



## Executive Summary

### Country Report Slovakia 2011 on measures to combat discrimination

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#### 1. Introduction

The Slovak Republic is a country of five million people. Apart from Slovak nationals, there are diverse minority groups living in the country. The largest groups are made up of Hungarians (8,5 %) and the Roma minority. The official number of Roma in the last census (2011) was 105 738 (2%). However, the sociological studies indicate a number of 300,000 – 400,000 or more Roma living in Slovakia. The other minority groups include Czechs, Ukrainians, Croatians, Germans, Poles, Bulgarians, Moravians and Jews.<sup>1</sup>

The public debate on discrimination has had a chequered history in Slovakia. The first of many legislative proposals referring to anti-discrimination was a proposal on registered partnerships for same-sex couples by a group of MPs. However, it was rejected in February 2002. More complex debate on the issue of discrimination was initiated by the first and second drafts of the Anti-discrimination Act which were introduced in 2002 and 2003 by the Deputy Prime Minister for Human Rights, Minorities and Regional Development. Both proposals were rejected. The Anti-Discrimination Act presently in force (further on as “ADA”) was adopted in May 2004, right after Slovakia joined the EU. The provision on positive action on the ground of racial and ethnic origin incorporated in ADA provoked a political debate in the country. Shortly after the adoption of the Act, the Christian democratic Minister of Justice challenged, on behalf of the Government, the provision before the Constitutional court. The Constitutional court decided that the provision was unconstitutional because of its vagueness and because, as the court argued, the Constitution does not allow to introduce such measures on the ground of race and ethnicity. Although later reformulated and readopted (in February 2008), it does not serve its aim, due to its restrictive concept and wording.

The February 2008 amendment, however, also brought some positive changes. It made a universal, quite extensive and an open list of grounds upon which discrimination is prohibited and made it applicable to all the fields covered by the act. It also made the act more logical and transparent, and was adopted in close cooperation with civil society. The act is, however, still not fully efficient in practice. For example, the Roma inhabitants face widespread and deep prejudice and discrimination and as of yet have not been fully accepted by the mainstream society. Discriminatory behaviour basically exists in all fields of life and often has segregational character. An extremely serious problem is segregation of Roma in all

<sup>1</sup> Each making up less than 1% of the national population.



spheres of life. In 2011, the first case ever decided and won before a court on segregation in education, albeit so far only in the first instance, brought heated discussions that were marked with a very frequent defense of segregational practices as a practical, efficient and even “helpful” solution to a problem that is very difficult to handle (and even politicians recourse to these arguments). No-one from the governmental sphere or media challenged the inherent discriminatory components in the structures of the educational system that divides schools into “normal” and “special”.

Another very serious problem is the widespread and often open racism that is omnipresent not only among the general public but also on the highest political level. The racial and nationalist hatred incited by neo-Nazi and nationalistic groups raises an additional concern. The occurrence of racially motivated physical attacks on the streets is present as well.

A very serious problem is also discrimination faced by the LGBT minority where, compared to other grounds of discrimination and discriminated groups, the LGBT has not acquired full legal and political recognition, e. g. through the possibility to enter into marriages/registered partnerships.

Many other individuals and groups also face serious discrimination, often on combinations of several grounds. It is in many cases women who are especially affected by multiple discrimination.

## **2. Main legislation**

The Slovak Republic is a party to several international human rights treaties including the International Covenant on Civil and Political Rights, the European Convention on Human Rights, the UN Convention on the Elimination of All Forms of Racial Discrimination and the UN Convention on the Rights of Persons with Disabilities.

The Constitution of the Slovak Republic states that human rights are guaranteed to every individual 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. Serious offensive and discriminatory behaviour is outlawed separately by the Criminal Code. In response to the need to implement the EU Employment and Racial Equality Directives, Slovakia adopted ADA on 20 May 2004. An important amendment was passed in February 2008 and entered into force in April 2008. ADA meets the minimum standards required by both Directives.

Apart from ADA, several special laws were amended in the area of education, health care and employment. These amendments basically refer to ADA, sometimes extend the scope of grounds protected by it (sex, religion or belief, race, affiliation with nationality or an ethnic group, disability, age, sexual orientation, marital status and



family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender<sup>2</sup> or other status), and in some cases also contain special mechanisms for invoking the right to equal treatment.

ADA does not define the principle of equal treatment only as prohibition of discrimination, but also as a duty to adopt measures to prevent it.

ADA is also more specific in defining the forms of prohibited discrimination in which it distinguishes between instruction to discriminate and incitement to discrimination. An instruction to discriminate is defined as a conduct of abuse of a person in a subordinate position for the purpose of discriminating against a third person. Incitement to discrimination can be in the form of persuading, affirming or inciting a person to discriminate against a third person.

The enforcement of the new rules established by ADA has not yet been fully effective in practice.

Although there are already some court decisions (mainly in relation to racial discrimination in access to services and in relation to sex/gender discrimination in employment) and some more are pending, people in general do not recourse to courts to litigate for their right not to be discriminated against.

This may be caused by rather low legal awareness about anti-discrimination legislation, by general distrust in courts, by lack of resources that are needed for litigation, by fear from stigmatisation and/or loss of earning opportunities etc. The labour inspectorates are also very ineffective in identifying and sanctioning breaches of the principle of equal treatment.

### **3. Main principles and definitions**

With the adoption of ADA, definitions of equal treatment and discrimination were introduced into the Slovak legal system. The Act defines direct discrimination, indirect discrimination, harassment, sexual harassment, instruction to discriminate, incitement to discrimination and victimisation. Except for incitement to discrimination (which is a form which goes beyond the scope of the Directives and does not conflict with them), the definitions follow the patterns of both the Directives 2000/43/EC and 2000/78/EC. With the grounds covered, the act goes well beyond the list of grounds covered by the Directives (and this applies to all the areas mentioned in the directives). Discrimination by association is also prohibited. By determining whether discrimination has occurred or not, no account is taken of whether the reasons for discrimination were based on facts or on a false assumption.

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<sup>2</sup> Lineage and gender both stand for the Slovak word „rod“ which can be translated as either of these.



Employment, social services, social insurance, social welfare payments and benefits, social advantages, health care, education, goods and services including housing – are spheres in which discrimination on the grounds of sex, religion or belief, race, affiliation with nationality or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status is prohibited pursuant to ADA. In some cases and pursuant to other laws, discrimination is also prohibited on the ground of unfavourable state of health, on the ground of trade union activities or activities in associations or since 2011 even on the ground of genetic features.

ADA also imposes the duty to provide reasonable accommodation on employers. In particular, it obