedure of judges.

3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))

Note that this can include contractual conditions of employment as well as the conditions in which work is, or is expected to be, carried out.

The right to satisfactory working conditions, remuneration, and protection against arbitrary dismissal including discrimination at work is basically guaranteed by the Article 36 of the Constitution (See Chapter 1)

The Anti-discrimination Act expressly covers in Section 6, paragraph 2(b) the whole area of employment relationships, similar relationships and related legal relationships on the grounds of gender, religion or belief, racial, national or ethnic origin, disability, age, and sexual orientation in “the performance of employment”⁷³ and condition of work, including remuneration and dismissal.”

According to Article 6 of the Labour Code, women and men shall have the right to equal treatment as far as access to employment, pay and promotion, vocational training and working conditions. Women shall be secured working conditions that enable them to partake in work

⁷¹ Although there is a quite clear legal regulation concerning recruitment these rules are very often breached by the employers especially during job interviews when asking personal data not relating to the work offered

⁷² Section 62, par. 2 and 3 of the Act. No. 5/2004 Coll. on Employment Services as amended

⁷³ the term “employment” includes occupation, other gainful activity or function

taking into account their physiological capacity and the social function of motherhood, and also women and men with regard to their family obligations in the upbringing and care of children". The employer shall create for employees with disabilities such working conditions as enable them to apply and upgrade their work skills, taking account of their state of health, according to Article 8 and Section 158 of the Labour Code (See Chapter 2.6). As far as equal pay is concerned, Section 119 paragraph 3 of the Labour Code provides that, "Wage conditions must be equal for both men and women without any discrimination on grounds of sex. Women and men shall be entitled to equal wages for work of an equal level of complexity, responsibility, and difficulty, performed under the same working conditions and upon achievement of the same efficiency and work results." The same conditions shall apply to the pay of accused and sentenced persons.⁷⁴

3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))

Note that there is an overlap between 'vocational training' and 'education'. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category.

The Anti-discrimination Act prohibits discrimination on the ground of sex, religion or belief, racial origin, national or ethnic origin, disability, age or sexual orientation in combination with the rights of natural persons provided for under separate acts in the area of access to vocational training, further vocational training and participation in active labour market policy programmes including the access to guidance services regarding the employment selection and the change of employment.

Act on Further Education⁷⁵ in Section 3(b) indirectly defines what is to be understood under the term "vocational training", in which it says: "Further education is carried out in the form of vocational education and training which enables participants to improve, deepen or update their knowledge and skills, obtain the competence to carry out certain activities. Re-qualification is also considered to be vocational training." According to Section 1, paragraph 1 of the Further Education Act each person interested in further education has the right to be educated and trained regardless his or her age under the conditions stipulated by law and according to his or her abilities and interests. As to the access to further education the Act directly refers to the application of the provisions of the Anti-discrimination Act.

Article 6 of the Labour Code stipulates equal access to vocational training for both men and women. Article 7 declares the right of juveniles to be trained and to have working conditions that enable them to advance their physical and intellectual skills.

Sections 158 and 159 of the Labour Code contains provisions regarding vocational training and raising professional qualification of persons with disabilities (See Chapter 2.6).

The question of overlapping "vocational training" and "education" does not play an important role in the Slovak anti-discrimination law since according to the existing laws discrimination

⁷⁴Nariadenie vlády č. 499/2002 Z. z. o výške pracovnej odmeny a o podmienkach jej poskytovania obvineným a odsúdeným, o výške peňažnej odmeny za výkon iných prospešných prác a o podmienkach jej poskytovania odsúdeným [Government Resolution No. 499/2002 Coll. on the amount of the payment for work and conditions of its provision to the accused and convicted and on the amount of the payment for other community service and conditions of its provision to the accused and convicted]

⁷⁵ Zákon č. 386/1997 Z. z. o ďalšom vzdelávaní v znení neskorších predpisov [Act No. 386/1997 Coll. on Further Education as amended]

is prohibited in both areas - education and vocational training - on all the grounds: religion or belief, racial and ethnic origin, disability, age and sexual orientation.⁷⁶

3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

Apart from the general constitutional prohibition of discrimination, the Constitution specifically forbids (Article 37, paragraph 2) restricting the number of trade unions as well as privileging some of them in a company or industry. Section 6, paragraph 1 and 2(c) of the Anti-discrimination Act prohibits discrimination on the grounds of sex, religion or belief, racial origin, national or ethnic origin, disability, age and sexual orientation relating to the rights provided for by separate acts in the sphere of membership and activity in employees' organisations, employers' organisations and organisations associating persons of certain occupations, including the benefits that these organisations provide to their members..

In relation to paragraphs 3.2.6 – 3.2.10 you should focus on how discrimination based on racial or ethnic origin is covered by national law, but you should also mention if the law extends to other grounds.

3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)

In relation to religion or belief, age, disability and sexual orientation, does national law seek to rely on the exception in Article 3(3), Directive 2000/78?

The Anti-discrimination Act in Section 5, paragraph 1 and 2 (a)(b) prohibits discrimination on the grounds of gender, racial, national or ethnic origin in social security and healthcare in conjunction with special acts existing in the area of access and provision of social assistance, social insurance, state social support including social advantages and healthcare. It follows from the wording of the Anti-discrimination Act that the principle of equal treatment does not apply to the grounds of religion, belief, disability or sexual orientation.

The basic law in the area of state social security scheme - The Act on Social Insurance⁷⁷ states that policyholders shall have rights in the exercise of social insurance in compliance with the principle of equal treatment in social security provided for under the Anti-discrimination Act. This means that national law relies on the exception in Article 3(3) of Directive 2000/78 and that the principle of equal treatment is guaranteed only on the ground of gender and racial or ethnic origin. The same applies to police officers, professional soldiers and soldiers in preparatory service under the Act on social security of police officers and soldiers.⁷⁸ Act on Social Assistance⁷⁹ which regulates legal relations relating to the provision of social assistance aimed at reducing or overcoming the destitution of citizens guarantees the equal

⁷⁶ Although the ground „sexual orientation“ is not explicitly mentioned in the Act No.131/2002 Coll. on Higher Education and Act No. 29/1984 Coll. on the System of Primary and Secondary Schools (the School Act) it can be covered by the ground „other status“

⁷⁷ Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov [Act No. 461/2003 Coll. On Social Insurance as amended]

⁷⁸ Zákon č. 328/2002 Z. z. o sociálnom zabezpečení policajtov a vojakov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov [Act No. 328/2002 Coll on Social Security of Police Officers and Soldiers and on amending and supplementing certain other acts as amended]

⁷⁹ Zákon č. 195/1998 Z. z. o sociálnej pomoci v znení neskorších predpisov [Act. No. 195/1998 Coll. On Social Assistance as amended]

rights provided for by this act in conformity with the principle laid down in the Anti-discrimination Act.

The right to health care guaranteed under the Act on Health Care⁸⁰ goes even beyond the scope of Directive 2000/43 in terms of the grounds covered. According to the act the right to the provision of health care was guaranteed equally to every person without discrimination on grounds of religion or belief, marital and family status, colour, language, political or other opinion, trade union activities, national or social status, disability, age, property or other status, including sex, and racial or ethnic origin.⁸¹ Policyholders shall have rights in the exercise of health insurance in conformity with the principle of equal treatment in health care regulated in the Anti-discrimination Act.⁸²

➔ 3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)

This covers a broad category of benefits that may be provided by either public or private actors granted to people because of their employment or residence status, for example, e.g. reduced rate train travel for large families, child birth grants, funeral grants and discounts on access to municipal leisure facilities. It may be difficult to give an exhaustive analysis of whether this category is fully covered in national law, but you should indicate whether national law explicitly addresses the category of 'social advantages' or if discrimination in this area is likely to be unlawful.

Child birth grants and funeral grant are under national law a part of state social security scheme. The Anti-discrimination Act prohibits discrimination with regard to access to and provision of social advantage on the grounds of gender, racial or ethnic origin. It also defines what social advantage shall mean for the purpose of the Act. It is „a discount, exemption from a fee, benefits in cash or in kind provided directly or indirectly and independently of social security benefits to a certain group of natural persons who, usually, have a lower income or higher living costs than other natural persons.” Such definition seems to be restrictive because the Act especially mentions people with “lower income or higher living costs.” On the other side the expression “usually” does not fully exclude other and more extensive understanding of social benefit issues. However, the wording of this provision leads one to expect that there will be a tendency to interpret social advantage in the application of the principle of equal treatment mainly as providing discounts to people suffering social disability or health-related disability (for example travel discounts, entrance fee discounts etc.) A more extensive interpretation of this concept will depend on future practice and potential judicial interpretation.

To summarize the above mentioned, the material scope of social advantages is very broad and covers all sorts of possible social benefits. Personal scope of the provision guaranteeing equal treatment in provision of social benefits might be restrictive although it does not explicitly exclude any category or group of beneficiaries.

➔ 3.2.8 Education (Article 3(1)(g) Directive 2000/43)

⁸⁰ § 4 ods. 2 zákona č. 277/1994 Z. z. o zdravotnej starostlivosti v znení neskorších predpisov [Section 4, par. 2 of the Act No. 277/1994 Coll. on Health Care as amended]

⁸¹ § 11 ods. 2 Zákona č. 576/2004 Z. z. o zdravotnej starostlivosti, službách súvisiacich s poskytovaním zdravotnej starostlivosti a o zmene a doplnení niektorých zákonov [Section 11, paragraph 2 of Act No. 576/2004 Coll. on Health Care, Services Related to the Provision of Health Care and on Amending and Supplementing Certain Other Acts]

⁸² § 29 Zákona č. 580/2004 Z. z. o zdravotnom poistení a o zmene a doplnení zákona č. 95/2002 Z. z. o poisťovníctve a o zmene a doplnení niektorých zákonov v znení neskorších predpisov [Section 29 of Act No. 580/2004 Coll. on Health Insurance and on amendment and supplementation of Act No. 95/2002 Coll. on Insurance and on amendment and supplementation Certain Other Acts as amended]

This covers all aspects of education, including all types of schools. Please also consider cases of segregation in schools, affecting notably the Roma community. If these cases exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.

The Anti-discrimination Act prohibits discrimination on the grounds of sex, racial origin and national or ethnic origin also in the area of education, specifically in combination with the special acts which regulate access to and provision of education in all types of schools.⁸³

The Act on Higher Education in Section 55, paragraph 2 and the Act on the System of Primary and Secondary Schools in Section 4b, paragraph 1 (See footnotes No. 31 and 32) set additional grounds on which the principle of equal treatment of every applicant and student must be respected – religion or belief, marital and family status, colour, language, political or other opinion, trade union activities, social status, disability, age, property, lineage or other status. Concerning education of physically disabled children or adults there exist special provisions which oblige the schools to accommodate the needs of disabled students. However due to the insufficient financial resources, the vast majority of schools do not have accessible facilities for the disabled. It is thus very likely that parents of children have a tendency to place their children in specialised educational institutes.

It is very hard to assess whether policy of some schools in access to education for the disabled (especially those physically handicapped) is discriminatory since there has been no known case in Slovakia in which a disabled person challenged a school for insufficient access to education.

In the area of high density Roma population there are still many problems with school or classes segregation of Roma pupils. Very often children from Roma families are sent to special classes for mentally disabled pupils due to their relative inability to speak the official language and their social performance.

One of the legal measures to tackle this problem is the establishment of the so-called zero-grade classes at elementary schools dedicated to children who “are expected not to be able to absorb the knowledge prescribed by the curriculum of the 1st grade of elementary school within one year due to the social and language environment which they come from.”⁸⁴

Although the aim of zero-grade classes is defined quite neutral, the system of zero-grade classes is implemented only in the schools with Roma pupils. Zero-grade classes are not an obligatory part of the school curriculum. The establishment of a zero-grade class depends on decision of the school. (See also Chapter No. 5) Another legal measure is the creation of the position of teacher’s assistant at elementary schools. This position was introduced primarily for the assistance of teachers in schools with a high proportion of Roma pupils.⁸⁵

There exist no reliable statistics on what is the mother tongue of Roma children (the official data from national census do not reflect reality). However, it is generally known that all Roma pupils grow up speaking Romanes of different dialects and many of them do not speak official language until they start to attend school. Ethnicity of individual pupils in schools is one of the statistical data which can legally be collected and recorded by the respective school. Sociological researches state that the likely number of Roma children in Slovakia (from 0-16 years) is over 150,000. There are also discussions about introducing bilingual Romanes-Slovak education or using Romanes as an auxiliary language in the schools. Romanes is at the moment taught at one Slovak university within the department of Roma culture. Along with that there is a need for recodification of Roma language as they are many different dialects and there is a missing tradition of using the language in written form. The

⁸³ including the system of further education provided for under the Act No. 386/1997 Coll. on Further Education

⁸⁴ Section 6 of the School Act No. 29/1984 Coll. as amended

⁸⁵ See Section 50b of the School Act No. 29/1984 Coll. as amended. A teachers assistant “contributes to the establishment of conditions necessary to overcome language, health and social barriers of a child within the process of education and training”

Office of the Plenipotentiary of the Government for Roma communities has announced the recodification as one of its priorities.

To solve the problem of segregation in schools systematically, in 2001 a project “Reintegration of Socially Disadvantaged Children from Special Schools into Standard Primary Schools” within the PHARE Program was introduced. The main objective of the project was to “contribute to the creation of better conditions for Roma education within the schooling system by means of designing suitable diagnostic tools which will enable the uncovering of the real potential and abilities of Roma children to carry on study at primary schools.”⁸⁶ The project should design a test for school readiness which should contribute to the elimination of unjustified placing of socially disadvantaged children in special schools.

The second product was differential methodology which should enable the identification of children attending special schools despite not being handicapped, and thus create conditions for their integration to standard schools.⁸⁷

A follow up of this project is another PHARE Program project called “Integration of Roma Children into Regular Primary Schools.” It aims at establishing transition classes for children attending special schools despite not being mentally disabled and to implement specific teaching methods and to implement the process of re-integration of re-diagnosed pupils into standard primary school classes in a methodical way. The project is being implemented in 39 schools (both standard and special) in Eastern Slovakia.⁸⁸

It has been proved that school segregation is caused not only by biased diagnostic or racial hatred. One of the factors is also the system of subsidies for schools teaching disabled children. Subsidies for disabled pupils are significantly higher than for those without an impairment.

This and many other problems and suggestions for solutions are communicated by the Section of Human Rights of the Office of the Government of the Slovak Republic to the Ministry of Education in order to embody them in the much publicised school reform.⁸⁹

The problem of segregation has also been identified in the findings of the field research carried out by the Slovak equality body – The Slovak National Centre for Human Rights.⁹⁰

School segregation exists not only by placing Roma children into special schools. It happens very often within standard schools (segregated classes, segregation within the classes, or segregated feeding). It might also be the reason why there are no reliable data in terms of finding out differences in material conditions or teachers’ qualifications in the education of Roma pupils. However, in some clearly segregated special schools the material conditions are significantly lower. Nonetheless, it has to be said that the issue of school segregation is

⁸⁶ <http://home.nextra.sk/vudpap/reintegracia/esummary.htm>

⁸⁷ The activities of the project launched in January 2003 and were concluded in March 2004. For more information see website of the Office of the Government of the Slovak Republic: <http://www-8.mensiny.vlada.gov.sk/index.php?ID=481> The Section for Human Rights and Minority of the Office of the Government was the coordinator and co-funder of the project.

⁸⁸ The project activities has started in May 2005 should end by June 2006.

<http://www8.mensiny.vlada.gov.sk/data/files/335.doc>

⁸⁹ Interview with Director of the Section of Human Rights of the Office of the Government of the Slovak Republic Jana Kviečinská. As far launching the school reform it seems that the current Minister of Education was not successful in accomplishing his program. He is rather facing huge criticism because of lack of communication about the objectives of the reform with the wider public.

⁹⁰ “The Right of Children in Roma Communities – Field Research on Observance of Rights of Children Living in Roma Settlements with Regard to Discrimination and Specific Problems.” The field research was carried out in 2004 and was supported by the Office of the Government of the Slovak republic – within Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Forms of Intolerance in Period 2004-2005 Final report of the project “Field research of the observance of human right of Roma children from Roma settlement with regard to discrimination and specific problems”

[http://www.snslp.sk/rs/snslp_rs.nsf/0/20b948ad2fa605c3c1256ff0003150a8/\\$FILE/Z%3%A1vere%C4%8Dn%C3%A1%20spr%C3%A1va%20v%C3%BDskumu%20dodr%C5%BEiavania%20pr%C3%A1v%20r%C3%B3mskych%20det%C3%AD.pdf](http://www.snslp.sk/rs/snslp_rs.nsf/0/20b948ad2fa605c3c1256ff0003150a8/$FILE/Z%3%A1vere%C4%8Dn%C3%A1%20spr%C3%A1va%20v%C3%BDskumu%20dodr%C5%BEiavania%20pr%C3%A1v%20r%C3%B3mskych%20det%C3%AD.pdf)

not a major political issue in the above mentioned school reform. Nor is it the subject of much current public political or legal discussion or media attention.

3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43)

Does the law distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association)? If so, explain the content of this distinction.

The Anti-discrimination Act refers explicitly to the area of “goods and services including housing provided to the public by legal entities and natural persons – entrepreneurs.”⁹¹ The wording of the Act clearly shows that the application of the prohibition of discrimination will be limited to the sale of goods and provision of services carried out in public and targeted to the public. The provisions of the Anti-discrimination Act do not apply to goods and services offered or provided on the private basis (e.g. providing or offering goods to the members of a private association, family etc).

Under the Consumer Protection Act when providing goods and services to consumers the seller has the obligation to comply with the principle of equal treatment set in the Anti-discrimination Act. The seller in particular must not refuse to sell the consumer products displayed or otherwise prepared for selling or to refuse to provide services within his capacity. The seller must also not tie product selling or provision of service to selling of other products or provision of other services unless the restriction is identical with all cases and usual in commercial relations. This shall not apply to cases when the consumer fails to comply with requirements that must be satisfied under separate provisions.⁹² Such conduct would be considered unlawful.

Despite the principle set in Art. 6 para. 2 of the Council Directive 2000/43/EC by the adoption of the Anti-discrimination Act the level of protection against discrimination was reduced in the area of access to goods and services. Although the legal standards are fully implemented with the Council Directive 2000/43/EC, the scope of the Consumer Protection Act⁹³ was broader before the adoption of the Anti-discrimination Act. The original wording of the Act guaranteeing equal treatment of consumers in Section 6, paragraph 1 stated: The seller must not discriminate any consumer in any way and must not act against a good moral. By the adoption of the Anti-discrimination Act the unlimited prohibition of discrimination was restricted to the grounds of sex and racial and ethnic origin.

3.2.10 Housing (Article 3(1)(h) Directive 2000/43)

To which aspects of housing does the law apply? Are there any exceptions?

As stated before, the Anti-discrimination Act prohibits discrimination on the ground of sex, racial, national or ethnic origin in relation to housing. The Act does not provide any definition of “housing”. The only specification is that it applies only to the housing provided to the public by legal entities and natural persons – entrepreneurs.

⁹¹ Section 2, letter d) of the Anti-discrimination Act

⁹² § 6, ods. 1 zákona č. 634/1992 Zb. o ochrane spotrebiteľa v znení neskorších predpisov [Section 6, paragraph 1 of the Act No. 634/1992 Coll. on Consumer Protection]

⁹³ Zákon č. 634/1992 Zb. o ochrane spotrebiteľa v znení neskorších predpisov [Act No. 634/1992 Coll. on Consumer Protection as amended]

4. EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

Does national law provide an exception for genuine and determining occupational requirements? If so, does this comply with Article 4 of Directive 2000/43 and Article 4(1) of Directive 2000/78?

The Anti-discrimination Act defines “genuine and determining occupational requirements” in Section 8 pursuant to which differences of treatment shall not constitute discrimination if they are objectively justified by the nature of occupational activities or the circumstances under which such activities are carried out, provided that the extent or form of such differences of treatment are proportionate and necessary in view of these activities or circumstances under which they are carried out. In the author’s opinion this provision fully complies with both Directives’ requirements. There is no case law applying or interpreting this provision.

4.2 Employers with an ethos based on religion or belief

a) Does national law provide an exception for employers with an ethos based on religion or belief? If so, does this comply with Article 4(2) of Directive 2000/78?

b) Are there any specific provisions or case-law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination?

As regards organisations with a special ethos connected with their religion or belief, relevant legislation states that there shall be no right to interfere with the internal matters of the church.⁹⁴ However, internal orders of churches cannot violate generally binding legal acts, and the activity of churches cannot contravene the Constitution, cannot endanger the safety of citizens, public order, health, morality or rights and freedoms of others. In practice it means e.g. that schools managed by religious organisations can have their own rules, however, these rules and the "external" relationships of such schools must comply with the generally binding rules.

In the Anti-discrimination Act the Slovak Republic provides an exception for churches, religious societies and other organisations whose activities are based on religion or belief. Section 8, paragraph 2 stipulates that in the case of registered churches, religious societies and other legal entities whose activities are based on religion or belief, differences of treatment based on age, sex, religion or belief and ascertainment of sexual orientation shall not constitute discrimination where they are related to employment by or to carrying out activities for such organisations. These organisations are allowed to require the individuals who are employed by them or carry out activities for them to act in conformity with the organisations’ religion or belief and with the principles of their religion or belief. From the author’s point of view this stipulation is much broader than the objectives of Article 4(2) of the Framework Employment Directive. Article 4 (2) states that this kind of difference in treatment “should not justify discrimination on another ground” than religion or belief. In very limited circumstances, a difference of treatment may be justified also on the grounds of age, sexual orientation or other grounds. (Recital 23 and 24 of the Framework Employment Directive) The Slovak Anti-discrimination Act also includes in admissible different treatment the

⁹⁴ Act No. 308/1991 Coll. on Freedom of Religious Belief and Status of Churches or Religious Societies, Section 5 paragraph 2 stipulates that, "Churches and religious societies administer their own affairs and, in particular, appoint their bodies, their priests and establish orders and other institutions independently of state authorities".

grounds of age, sex and ascertainment of sexual orientation. However, the most important omission is that the quoted provision does not stipulate any genuine and determining occupational requirements which should objectively justify the difference in treatment in a particular case. Following the wording of Section 8, paragraph 2 it means that this provision lays down for all registered churches, religious societies and organisations based on religion or belief a general exception from respecting the principle of different treatment on the above mentioned grounds.

Allowing the ascertainment of sexual orientation without providing any specific justification, in the author's opinion, creates room for prejudice and unequal treatment on the ground of sexual orientation which might, in concrete cases, be unjustified. It has to be stated that the general exception under this provision applies not only to priests and other religious servants but to all persons carrying out activities for these organisations or employed by them.

There is no case-law relating to the conflict between the rights of churches, religious or similar organisations and other rights to non-discrimination.

4.3 Armed forces and other specific occupations

- a) Does national law provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78)?*
- b) Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?*

The provision of the Anti-discrimination Act concerning disability and age do not apply to the regulation covering the service of customs officers, members of armed forces, armed security services, armed services, the National Security Office, the Slovak Intelligence Service and the Fire and Rescue Services.⁹⁵

4.4 Nationality discrimination

Both the Race Directive and the Framework Employment Directive include exceptions relating to difference of treatment based on nationality (Art 3(2) in both Directives).

- a) How does national law treat nationality discrimination?*
- b) Are there exceptions in anti-discrimination law that seek to rely on Art 3(2)?*

The difference of treatment based on nationality of a person is allowed under the Anti-discrimination Act as far as it results from the legal requirements for entry and stay of aliens in the territory of the Slovak Republic, including the treatment of these aliens provided for under separate provisions.⁹⁶ Separate legal conditions regarding aliens apply mostly to fulfilment of special requirements for granting permission to business activity, employment or study on the territory of the Slovak Republic. Restrictions also apply to access to certain occupational positions and social assistance service. In other areas discrimination shall be prohibited under the legal regime of the Anti-discrimination Act regardless of nationality. It follows from the inclusive formulation of grounds in specific laws on which discrimination is prohibited (See Chapter 2.1) The only area where it is not possible to apply nationality as a ground of discrimination is access to goods and services including housing. This is because

⁹⁵ Section 4, paragraph 1(b) of the Anti-discrimination Act

⁹⁶ Zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov, Zákon č. 480/2000 Z. z. o azyle a o zmene a doplnení niektorých zákonov v znení neskorších predpisov [Act No. 48/2002 Coll. on the Stay of Aliens and on amending and supplementing certain other laws as amended, Act. No. 480/2002 Coll. on Asylum and on amending and supplementing certain other laws as amended]. Both acts regulate legal status, conditions for granting permission business activities, employment, study and stay of aliens and asylum seekers

the Act of Consumer Protection does not extend the grounds of discrimination beyond the scope of the Race Directive. There are no other exceptions or conditions as far as nationality discrimination.

➔ 4.5 Work-related family benefits

Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employee and their partner. Certain employers limit these benefits to the married partners or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note this question is focused on benefits provided by the employer. We are not looking for information on state social security arrangements.

(a) Does national law permit an employer to provide benefits that are limited to those employees who are married?

(b) Does national law permit an employer to provide benefits that are limited to those employees with opposite-sex partners?

The Anti-discrimination Act does not explicitly lay down any rules as far as work-related benefits. It also does not explicitly stipulate any exception relating to the family benefits for the opposite-sex partners.

Section 43, paragraph 4 of the Labour Code contains a general reference according to which further working conditions can be agreed on in an employment contract, notably on further material benefits. There are no specific rules for categorizing employees according to their family or sexual orientation status. The Labour Code also states that in conformity with the principle of equal treatment, any discrimination shall also be prohibited on the grounds of marital, family status or other status. It can therefore be assumed that any discriminatory rules in the provision of work-related family benefits are prohibited.

On the other hand the Labour Code contains one specific provision according to which in the case of death of the employees' husband or wife the employer is obliged to grant to the employee two days off paid by the employer. In the case of death of a person who lived with the employee (possibly a same-sex partner) the employee is to be granted one day off.

Work-related family benefits are usually not a part of an employment contract. They are often incorporated into the collective agreements or internal rules of an employer and are known only to the employees concerned. If they are a part of an employment contract the prohibition of discrimination on the grounds of sex or family status embodied in the Labour Code should be applicable. It is likely that many employers provide benefits limited to "family members" which are usually considered to be a married couple, or the children of an employee. Nonetheless, it must be stated that this assumption is not supported by any official data. The rules related to family benefits were never challenged for being discriminatory (be it on the ground of sex or other) and the law has not yet officially been interpreted in relation to family benefits within employment.

4.6 Health and safety

Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?

Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery etc)?

Exceptions in relation to disability, health or safety in national law have rather a form of positive action towards women, parents, juveniles and disabled people in the area of employment and education incorporated in several different acts. (See Chapter 4.7.2 and Chapter 5)

Article 38 of the Constitution guarantees to women, minors and disabled persons more extensive health protection and special working conditions. According to Article 8 of the Labour Code's basic principles "employees with disabilities are ensured working conditions that enable them to apply and develop their working skills, taking account of their health condition."

Section 8, paragraph 5 of the Anti-discrimination Act lays down possible justification for differences in treatment in relation to disability. It states, that objectively justified differences of treatment shall not be considered as discrimination on the ground of disability where, by reason of the nature of employment or occupational activities, access to such employment or occupational activities is made conditional on meeting the health requirements. Exception on the ground of disability also applies in the area of the provision of insurance services (See Chapter 4.7.1) The health requirements for exercising a job or occupation are set by specific laws regulating the respective legal relationships. Assessing whether a disabled person is able to work and to what extent, rests with the medical advisor whose decision is binding. It is therefore not the task or the right of an employer to decide whether a particular job would pose a risk to the disabled persons' health. Generally, a potential argument of an employer that a particular disability would jeopardize the health and safety of other workers or customers would have to be justified by objective reasons. The legal basis for such arguments is Section 8, paragraph 1 of the Anti-discrimination Act under which different treatment is allowed when it is objectively justified by the nature of occupational activities or the circumstances under which such activities are carried out. The extent and form of such different treatment must be legitimate and justified in view of these activities or circumstances under which they are carried out. There is yet no case-law on this issue.

4.7 Exceptions related to discrimination on the ground of age

➔ 4.7.1 Direct discrimination

- a) Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78, account being taken of the European Court of Justice in the Case C-144/04, Mangold ?*
- b) Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?*

Justification of discrimination (including indirect discrimination) is specified in Section 8, paragraph 3 of the Anti-discrimination Act which almost follows the wording of Article 6 of Directive 2000/78. It reads as follows: "Differences of treatment on grounds of age shall not be deemed to constitute discrimination if they are objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. Differences of treatment on grounds of age shall not be deemed to constitute discrimination if they consist in

- a) the fixing of a minimum or maximum age as a recruitment criterion,
- b) the setting of special conditions on access to employment and vocational training, and special conditions on employment, including remuneration and dismissal, for

persons of a certain age bracket or persons with caring responsibilities, where such special conditions are intended to promote vocational integration or protection of such persons,

- c) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment”

With regard to occupational social security schemes, differences of treatment on grounds of age shall not be considered as discrimination where they consist in the fixing of age limits for entitlement to certain social benefits including the fixing of different age limits in such schemes for employees or groups of employees, and the use of different calculation modes of such benefits, provided this does not result in discrimination on the grounds of sex.⁹⁷ Under Section 8, paragraph 6 also differences of treatment on grounds of age or disability in the provision of insurance services shall not be deemed to constitute discrimination where such treatment results from different levels of risk, verifiable by statistical or similar data, and where the terms of insurance services adequately reflect such risk.

Reflecting the decision of European Court of Justice in the case of Mangold C-144/04 with regard to the situation in Slovakia the legal regulation in terms of part-time work has to be pointed out. The Labour Code on the one hand prohibits discrimination in treatment of full-time and part-time workers whatever the grounds are. On the other hand after the amendment of the Labour Code effective since July 2003⁹⁸ there exists no legal protection against dismissal for part-time workers working less than 20 hour per week. The employer can terminate the employment on whatever the grounds or without giving any ground for employment termination.⁹⁹ Full-time workers and part-time workers working more than 20 hours per week can be dismissed only on the ground stipulated by the Labour Code in Section 63. The notice period for the employees employed for less than 20 hours per week is only 15 days whereas in full-time employment it is 2 months. Since it is very likely that the most numerous group working part-time are older employees after their retirement age and women, this legal rule might create the room for legalized indirect discrimination of workers on the ground of age, gender and possibly as well on other grounds. The question whether this provision amounts to a failure to implement the requirements of the Directive can be answered within individual case by using statistical data proving indirect discrimination. The provision at issue has not yet been impugned and there is no case in court known in which the statistical data was used as a mean of proving indirect discrimination.

4.7.2 Special conditions for young people, older workers and persons with caring responsibilities

Are there any special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection? If so, please describe these.

According to Sections 171 - 173 of the Labour Code, an employer shall be obliged to create favourable conditions for the overall development of physical and mental capabilities of juvenile employees, including by adapting their working conditions. Juvenile employee is under Section 40, paragraph 3 of the Labour Code an employee younger than 18 years. When dealing with significant matters concerning the juveniles, employers shall closely co-operate with the parents of juveniles. Employers shall be obliged to keep records on juveniles they employ. Any notice given to a juvenile employee, or termination of employment with immediate effect at the employer's initiative must also be brought to the attention of the

⁹⁷ Section 8, paragraph 4 of the Anti-discrimination Act

⁹⁸ Zákon č. 210/2003 Z. z. ktorým sa mení a dopĺňa zákon č. 311/2001 Z.z. Zákonník práce v znení neskorších predpisov [Act No. 210/2003 Coll. amending and supplementing Act. No. 311/2001 Coll. Labour Code as amended]

⁹⁹ Section 49, paragraph 6 of the Labour Code

juvenile's legal guardian or, where employment is terminated on the employee's initiative, the employer is obliged to request the opinion of the juvenile's legal guardian. Employers may only assign juveniles to the jobs that are appropriate to their physical and mental development, that do not jeopardise their morality, and they shall provide them with enhanced care at work.

The Labour Code, Sections 174 to 175, stipulate the prohibition of night work and standby duty applicable to juvenile employees. Juvenile employees older than 16 may exceptionally perform night work not exceeding one hour in case it is necessary for their vocational training. The employer must not apply such system of wages and benefits, which could result in endangering the health and safety of juvenile employees due to the increasing work performance. If a juvenile employee is prohibited to carry out the work which he or she is qualified for, the employer is obliged to assign him or her to another work, preferably to that corresponding to his or her qualification, until the juvenile employee is permitted to carry out the work concerned. A juvenile employee must not be assigned to work which is inadequate, dangerous or harmful to health for the juvenile employee due to his or her age-related specific anatomic, physiological features. The lists of work and workplaces forbidden for juvenile employees are set by the government regulation.¹⁰⁰ Moreover, the employee is forbidden to assign juvenile employees to work exposing them to the increased risk of injury or to work the performance of which could seriously endanger the health and safety of their co-workers or other persons. It is evident, that most of the above-mentioned provisions are very general and declaratory.

Specific protective measures of the Labour Code applies to the prohibition of an immediate dismissal of an employee on maternity and parental leave, a solitary employee taking care of a child younger than three years (Section 68). The employee may decide on the scheduling of working hours of such persons and other employees caring for a child younger than 15 years of age only upon the agreement with the employee concerned (Section 87). The employer is obliged to excuse the absence from work of an employee for periods of maternity leave and parental leave, periods of attending to a sick family member and periods of caring of a child younger than ten years of age who for substantive reasons may not be in the care of a children's educational facility or school which the child is otherwise in the care of (Section 141). When designating employees to work shifts, the employer shall be obliged to take into account the needs of pregnant women, women and men continuously caring for children. If a pregnant woman, men and women continuously caring for a child younger than 15 years of age requests a reduction in working time or other arrangement to the fixed weekly working time, the employer is obliged to accommodate her request if such is not prevented by substantive operational reasons. A pregnant woman, a woman or man continuously caring for a child younger than three or a solitary man or woman continuously caring for a child younger than fifteen years of age may be employed for overtime work only with their agreement. Stand-by work may only be agreed upon with them (Section 164).

The Employment Service Act expressly defines the employment services as well as the implementation of active measures within the labour market. Among others, the act specifically considers support for „a handicapped job seeker.“ Into this category fall as well solitary citizen caring for a child up to 10 years old, people older than 50 years of age and people younger than 25 years of age who graduated from their regular daily studies less than two years ago and did not succeed in getting their first paid job. Following this Act the government may provide a job seeker younger than 25 years a so-called graduate practical training allowance aimed at widening the opportunities of young people to find a job within the labour market. The graduate practical training is carried out at the workplace

¹⁰⁰ Nariadenie vlády č. 286/2004 Z.z. ktorým sa ustanovuje zoznam prác a pracovísk, ktoré sú zakázané mladistvým zamestnancom, a ktorým sa ustanovujú niektoré povinnosti zamestnávateľom pri zamestnávaní mladistvých zamestnancov [Government Regulation No. 286/2004 Coll. regulating the list of work and workplaces forbidden for juvenile employees and setting certain duties of employers regarding the employment of juvenile employees]

corresponding to the reached level of education. During the graduate practical training the employer receives a state-funded allowance to cover necessary expenses in the amount of SKK 1.000 (approx. 26 EUR, the average wage in first half of the year 2004 reached the level 15.008 SKK – approx. 395 EUR) and the young trainee a benefit in the amount 1.500 SKK (approx. 39 EUR) a month. The author has no statistical data available evaluating the utilization of such support; however, current public responses presented in the media indicate that this measure is not motivating for young people, especially due to the amount of the benefit.

The act introduced as well “subsidy of employment of a handicapped job seeker.”¹⁰¹ An employer who creates a new workplace and employs “a handicapped job seeker” is entitled for a subsidy up to 100 % of the monthly cost of labour of one employee. The subsidy can be granted during 24 months after the agreement between the employment the respective office of labour, social affairs and family was signed.

As far as persons with caring responsibilities are concerned, the Labour Code protects employees taking care of a seriously disabled next of kin. Specific protective measures prohibit the immediate dismissal and rescheduling of working hours is permissible only upon the agreement with the employee concerned. According to the Social Assistance Act,¹⁰² a natural person caring for a seriously disabled person who is older than six years of age and dependent, according to medical opinion, on a permanent personal care, may be provided a care allowance determined by law.

➔ 4.7.3 Minimum and maximum age requirements

Are there exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training?

General rules for justification of direct discrimination on the ground through minimum or maximum age requirement in employment sets Section 8, paragraph 3(a) of the Anti-discrimination Act (See Chapter 4.7.1) In practice, it happens quite often that one of the criteria stated in job advertisements published within the recruitment procedure is an indirect determination of the acceptable age via determination of length of professional work experience. As far as the legislation requirements are concerned there are several laws stipulating minimum or maximum age in employment relationships. None of the laws were subject to a specific public discussion as to whether they are compatible with the Directive 2000/78. The Constitution of the Slovak Republic regulates the requirements applicable to the holders of high public positions, including their age. This applies to the President of the State, in case of whom minimum level of 40 years age has been determined, to judges, judges of the Constitutional Court, the Ombudsman and the Members of the Parliament (the National Council)¹⁰³. Other laws regulate for example the age limit applicable to a work assistant for the disabled person¹⁰⁴, the minimum age of a prosecutor¹⁰⁵, general prosecutor¹⁰⁶ and the judges of the Supreme Court and the Special Court.¹⁰⁷ The President may, upon the

¹⁰¹ Section 50 of the Act on Employment Services, Zákon č. 5/2004 Z. z. o službách zamestnanosti v znení neskorších predpisov

¹⁰² Section 64a of the Act on Social Aid, Zákon č. 195/1998 Z. z. o sociálnej pomoci v znení neskorších predpisov, [Act No. 195/1998 Coll. on Social Aid as amended] The allowance entitlement applies only to the category of relatives specified by law or to a guardian appointed by a court, or a person into the foster care of whom the child was entrusted.

¹⁰³ See Articles 74, 103, 134, 145 and 151a of the Constitution of the Slovak republic

¹⁰⁴ Section 59 of the Act on Employment Services, See footnote No. 30

¹⁰⁵ § 6 zákona č. 154/2001 Z. z. o prokurátoroch a právnych čakatel'och prokuratúry v znení neskorších predpisov [Section 6 of the Act No. 154/2001 Coll. on prosecutors and prosecutors candidates as amended]

¹⁰⁶ § 7 zákona č. 153/2001 Z. z. o prokuratúre v znení neskorších predpisov [Section 7 of the Act No. 153/2001 on prosecution as amended]

¹⁰⁷ § 11 zákona č. 385/2000 Z. z. o sudcoch a prísediach a o zmene a doplnení niektorých zákonov v znení neskorších predpisov [Section 11 of the Act No. 385/2000 Coll. on judges and lay judges and on amending and supplementing certain other acts]

recommendation of the Judicial Council, withdraw a judge who reached 65 years of age.¹⁰⁸ The Labour Code stipulates the minimum age of 15 years for a natural person to be subject to the rights and duties of an employee. However, the employer must not agree upon a starting day of work before the applicant has completed compulsory school education.¹⁰⁹ Civil servants must be a minimum of 18 years old. The employment within the permanent civil service is to terminate on the 65th birthday of the employee.¹¹⁰ Similarly, the law requires a minimum age of 18 for obtaining a permit to run an entrepreneur's business.¹¹¹

➔ 4.7.4 Retirement

In this question it is important to distinguish between pensionable age (the age set by the state, or by employers or by collective agreements, at which individuals become entitled to a state pension, as distinct from the age at which individuals retire from work), and mandatory retirement ages (which can be state-imposed, employer-imposed, imposed by an employee's employment contract or imposed by a collective agreement).

a) Is there a state pension age, at which individuals must begin to collect their state pensions? Can this be deferred if an individual wishes to work for longer, or can an individual collect a pension and still work?

b) Is there a normal age when individuals can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements? Can payments from such occupational pension schemes be deferred if an individual wishes to work for longer, or can an individual collect a pension and still work?

c) Is there a state-imposed mandatory retirement age(s)? Please state whether this is generally applicable or only in respect of certain sectors, if so please state which. Have there been recent changes in this respect or are any planned in the near future?

d) Does national law permit employers to set retirement ages by contract, collective bargaining or unilaterally?

e) Does the law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment or are these rights lost on attaining pensionable age or another age (please specify)?

For these above questions, please indicate whether the ages are different for women and men.'

The age for entitlement to a retirement pension is fixed by law. There is no possibility to set retirement ages by private contract or by collective bargaining. Under the new Social Insurance Act effective from January 2004 retirement age is fixed equally for men and women in the age 62 years. However the provision will be fully implemented as of the year

¹⁰⁸ Art. 147, paragraph 2 (b) of the Constitution of the Slovak republic

¹⁰⁹ Section 11 of the Labour Code

¹¹⁰ Section 14 and 43 of the Civil Service Act, See footnote No. 22

¹¹¹ Section 6 of the Small Business Act, See footnote No. 28

2014. Due to changing of retirement security scheme the Social Insurance Act simultaneously introduced transitory provisions calculating the retirement age for men and women from the year 2004 differently, starting with 60 years for men and with 53 to 57 years for women, depending on the number of children.¹¹² The retirement age and collection of pension does not influence the employee in working if they wish to continue their employment or start a new one. The employee can still work after reaching the retirement age and during that time collect both pension from the social security scheme and wage from their employer. Under special circumstances an individual can start to collect an early pension¹¹³. Nevertheless early pension does not limit an individual in working either. General rights as to protection from unfair dismissal are not lost upon reaching retirement age. This means that anyone can continue employment so long as he or she enjoys sufficient capacity (except for age conditions mentioned above, See Chapter 4.7.3) and the state retirement age simply refers to pension entitlement which a worker can collect while still working. The Anti-discrimination Act explicitly states that objectively justified differences of treatment on the ground of sex where they consist in the fixing of different retirement age for men and women are not considered to be discriminatory.¹¹⁴

4.7.5 Redundancy

a) Does national law permit age or seniority to be taken into account in selecting workers for redundancy?

b) *If national law provides compensation for redundancy, is this affected by the age of the worker?*

The age of an employee cannot, according to the Slovak law, constitute the aspect to be considered when reducing a number of employees due to redundancy. Similarly, the redundancy payment does not depend on the age of the employee concerned. The calculations of the redundancy payment are made only by average wage of an employee and by the fact whether the employment lasted less than or at least 5 years.¹¹⁵

4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

Does national law include any exceptions that seek to rely on Article 2(5) of the Framework Employment Directive?

The Anti-discrimination Act does not apply when, compliance with the principle of equal treatment would or could contradict legal measures which ensure security, internal order, crime prevention, health protection or the protection of rights and interests protected by law and freedoms of persons.¹¹⁶

4.9 Any other exceptions

Please mention any other exceptions to the prohibition of discrimination (on any ground) provided in national law.

¹¹² Section 65 of Social Insurance Act. The law envisages the gradual unification of retirement ages for men and women; women's retirement in 2014 will be the same as for men - 62 years, without taking into account the number of children. The men's retirement age 62 years will be applicable from the year 2006

¹¹³ Section 67 of Social Insurance Act. One of the conditions is that an individual was insured at least for 10 years.

¹¹⁴ Section 8, par. 7(a) of the Anti-discrimination Act

¹¹⁵ Section 63, par. 1(b) and Section 76 of the Labour Code

¹¹⁶ Section 3, par. 1 of the Anti-discrimination Act

Under the Anti-discrimination Act different treatment shall not be deemed as discriminatory where its purpose is the protection of pregnant women and mother. Section 8, par. 7(b).

The Labour Code includes the provisions ensuring in particular the protection of pregnant women, parents caring for children, mothers caring for a child younger than nine months of age. These provisions justify in fact differential treatment based on gender, motherhood and parenthood. Work that must not be carried out by pregnant women, mothers before the end of the ninth month following childbirth or a breast-feeding women are specified by a separate governmental regulation.¹¹⁷

An employee is obliged to establish, maintain and improve facilities for women as well as facilities for personal hygiene of women. If a pregnant woman, a mother before the end of the ninth month following childbirth or a breast-feeding woman performs work that is prohibited to pregnant women, or which according to medical opinion threatens her health, the employer shall be obliged to implement a temporary change to her working conditions. If a woman earns less after a job transfer than she earned in her previous job, she shall be provided with a compensation benefit. If transfer of such woman to other suitable work is not possible, the employer shall be obliged to provide her with time off and wage compensation.¹¹⁸

The Labour Code in Section 166 stipulates the rules for the maternity and parental leave entitlement. An employer is obliged to provide a woman and man with parental leave until the child reaches three years of age or until the child reaches six years of age if long-term seriously disabled.

➔ 5. POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

a) What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation? Please refer to any important case-law or relevant legal/political discussions on this topic.

b) Do measures of positive action exist in your country? Which are the most important?

Refer to measures taken in respect of all 5 grounds, in particular refer to the measures related to disability and any quotas for access of disabled persons to the labour market and any related to Roma.

Constitution of the Slovak Republic contains articles that explicitly derogate from the rule of rigid equality, permitting measures of positive action for women, pregnant women, juveniles and disabled persons. These categories of persons enjoy more extensive health protection and special working conditions.¹¹⁹ Before the adoption of the Anti-discrimination Act the Constitutional Court held in one case related to equal treatment that it is forbidden to favour or to put at a disadvantage certain groups of citizens.¹²⁰ This case dealt with statutory mandatory ethnic quotas in local municipality elections. These quotas reserved a certain percentage of seats in local parliaments for Slovaks - the representatives of majority

¹¹⁷ Nariadenie vlády č. 272/2004 Z.z. ktorým sa ustanovuje zoznam prác a pracovísk, ktoré sú zakázané tehotným ženám, matkám do konca deviateho mesiaca po pôrode a dojčiacim ženám, zoznam prác a pracovísk spojených so špecifickým rizikom pre tehotné ženy, matky do konca deviateho mesiaca po pôrode a pre dojčiace ženy a ktorým sa ustanovujú niektoré povinnosti zamestnávateľom pri zamestnávaní týchto žien [The Government Regulation No. 272/2004 Coll. setting the list of work and workplaces forbidden to pregnant women, mothers before the end of the ninth month following childbirth and breast-feeding women and the list of work and workplaces constituting a specific risk for pregnant women, mothers before the end of the ninth month following childbirth and breast-feeding women and setting certain obligation of an employee when employing such women]

¹¹⁸ for details see Sections 160-162 of the Labour Code on women or men taking care of children

¹¹⁹ Section 38 of the Constitution reads "(i) Women, minors and disabled persons shall enjoy more extensive health protection and special working conditions. (ii) Minors and disabled persons shall enjoy special protection in employment relations and special assistance in vocational training". Article 41 paragraph 2 reads "Pregnant women shall be entitled to special treatment, terms of employment and working conditions".

¹²⁰ See the decision of the Constitutional Court PL US 19/1998.

population - in the constituencies in which ethnic Slovaks are a minority. The Constitutional Court abolished these provisions by reference to the general anti-discrimination principle, and stated in its reasoning that, *"irrespective of the legal force of a legal act, neither the legal act nor its application by public administrative bodies can favour or disadvantage certain groups of citizens in their access to elected and other public offices (...)"*. Although this case was not directly linked to positive discrimination of ethnic minorities (because the Slovak population is, naturally, not recognised as an ethnic minority), the Court in its reasoning on the protection of voting rights also expressed the following opinion: *"The Constitution of the Slovak Republic does not contain any provision that could be interpreted as justifying any policy permitting the restriction or modification of the fundamental rights of citizens with a view to improving the situation of persons belonging to ethnic minorities or groups."* In another case the Constitutional Court went further interpreting exceptions to equal treatment in enjoyment of fundamental rights. Constitutional Court while examining constitutionality of a legal provision regulating work of students working on temporary basis, stressed: *„Legal provision favouring certain group of persons, cannot be considered as violating the principle of equality just for this reason. In the areas of economic, social, cultural and minority rights are the principles of favouritism, which are appropriate, not only acceptable, but sometimes necessary in order to eliminate natural inequalities in different groups of people. This is confirmed by the Constitution, which by certain fundamental rights directly anticipates preferential treatment of certain groups of natural persons (women, juveniles, disabled) and gives to this favouritism constitutional basis."*

The debate on the constitutionality of positive action has started intensively by the adoption of the Anti-discrimination Act. Section 8 of the Anti-discrimination Act titled „Admissible different treatment“ introduced a general positive action regulation in relation to racial and ethnic minority. It reads: *"With a view to ensuring full equality in practice and compliance with the principle of equal treatment specific balancing measures to prevent disadvantages linked to racial or ethnic origin may be adopted."*

On October 6, 2004 the Government of the Slovak Republic (three months after the Anti-discrimination Act entered into effect) submitted a petition starting the proceeding before the Constitutional Court on the constitutional conformity of the mentioned provision.¹²¹ It said that only the Constitution can make an exception from the principal of equality, as Article 38 of the Constitution does for women, minors and the disabled in health protection at work and working conditions. The initiator of the proceeding before the Constitutional Court - the Minister of Justice declared that this provision would *„boost stereotypes that certain groups are not able to be successful without special protection."*

The Constitutional Court decided on October 18, 2005 that Section 8(8) of the Anti-discrimination Act is not in compliance with:

- Art. 1, paragraph 1 of the constitution (The Slovak Republic is a sovereign, democratic state governed by the rule of law. It is not bound to any ideology or religion.),
- Art. 12 first sentence of the paragraph 1 of the constitution (All human beings are free and equal in dignity and in rights.) and
- Article 12, paragraph 2 of the constitution (Fundamental rights shall be guaranteed in the Slovak Republic to everyone regardless of sex, race, colour, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic

¹²¹ The submission was approved by the Government Resolution No. 941/2004, The Governments proposal prepared by the Ministry of Justice argues that Section 8 par. 8 of the Anti-discrimination Law contradicts Art. 1 par. 1 of the Constitution and Art. 12 par. 1 and 2 in conjunction with Art. 35 par. 1-3; Art. 36; Art. 37 par. 2; Art. 39 par. 1 and 2; Art. 40 and Art. 42 of the Constitution, which cover basic rights identical with areas of Anti-discrimination Act regulation. The Minister of Justice insisted that the provision is so broad and vague that it makes it possible to introduce any measure whatever including quotas for members of racial and ethnic minorities

origin, property, descent or any other status. No one shall be aggrieved, discriminated against or favoured on any of these grounds.).¹²²

According to the decision of the Constitutional Court the disputed provision is in contradiction with Art.1(1) (principle of rule of law) because:

- “the disputed provision of the Anti-discrimination Act, by taking positive measures, which are also specific balancing measures, constitutes more favourable treatment (positive discrimination) of persons linked to racial or ethnic origin.”

- „It does not set out, even in outline, criteria (who can be subject to positive action and what kind of action can be taken – remark of the expert) for taking specific balancing measures. Therefore it interferes in an unconstitutional manner with legal certainty in legal relationships...“(risk of arbitrary, purpose- built and diverse interpretation and application of the balancing measures).

- there are no rules limiting measures in terms of duration, that is, it could become a basis for discrimination (so called „inverted discrimination“) of other groups without having a constitutional basis for it.

The Constitutional Court further stated that Art. 12 of the Constitution prohibits both positive and negative discrimination and that „therefore application of balancing measures... for the prevention of disadvantages linked to racial or ethnic origin is in contradiction with Art. 12 (2) and therefore also with Art. 12 (1) of the Constitution.“ The Constitutional Court did not reject the application of balancing measures (positive action) in principle. However, it stated that taking such action must have a constitutional basis, which is not the case when speaking about racial and ethnic origin. The Constitutional Court was of the opinion that the only constitutional basis for positive action is in Art. 38 (1 and 2) of the Constitution under which women, minors and disabled people shall enjoy more extensive health protection at work and special working conditions. Under Art. 38 of the Constitution minors and disabled people also have the right to special assistance in training.¹²³

The decision of the Constitutional Court put up polemics even within the plenary of the Constitutional Court itself. Five judges out of eleven gave a dissenting opinion to the above quoted decision.

According to a dissenting opinion of one of the judges of the Constitutional Court, the Slovak Constitution does allow different treatment the purpose of which aims to assure equal opportunities in practice. The other three dissenting opinions insist that „more favourable treatment (which is the actual content of balancing measures)“ as such does not constitute discrimination. They criticised the lack of clearly defined terminology in the decision of the Constitutional Court as to what is meant by positive and negative discrimination, equality of opportunities etc. They also stated that there was a constitutional basis for taking positive measures because under Art. 33 membership of any national minority or ethnic group may not result in detriment to any individual.

Paradoxically, the defenders of the strictly formal legal approach do not claim that the existing measures of positive action related to Roma should be stopped. Nor has there been

¹²² Decision of the Constitutional Court, PL. ÚS 8/04, http://www.concourt.sk/S/s_index.htm

¹²³ If the Constitutional Court holds by its decision that there is unconstitutionality of a legal regulation with the Constitution, the respective regulations, their parts or some of their provisions lose their effect. The competent body (in a case of an act – the Slovak Parliament) are obliged to harmonize them with the Constitution within six months from the promulgation of the decision. If they fail to do so, the regulation lose the effect after six months from the promulgation of the Constitutional Courts' decision.

criticism about supportive measures e.g. for older workers within the labour market which also do not have any direct coverage in the Slovak Constitution. Despite the decision of the Constitutional Court there are no suggestions for reducing or closing down projects of the Government supporting Roma communities.

Despite the above mentioned, there are some legal provisions in national law, specifically in the field of education, which have character of positive action linked to the Roma community, although there is no direct reference in law to the Roma or other ethnic minority. The School Act allows the establishment of the so-called zero-grade classes at elementary schools dedicated for children that “are expected not to be able to absorb the knowledge prescribed by the curriculum of the 1st grade of elementary school within one year due to the social and language environment which they come from.”¹²⁴ This kind of measure is criticized for its practical inefficiency (because of unsuitable curricula and unqualified teachers) and therefore creating other form of Roma segregation. Another legal measure has established the position of teacher’s assistant at elementary schools. This position was introduced primarily for the assistance of teachers in schools with a high proportion of Roma pupils.¹²⁵ In 2005 there were 556 teachers’ assistants.

A comprehensive report on activities taken and being developed in support of Roma communities are included in the Report on Situation in Dealing with Roma communities Matters in Individual Regions of Slovakia.¹²⁶ The areas supported by the Government through different projects are health care, housing and development of Roma settlements, social work and education.

The enjoyment of all economic and social rights (including all social rights for women, the disabled and juveniles, for whom the Constitution allows positive action) is restricted by the fact that these rights can only be exercised under the terms of the existing laws. These laws are in many aspects general and declaratory.

Regarding the positive discrimination of disabled persons the legal guarantees for support of their participation in the labour market are more specific. According to Article 8 of the Labour Code, “employees with disabilities are ensured working conditions that enable them to apply and develop their working skills, taking account of their health condition”. This principle is embodied in the abovementioned provisions of Sections 158 - 159 of the Labour Code (See Chapter 2.6) and in the Act on Employment Services. The latter Act guarantees the right to special working condition, advisory service, vocational training and guidance, existence of special sheltered workplaces eligible for state aid, financial support for creating a work place for disabled people, financial support for work assistant etc.¹²⁷ The Act allows the provision of a state-funded financial allowance to the employers that employ disabled applicants for work for a period not exceeding 24 months under the conditions specified precisely in Section 50 of the Employment Service Act. Following Section 59 of the Employment Service Act the Bureau of Labour, Social Affairs and Family may provide to a disabled employee or a disabled self-employed person an allowance for the work of his or her work assistant a monthly pay in the amount of 90 % of the price of the work performed by the assistant. A work assistant is the employee providing a disabled employee or employees with

¹²⁴ Section 6 of the School Act No. 29/1984 Coll. as amended. However, people from Roma families are still often sent to special classes for mentally disabled people due to their insufficient ability to speak official language and social performance.

¹²⁵ See Section 50b of the School Act No. 29/1984 Coll. as amended. A teachers assistant “contributes to the establishment of conditions necessary to overcome language, health and social barriers of a child within the process of education and training”

¹²⁶ Správa o stave riešenia záležitostí rómskych komunít v jednotlivých regiónoch Slovenska. The report on situation in dealing with Roma communities matters in individual regions of Slovakia

[http://www.rokovania.sk/appl/material.nsf/0/3C7983F92B604C7BC12570DC004CB16F/\\$FILE/Zdroj.html](http://www.rokovania.sk/appl/material.nsf/0/3C7983F92B604C7BC12570DC004CB16F/$FILE/Zdroj.html)

The report was put forth to the Government session of 21 December 2005 but before the session was withdrawn from the programme.

¹²⁷ Sections 50, 55 -61 of the Act on Employment Services No. 5/2004 Coll. State bodies responsible for providing this type of support are offices of labour, social affairs and family.

help relating to the performance of the employee's job and personal needs during the working time or the person providing such help to a disabled self-employed person. According to Section 87 paragraph 7 of the Labour Code, employers may only introduce irregular working hours for persons with disabilities subject to their agreement. Persons with disabilities enjoy special protection against dismissal – a person with a disability can only be given notice after prior endorsement by the National Labour Office.¹²⁸ Any employer that employs at least 20 employees is obliged to employ disabled citizens, if the local Labour Office has on its register disabled job seekers numbering more than 3,2 % of the total number on the employer's payroll. If an employer fails to meet this obligation, by the end of March of the following calendar year he is obliged to pay to the Labour Office account three minimum wages for each person whom he failed to employ during the previous year.¹²⁹

The School Act imposes a special obligation to accommodate the needs of disabled pupils in primary and secondary schools.¹³⁰

In addition to the above mentioned provisions regarding specific working conditions for women, pregnant women and persons caring for small children, or for disabled close person (See Chapter 4.7.2.) there are no specific measures related to gender discrimination or discrimination on other grounds.

6. REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

- a) *What procedures exist for enforcing the principle of equal treatment (judicial/administrative/alternative dispute resolution such as mediation)?*
- b) *Are these binding or non-binding?*
- c) ➔ *Can a person bring a case after the employment relationship has ended?*

In relation to each, please note whether there are different procedures for employment in the private and public sectors.

In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body)?

The legal provisions specifically aimed at enforcing of equal treatment can be found in several laws, mainly regulating administrative complaints against unequal treatment.¹³¹ The Labour Code sets in Section 13 the right of employee to submit a complaint to the employer against the infringement of the principle of equal treatment. The employer is obliged to respond to such a complaint without undue delay, perform retrieval, abstain from such conduct and eliminate the consequences thereof. Importance of this provision is in setting the obligation of a private employer to deal with the complaints against discrimination in employment relationships. However, the effect of such a remedy is questionable. Similar regulations contains the Act on Employment Services pursuant to which citizen have the right

¹²⁸ Section 66 of the Labour Code

¹²⁹ Section 63-65 of the Act on Employment Service No. 5/2004 Coll.

¹³⁰ Disabled pupils have the right to individual approach in education and training. The schools prior to pupils admission creates conditions for integrated education of the pupil, makes adjustments of the classroom, arranges for compensatory devices etc. For details See Section 32b and 32c of the School Act.

¹³¹ Public authorities deal with every complaint against an unlawful conduct under the rules of the Act on Complaints, See Zákon č. 152/1998 Z. z. o šťažnostiach, [Act No. 152/1998 Coll. On Complaints] Complaints against a public body are usually dealt with by a higher public authority. The complaint should be processed within time limit of 30 days

to submit a complaint to the authority (office of labour, social affairs and family), when his/her rights in the area of providing services in search for employment, education and training for the labour market. The authority has the obligation to respond without undue delay, perform retrieval, abstain from such conduct and eliminate the eventual consequences. More specific and more effective complaints procedure is laid down by the Act on Civil Service. Civil servants who consider themselves wronged in their rights or interests protected by law because of the breach of the principle of equal treatment may go to the competent authority.¹³² In proceeding before a competent authority the Service Office (the respective office in which is the civil servants employed) has to prove that the principle of equal treatment has not been breached. However, in all the mentioned complaints proceedings the remedy remains to be the imposition of a notice or fine on the perpetrator of the offence and informing the victim without any impact on her/his subjective rights.

The new Anti-discrimination Act introduced changes in the field of judicial remedy for unequal treatment in areas and on the grounds which are subject to the legal regulation. Since July 2004 a natural person and/or legal entity who consider themselves wronged in their rights and interest protected by law because the principle of equal treatment has not been applied to them may pursue their claim by judicial proceeding before the civil court of the first instance. There are no special labour courts for discrimination cases in the area of employment. In particular, the victims have the right to sue the discriminator – be it a natural person or a legal entity, a public or a private body – and demand that he/she be made to refrain from such conduct and, where possible, rectify the illegal situation or provide adequate satisfaction. When the violation of the principle of equal treatment has considerably impaired the dignity, social status or social achievement of the victim, the victim may also seek non-pecuniary damages in cash. The amount of non-pecuniary damage shall be determined by the court, which has to take into account seriousness of the non-pecuniary damage and all underlying circumstances. Material damages that result from such treatment may be claimed as well.¹³³

As far as initiating the judicial proceeding a victim can bring the case to court even though the employment relationship ended. Claiming invalidity of the employment termination can be done within a period of 2 months.

The potential barriers for initiating the judicial proceeding can be for a litigant the court fee in case, when he/she decides to claim non-pecuniary damage in cash. Socially disadvantaged applicants can be exempted from payment of court fees upon the decision of the judge in the respective proceeding. The most important barrier under the up-to-date legal circumstances is the access to legal aid for those who cannot afford it. The access to free legal representation will be significantly improved for indigent whose income is very low.¹³⁴ The new law on provision of legal aid to persons in material need¹³⁵ has introduced the State funded system of legal advice and where necessary also legal representation for those in material need. The threshold for the entitlement to free legal aid is quite low and there will still be a relative significant group of people who would not be able to pay for legal services. The law has no prescriptions concerning the obligatory legal representation in proceedings dealing with the breach of principle of equal treatment. The Slovak legal system as well as the judicial proceeding is quite complicated for a non-lawyer, therefore it can be expected, that in the new and sensitive legal disputes victims will tend to ask lawyers for assistance.

¹³² the competent authority under Section 126 of the Civil Service Act is a disciplinary committee in cases of the breach of service duties

¹³³ Section 9 of the Anti-discrimination Act

¹³⁴ 1,4 multiple of the life-sustaining minimum set by law

¹³⁵ Zákon č. 327/2005 Z. z. o poskytovaní právnej pomoci osobám v materiálnej núdzi a o zmene a doplnení zákona č. 586/2003 Z.z. o advokácii a o zmene a doplnení zákona č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov v znení zákona č. 8/2005 Z.z. [Act No. 327/2005 Coll. on Provision of Legal Aid to Persons in Material Need and on Amending and Supplementing Act No. 586/2003 Coll. on Advocacy and on Amending and Supplementing Act No. 455/1991 Coll. on Licensed Trade (Small Business Act) as amended, in wording of Act No. 8/2005 Coll.]

Since 1st September 2004 is in force the Act on Mediation¹³⁶ which opened a new way of alternative dispute resolution acknowledged by the state authorities. Under this Act a potential victim and a perpetrator can agree on the dispute resolution before an authorized mediator. Result of the mediation is a written agreement which is binding for both parties. It can also be used as a title for execution if the agreement has a form of a notary's record or a settlement approved by a court. As yet, after the short existence of the law, the effectiveness and relevancy of this kind of non-judicial procedure cannot be assessed. The courts' physical accessibility is not fully guaranteed for the disabled in old court buildings. There are no regulations as to the access to the court buildings or providing information in Braille script. The Constitution guarantees the right to an interpreter in case that a person is not able to speak official language. The Act on Civil Judicial Procedure allows the court to appoint a guardian if the plaintiff suffers from a mental disorder or is not able to express him/herself comprehensibly.

➔ 6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

Please list the ways in which associations may engage in judicial or other procedures

a) in support of a complainant

b) on behalf of one or more complaints (please indicate if class actions are possible)

The Anti-discrimination Act introduced the possibility for the plaintiff to be represented in the judicial proceeding concerning discriminatory treatment by a legal entity. The legal entity has to have such authority under a separate law¹³⁷, or has to be aimed at or deal with protection against discrimination. There are no restrictions as to the number of petitioners the association can represent. Also class action are possible in the Slovak civil judicial proceeding. If an NGO takes up representation of a victim, it shall assign one of its members and/or employees to act on behalf of the person represented. So far the NGOs have not represented any victim of discrimination before the court.

The law doesn't stipulate how the aim or content of activities of an association can be proved and there are still no cases known in which this kind of legal representation was applied. It can be assumed that the court will follow the statute of the organisation, in which its mission can be found. There is no general entitlement for associations or other legal entities to engage in judicial procedure on behalf of any party.¹³⁸ Even though it is not explicitly prohibited, it is not common to use other forms of support (e.g. written legal opinion in a form of amicus brief). However, it can be expected that the way of submitting expert opinion on behalf of a victim will be used in the future by the Slovak National Centre for Human Rights. Under the separate provision the Centre was granted the competence to prepare expert opinions concerning compliance with the principle of equal treatment upon request or in its own initiative.¹³⁹

As far as criminal law is concerned, the victim in the criminal proceeding can be represented by authorized representative of an organisation with an aim of helping the victims of crimes.¹⁴⁰ Regarding a complaint dealt with by a public body, although there is no specific

¹³⁶ Zákona č. 420/2004 Z. z. o mediácii a o doplnení niektorých zákonov [Act No. 420/2004 Coll. on Mediation and supplementing certain other acts]

¹³⁷ Under the Act on Slovak National Centre for Human Rights (See Chapter 7), the Center is empowered by law to represent the plaintiff in the proceeding concerning violation of the principle of equal treatment

¹³⁸ Section 93 of the Civil Procedure Code admittedly enables the participation of so-called "secondary parties"; however, the court only allows secondary parties to participate in the proceedings if the outcome of the dispute could affect the legal status of such parties.

¹³⁹ Section 1, par. 2 (f) of the Act on Slovak National Centre for Human Rights, See also Chapter 7.

¹⁴⁰ Section 50 of the Criminal Proceeding Code

provision as to the legal standing of associations, the law doesn't prohibit other natural persons or legal entities to act (submit a complaint) on behalf of a victim.

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

Does national law require or permit a shift of the burden of proof from the complainant to the respondent? Identify the criteria applicable in the full range of existing procedures and concerning the different types of discrimination, as defined by the Directives (including harassment).

General provisions in force guarantee the equality of parties in a court procedure;¹⁴¹ the relevant law places the burden of proof upon the party that files the particular claim. The Civil Procedure Code states that "parties are obliged to bring evidence to prove their claims."¹⁴² Parties to the proceedings have a procedural evidential duty, i.e. they have to produce evidence proving their claims.

The new Anti-discrimination Act has changed this general principle by introducing an exception for discrimination-related cases. Pursuant to its Section 11 paragraph 2, if the plaintiff submits to court the evidence which gives rise to a reasonable assumption that violation of the principle of equal treatment occurred, the defendant has the obligation to prove that there was no violation of the principle. The shifting of the burden of proof is applicable in all civil judicial proceedings, dealing with the observance of the principle of equal treatment regardless the ground of discrimination and the field in which the discrimination occurred. It means it includes proceedings which may deal with direct or indirect discrimination, harassment, an instruction to discriminate, incitement to discrimination as well as victimisation.

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

What protection exists against victimisation? Does the protection against victimisation extend to persons other than the complainant? (e.g. witnesses, ➔ or person that help the victim of discrimination to present a complaint)

As far as victimisation is concerned, Article 12 paragraph 4 of the Constitution generally prohibits any victimisation resulting from the exercise of basic rights guaranteed under the Constitution. Under the Anti-discrimination Act victimisation is considered to be one form of discrimination. The Anti-discrimination Act contains as well an explicit definition of victimisation pursuant to which victimisation means any action or omission which has adverse consequences for a person and is directly connected with seeking legal protection against discrimination for oneself or on behalf of another person, or with a deposition or examination of witness, providing an explanation or is connected with other involvement of a person in a proceeding concerning the violation of the principle of equal treatment.¹⁴³ Apart from this provision, several other laws regulate the protection against victimisation. The Act on Complaints stipulates that the mere fact of filing an action must not be used to the detriment of the complainant. Moreover, the complainant may request that his/her identity not be disclosed.¹⁴⁴ The other law is the Labour Code. It's Section 13, paragraph 3 states that no person shall be persecuted or other adversely treated at the workplace as a reaction to a complaint, action or petition to start criminal proceeding against another employee or the

¹⁴¹ Article 47 paragraph 3 of the Constitution.

¹⁴² Section 120 paragraph 1 of the Civil Procedure Code.

¹⁴³ Section 2, par. 8 of the Anti-discrimination Act

¹⁴⁴ Sections 6 and 7 of the Act on Complaints.

employer. Similar provisions were adopted in the Act on State Service of Customs Officers, Act on State Service of Members of the Police Force, Act on Fire and Rescue Service, Act on Employment Services, Act on Higher Education, in the School Act and in the Act on Health Care. To the best of the author's knowledge there has not yet been a judgement issued in this regard.

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.

b) Is there any ceiling on the maximum amount of compensation that can be awarded?

c) Is there any information available concerning:

➔ - the average amount of compensation available to victims

- the extent to which the available sanctions have been shown to be - or are likely to be - effective, proportionate and dissuasive, as is required by the Directives?

As mentioned above the Section 9, paragraph 3 of the Anti-discrimination Act introduces the possibility for the plaintiff to seek non-pecuniary damages in all cases of discrimination connected with the Constitution or statutory rights. The court may, in general, order the discriminating entity to refrain from discriminatory conduct or to remedy an unlawful situation. The amount of non-pecuniary damages is not limited and depends primarily on the seriousness of the detriment caused and circumstances under which it occurred. The person violating the principle of equal treatment is also liable for material damages caused through breach of the principle of equal treatment. The amount of pecuniary damage is not limited – the plaintiff has to prove the real material damage which he/she has suffered and the causal link between the damage suffered and the unlawful act of the defendant. There is no punitive damage under Slovak law. One of the sanctions applicable in criminal law is money penalty, which is a fine paid to the Treasury.

In the area of employment, whether public or private, bodies exercising control have the authority to impose a fine of up to 1.000.000 SKK (approx. 26.406 EUR) on the entities that fall under their jurisdiction and that have breached their duties under provisions in the field of employment legislation. The management whose behaviour breaches their legal duties and obligations under the collective agreements may be fined up to three months of their salary. Relevant controlling bodies are labour inspectorates under the National Labour Inspectorate, which are based in every district in the country. The Ministry of Labour, Social Affairs and Family is the managing and supervisory body responsible for the development and implementation of the government policy in the field of labour protection and the execution of labour inspection.¹⁴⁵ There is still no single case known, in which such fine has been imposed in the country on the grounds of discrimination. However, as far as pre-employment relationships are concerned, the investigative power of these bodies of control is considered as limited. Moreover, the problem does not reside in unequal legal conditions under labour legislation, policy or competition in the field of recruitment, but rather in unequal practices, especially in the private sector who differentiate between e.g., Roma and non-Roma¹⁴⁶

¹⁴⁵ Zákon č. 95/2000 Z. z. o inšpekcií práce a o zmene a doplnení niektorých zákonov v znení neskorších predpisov [Act No. 95/2000 Coll. on Inspection the Labour and on amending and supplementing certain other acts as amended]

¹⁴⁶ It has to be mentioned that there are no relevant and reliable sources that would help to answer the question as to how many Romany applicants are actively job-seeking, how many have been denied, and the representation of Romany citizens in the public sector. The one reason is that the majority of Romany people declare Slovak or Hungarian nationality for

applicants. Many opinion polls show the high level of prejudices against this community in the country. The reality shows that there is a need to increase the effectiveness of the state controlling system in this field. The same applies to the area of education, where the competent body is the State School Inspection.¹⁴⁷

In the area of access to goods and services the controlling authorities (inspectorates of the Slovak Trade Inspection) may punish such conduct by a fine of up to 500.000 SKK (approx. 13.203 EUR). By multiple violation of the legal obligation within one year it may be imposed a fine up to 1.000.000 SKK (approx. 26.406 EUR).¹⁴⁸

As far as judicial proceeding that could bring compensation for victims is concerned, there is a lack of test cases in the field. Case-law on defamation action (“protection of personhood”)¹⁴⁹, which has been developing for several years, shows an unstable and varying approach as far as financial compensation is concerned.

The Section 41 paragraph 9 of the Labour Code allows a natural person, whose rights have been violated during the recruitment procedure, to claim “an adequate financial compensation.” There is no analyses or other information available regarding the effects and proportionality or amount of sanctions imposed in the national legal system.

7. SPECIALISED BODIES

Body for the promotion of equal treatment (Article 13 Directive 2000/43)

When answering this question if there is any data regarding the activities of the body (or bodies), include reference to this (keeping in mind the need to examine whether the race equality body is functioning properly). For example, annual reports, statistics on the number of complaints received in each year or the number of complainants assisted in bringing legal proceedings.

a) Does a ‘specialised body’ or ‘bodies’ exist for the promotion of equal treatment irrespective of racial or ethnic origin?

b) Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable.

c) Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues.

d) Does it / do they have the competence to provide assistance to victims, conduct surveys and publish reports and issue recommendations on discrimination issues?

e) Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?

evidential needs and the second reason is lack of relevant statistical data in the field. The fact is that in many poor Roma settlements there is 100% unemployment. The author and the general public in the Slovak republic consider this information to be generally known facts (interview with Mrs Jana Kviecinska, the General Director of the Department of Human Rights at the Office of Government).

¹⁴⁷ If the subject under inspection fails to remove the deficiencies disclosed by the inspection, it can be fined in the amount of 1.000 SKK to 10.000 SKK (approx. 26 EUR to 263 EUR) . Section 37 of the Act No. 596/2003 Coll. on State Administration of the School System and the School Self-Governance

¹⁴⁸ The Slovak Trade Inspectorate is the entity responsible for the implementation of these provisions. From the annual report <http://www.soi.sk/files/kcinnost/zoznam/vyrocnasprava04.rtf> follows that the problem of discrimination in access to goods and services is not one of the priorities of the Slovak Trade Inspectorate.

¹⁴⁹ Under Sections 11- 13 of the Civil Code a natural person who feels wronged by the breach of the protection of his/her personhood (in particular of his/her life, health, honour, human dignity as well as privacy, name and expressions of personal character) may seek from the perpetrator a non-pecuniary damage in cash

f) Is the work undertaken independently?

The Slovak National Centre for Human Rights has become the specialised body for the promotion of equal treatment for all grounds of discrimination falling under the Anti-discrimination Act. Along with the adoption of the Anti-discrimination Act, the Act on the Slovak National Centre for Human Rights (“Centre” hereinafter) was significantly amended. According to the Act the Centre is an independent, non-judicial body, subsidised by the State.¹⁵⁰

The governing body of the Centre is an executive director as a statutory position, and a Board consisting of nine independent members.¹⁵¹ The executive director is elected and dismissed by the Board upon nomination from the Board members. The staff is appointed and dismissed by the executive director who is the statutory representative of the Centre. As far as the formal independence of the Centre is concerned according to Article 3 of the Treaty the Slovak Republic is obliged to provide the Centre with adequate accommodation and to guarantee the Centre financial means which will enable it to continue its activities at a minimum of the level achieved during the first two years of its existence. The Slovak Republic is also obliged to guarantee legal and operational independence of the Centre. The guarantee of the existence of the Centre resulting from the international treaty is important. At the same time it has to be pointed out that the level of material guarantee confirmed in the treaty is not anymore the most determining according to the increased tasks and competences of the Centre. The actual budget of the Centre for year 2006 is 401.579,- Euro and it ensures relative financial independence of the Centre. However, the Centre claims that the governmental funding is not sufficient for the fulfilment all the task and obligation consigned to the Centre by current legislation.

Another guarantee of the existence of the Centre is Act No. 308/1993 Coll. on Establishing the Slovak National Centre for Human Rights - which can be changed or abolished only by the Slovak Parliament.

By defining the competences of the Centre, the Act uses quite general language stating that the Centre operates in the field of human rights, monitors and evaluates respect for human rights and the principle of equal treatment, collects and provides information on racism, xenophobia and anti-Semitism, conducts research and surveys, collects and disseminates information in this field, provides educational activities, takes part in public information campaigns, provides library services and services in the area of human rights. As far as independent surveys by the end of year 2005 the Centre published one survey on its website (See footnote No. 90). The survey was clear about its methodology. The outcome was the in the form of findings and recommendations. However, the recommendations were quite general and without making clear to whom are they addressed.

The Centre publishes the annual report on respect for human rights in Slovakia. A statutory obligation of the Centre in the field of anti-discrimination law is to arrange legal aid to victims of discrimination and of intolerance and to prepare expert opinions (which can also

¹⁵⁰ The Treaty on the Establishment of the Slovak National Centre for Human Rights between the Government of the Slovak Republic and United Nations was signed on March 9, 1994 in Geneva. Under the Treaty’s provisions the Centre was established to be engaged in human rights issues. According to the Treaty the first two years of its existence were supported from the Voluntary Fund subsidized by the Government of the Netherlands and by contribution of the Slovak Government. The further maintenance of the Centre undertook the Slovak Government. Although the Centre has existed since January 1994 its activities were very formal until the election of the new executive director in November 2003 and the amendment of the Act in July 2004

¹⁵¹ one member is appointed by the President of the Slovak Republic, one member by the Chairman of the National Parliament, one member by the Ombudsman, one member is appointed by the Prime Minister of the Government of the Slovak Republic upon a proposal of NGOs, one member is appointed by the Minister of Labour, Social Affairs and Family and the other four members are appointed by deans of the four Law faculties.

have a form of a recommendation) on compliance with the principle of equal treatment.¹⁵² The expert opinions or recommendation of the Centre are not binding for parties or private and public bodies. The Act on Establishing the Slovak National Centre for Human Rights does not specify what is meant by arranging of legal aid to the victims of discrimination. It can be provided in the form of legal consultations, by representing a victim in the court proceeding or by cooperation with attorneys or NGOs providing legal aid in the field equal treatment. In any case, there is no clear statement about providing financial assistance with the cost of litigation and the Centre does not provide to the victims any kind of financial assistance.

Under Section 1, paragraph 3 of the Act, the Centre has the authority to represent parties in proceedings concerning violation of the principle of equal treatment. In these cases the victims of discrimination represented by the Centre do not pay for the legal representation provided by the Centre. Up to December 2005 the Centre had no case in which it represented a victim in judicial proceedings concerning discrimination. According to the statistics of the Centre since the Anti-discrimination Act has been in force (July 2004) the Centre has received 280 requests¹⁵³ for assistance related to discrimination. The most numerous are requests related to discrimination in employment. There are no data available on the structure of grounds on which discrimination was claimed.

The Centre also provides educational activities.¹⁵⁴ Within the anti-discrimination campaign the Centre implements a project supported by the European Commission which during the years 2005 and 2006 should embrace anti-discrimination education as well as a media component. The result of the research activities of the Centre is the Final report on “Field research of the observance of human rights of Roma children from Roma settlements with regard to discrimination and specific problems” (See footnote No. 90)

The Annual Report on the Human Rights Observance for year 2005 has not yet been published. The report for the year 2004 is not easy accessible as there is a restricted access to the document on the website of the Centre.

In assessing the independence of the activities the Centre should carry out there might be a conflict between the roles played by the Centre. According to the law the Centre on one hand gives expert opinions (upon request or on its own initiative) concerning compliance with the principle of equal treatment. On the other hand the Centre is also competent to represent or to assist the victims of discrimination in proceedings concerning violation of the principle of equal treatment. It does not necessarily constitute a threat to its independence, however there should be a clear strategy in what position the Centre should take in every single case (e.g. the Centre providing independent advice to the victim, communicating with the alleged perpetrator, giving an expert opinion or representing just one party within the judicial proceeding). The Centre has yet not represented any victim before a court and from the available information the Centre did not notify any potential problem or conflict in its competencies..

There are not enough source materials, reports or independent evaluations to have a real picture about the quality and independence of assistance provided to victims of discrimination. The only information available is the reports issued by the Centre about its

¹⁵² § 1, ods. 2 zákona č. 308/1993 Z. z. o zriadení Slovenského národného strediska pre ľudské práva v znení neskorších predpisov [Section 1, par. 2 of the Act No. 308/1993 Coll. on establishing the Slovak National Centre for Human Rights as amended]

¹⁵³ Written information from the Centre

¹⁵⁴ Series of educational events aimed at provision of social services by municipalities, social aid in material need etc. – page 10-11 of the Plan of activities of the Centre for year 2005

[http://www.snslp.sk/rs/snslp_rs.nsf/0/51664e8b8e621570c1256fef0048e02e/\\$FILE/ATTAP8SP/Plan%20cinnosti%20na%20rok%202005.doc](http://www.snslp.sk/rs/snslp_rs.nsf/0/51664e8b8e621570c1256fef0048e02e/$FILE/ATTAP8SP/Plan%20cinnosti%20na%20rok%202005.doc)

own activities. These only provide selected examples about the assistance provided to victims.¹⁵⁵

8. IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

Describe briefly the action taken by the Member State

a) to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

The framework of the activities taken by the State in fight against discrimination is the document titled "Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Forms of Intolerance in the 2000-2001 Period". The document was for the first time prepared in 2000 and is updated every second year by the Office of Deputy Prime Minister for European Integration, Human Rights and Minorities. "The Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Forms of Intolerance in the 2004-2005 Period" contains plan for the activities throughout the years 2004 and 2005.¹⁵⁶ The vast majority were educational activities or awareness raising campaign for different target groups such as state agencies employers, municipalities, judges, prosecutors, police officers, teachers, students, etc. in the area of "prevention of all forms of discrimination, racism, xenophobia, anti-Semitism and other forms of intolerance." Several of these small projects dealt with the new anti-discrimination legislation and legal protection against discrimination. The activities are financed from the budget of the Government of the Slovak Republic or from budgets of each Ministry which cover financially and administratively the activities falling into their competences. Some of the educational activities included in the Action Plan were implemented by the equality body – The Slovak National Centre for Human Rights. Dissemination of information as well as an awareness raising campaign in the area of human rights fall under the obligation of the Slovak National Centre for Human Rights. Except for individual educational events there was no large scale public information campaign specifically focused on legal protection against discrimination. An anti-discrimination campaign is in the Plan of Activities of the Slovak National Centre for Human Rights for the year 2006.¹⁵⁷ This project is supported by the European Commission.

b) to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78) and

As far as the non-government sector in Slovakia is concerned, NGOs are generally considered to be very active. There are a number of Roma, Hungarian, Ruthenian organisations and those representing other national minorities, as well as women, sexual and other minorities, etc. Most of them try to find an appropriate forum for cooperation with state authorities, and the government turns to non-governmental organisations as well. Dialogue between the State and NGOs take place without being formally established or guaranteed. There are no laws,

¹⁵⁵ The Annual Report on the Activities of the Centre in year 2004

http://www.snslp.sk/rs/snslp_rs.nsf/0/98B4978D5EA446DCC1256FEF0048C486?OpenDocument

¹⁵⁶ approved by the Government Resolution No. 446/2004, in which the Government observed as well the final assessment of the Action plan in the period 2002-2003.

[http://www.rokovania.sk/appl/material.nsf/0/415A2C077B1FE1C2C1256E9A0037F3A9/\\$FILE/Zdroj.html](http://www.rokovania.sk/appl/material.nsf/0/415A2C077B1FE1C2C1256E9A0037F3A9/$FILE/Zdroj.html)

¹⁵⁷ Plan of the Activities of the Centre for year 2006

[http://www.snslp.sk/rs/snslp_rs.nsf/0/51664e8b8e621570c1256fef0048e02e/\\$FILE/ATTX0B4B/Plan%20cinnosti%20%20na%20rok%202006.doc](http://www.snslp.sk/rs/snslp_rs.nsf/0/51664e8b8e621570c1256fef0048e02e/$FILE/ATTX0B4B/Plan%20cinnosti%20%20na%20rok%202006.doc)

decrees, orders or ordinances concerning compulsory co-operation with the NGO sector in the field of discrimination.¹⁵⁸ Mutual communication between the State and NGOs exists e.g. when drafting laws that have an impact on the non-government sector or laws that have implications for the activities of non-government organisations, or on human rights or when seeking information from practice in the area of discrimination or human rights in general. The most developed area of cooperation specifically in the field of discrimination is educational programs for civil servants.¹⁵⁹

The Office of Plenipotentiary of the Government for Roma communities has developed a very close cooperation with NGOs in the fight against discrimination in Roma communities and in solving everyday life problems.

The above mentioned Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Forms of Intolerance contains some general clauses that also support co-operation with NGOs. Many of the projects financially supported by the Action Plan mentioned above are or will be carried out by non-government organisations or by a state agency in cooperation with an NGO.

Despite the factual cooperation in individual cases there has not yet been developed institutionalized dialogue with NGOs in the field of anti-discrimination. "The Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Forms of Intolerance in the 2004-2005 Period" has established "The Intersectoral Working Group" which is competent to coordinate activities in the framework of the Action Plan as well as to include other State departments or non-government organisations in the preparatory work and the implementation of the Action Plan. The working group has 20 members; however none of them is a representative of NGOs. The chairman of the working group is the Deputy Prime Minister for European Integration, Human Rights and Minorities.

c) to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

Activities initiated by the Government that are specifically aimed at increasing dialogue between social partners or monitoring workplace practices or internal rules of employers are mainly focused on the gender equality and gender mainstreaming. The Department of Family and Gender Policies at the Ministry of Labour, Social Affairs and Family¹⁶⁰ is co-ordinating body in the area of gender equality on the labour market. In developing dialogue with social partners it works together with the Committee for Equal Opportunities of Men and Women of the Confederation of Trade Union. Between the Committee and the Ministry exists a dialogue on designing the code of practices and collective agreement with a focus on gender equality and family friendly working environment. In December 2005 the Department of the Ministry organised an open forum for social partner under the title "Family friendly collective bargaining."

The other activity in the area is the Twinning project "Strengthening administrative capacities in the area of gender mainstreaming" which is aimed at informing wide public, education of

¹⁵⁸ There are some provisions on general co-operation with non-governmental organisations in specific fields – the Social Assistance Act, Act on Employment Services, Act on Slovak National Centre for Human Rights, Act on Ombudsman - stipulating that relevant state agencies should co-operate with non-governmental organisations.

¹⁵⁹ e.g. cooperation of the Judicial Academy with NGO Centre for Public Advocacy in anti-discrimination education of judges, or providing educational programmes of the Association Citizen and Democracy (Občan a demokracia) for the police officers or for prison pedagogues. In fight against racially motivated attack organisation called People Against Racism (Ludia proti rasizmu) works together with the Police of the Slovak republic in fact-finding as well as in education.

¹⁶⁰ The Departments' original name was Department of Equal Opportunities and Anti-discrimination

social partners, State representatives, university experts, members of NGOs etc. as well as creation of mechanisms of gender mainstreaming in the Slovak society.

The grounds of discrimination different from gender are not very much covered or discussed between social partners and the Government.

8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Are there mechanisms to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment?

b) Are any laws, regulations or rules contrary to the principle of equality still in force?

The Anti-discrimination Act set in its transitory provision a general clause which states that employers and relevant trade union bodies who concluded collective agreements are obliged to bring the provision of collective agreements into compliance with the principle of equal treatment by January 1, 2005. Employers have the same obligation to adopt the provision in their internal rules. The provision does not mention statutes or internal rules of other professions or independent occupations. However, this does not mean that the respecting of the principle of equal treatment does not apply to these. It is guaranteed that any normative act, registered by a state agency (by-laws of associations, by-laws of independent professions and workers' and employers' organisations, by-laws of profit-making organisations, etc.) must not be contrary to the principle of equality. If the by-laws submitted for registration are in breach of this principle, the registration body must reject them.

At the same time, it has to be stated, that is no monitoring mechanism in relation to content of collective agreements. As long as there is no legal dispute the possible discriminatory provisions may not be identified.

9. OVERVIEW

This section is also an opportunity to raise any important considerations regarding the implementation and enforcement of the Directives that have not been mentioned elsewhere in the report.

➔ *This could also be used to give an overview on the way (and if at all) national law has given rise to complaints or changes, including, eventually a reference to the number of complaints, whether instances of indirect discrimination have been found by judges, and if so, for which grounds, etc.*

The adoption of the Anti-discrimination Act introduced necessary definitions of discriminatory behaviour as well as the determination of areas where the prohibition of discrimination is to be applied in the Slovak law. This will definitely give increased legal certainty to potential victims. Moreover, the Act established a unified system of protection against discrimination through judicial proceedings, which were previously accepted only under special conditions and required the application of complicated legal speculations. However, the structure of a single general act defining the grounds for, and areas subjected to, the prohibition of discrimination in combination with separate acts setting additional grounds of discrimination, is confusing, especially for non-lawyers. The most problematic issue is still the implementation of existing legislation in both the private and public spheres. Up till now, the controlling authorities, capable of directly influencing existing practices, have failed to focus their consistent, systematic attention to the improvement of the standards of non-discriminating behaviour. This is closely connected with the legal awareness of citizens who

are not aware of their rights and accept the status quo. In the private sphere, the victims rarely claim the enforcement of their rights. There are no relevant sources of information explaining why potential victims do not bring cases to courts or other state authorities. We can only assume that apart from the low level of awareness there is also insufficient access to legal aid for poor people and lack of trust towards judicial and state authorities in the country. The judicial proceedings are very often lengthy and the victims do not believe that proceedings are likely to change their situation. Especially in those regions with high levels of unemployment people are afraid to bring any action or complaint against their employer and even if they were discriminated against in the recruitment procedure, they mostly accept it as the reality of the labour market.

According to the data of the Slovak National Centre of Human Rights the new anti-discrimination legislation encouraged some citizens in complaining against discrimination especially in labour relationship and the number is rather increasing. Nonetheless there are still not many cases pending before court authorities a no decision after the adoption of the Anti-discrimination was made.

In this respect the positive fact of Parliament's adoption of the Anti-discrimination Act has to be supported by systematic action on the part of state agencies, by strengthening social dialogue and by raising legal awareness in this field. The recent public debate, strongly influenced by the arguments against constitutionality of the positive action provision aimed at people with certain racial or ethnic origin and the decision of the Constitutional Court had rather a negative impact on the promotion of the principle of equality.

10. CO-ORDINATION AT NATIONAL LEVEL

Which government department/ other authority is/ are responsible for dealing with or co-ordinating issues regarding anti-discrimination on the grounds covered by this report?

As already stated the co-ordinating authority in the area of anti-discrimination is the Office of Deputy Prime Minister for European Integration, Human Rights and Minorities. It carries out co-ordinating activities within "The Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Forms of Intolerance in the 2004-2005 Period" mentioned in Chapter 8.1. In the area of gender equality in employment the leading authority is the Ministry of Labour, Social Affairs and Family through it's Department of Family and Gender Policies.

Annex

1. Table of key national anti-discrimination legislation

2. Table of international instruments

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Name of Country: **SLOVAKIA**

Date: 1 February 2006

Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/Administrative/Criminal Law	Material Scope	Principal content
This table concerns only key national legislation; please list not more than 10 anti-discrimination laws (which may be included as parts of laws with wider scope). Where the legislation is available electronically, provide the webpage address.	Please give month / Year			e.g. public employment, private employment, access to goods or services	e.g. prohibition of direct and indirect discrimination or creation of a specialised body
The Constitution of the Slovak Republic No. 460/1992 Coll. as amended by No. 244/1998 Coll., No. 9/1999 Coll., No. 90/2001 Coll., No. 90/2001 Coll., No. 140/2004 Coll., No. 323/2004 Coll. and No.323/2004 Coll. http://www.concourt.sk/A/a_index.htm	September, 1992	sex, race, skin colour, language, faith, religion, political affiliation, conviction, national or social origin, nationality or ethnic origin, property, lineage or any other status.	Constitutional Law	human rights and fundamental freedoms guaranteed by the Constitution	general prohibition of discrimination
Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination, amending and supplementing certain other laws (Anti-	July, 2004	sex, racial origin, national or ethnic origin, religion, belief, disability, age, sexual orientation	Civil Law	identical with Directive 2000/43/EC and Directive 2000/78/EC	definition of discrimination, principle of equal treatment, areas and grounds, establishment of

discrimination Act) http://www.zbierka.sk/ciastka.asp?ro=2004					judicial remedy
Act No. 308/1993 Coll. on establishing the Slovak National Centre for Human Rights as amended by Act No.136/2003 Coll. and Act No. 365/2004 Coll.	January, 2004		Administrative Law		establishment of “designated body” and defining its competences
Labour Code No. 311/2001 Coll. as amended by Act No. 408/2002 Coll., 210/2003 Coll., No. 413/2002 Coll., No. 461/2003 Coll. No. 5/2004 Coll., No 365/2004 Coll., 82/2005 Coll, 131/2005 Coll, and Act No. 244/2004 Coll.	April, 2002	marital and family status, colour, language, political or other opinion, trade union involvement, national or social origin, property, lineage or other status	Civil Law	Employment, especially private employment	prohibition of discrimination in employment relationships

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country: **SLOVAKIA**

Date: January 2006

Instrument	Signed (yes/no)	Ratified (yes/no)	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	Yes	Yes	No	yes	yes
Protocol 12, ECHR	Yes	No	No	no	no
Revised European Social Charter	Yes	No	No	Ratified collective complaints protocol? no	no
International Covenant on Civil and Political Rights	Yes	Yes	No	yes	yes
➔Framework Convention for the Protection of National Minorities	Yes	Yes	No		yes
International Convention on Economic, Social and Cultural Rights	Yes	Yes	No		yes
Convention on the Elimination of All Forms of Racial Discrimination	Yes	Yes	No	yes	yes

Convention on the Elimination of Discrimination Against Women	Yes	Yes	No	yes	yes
ILO Convention No. 111 on Discrimination	Yes	Yes	No		yes
➔Convention on the Rights of the Child	Yes	Yes	No		Yes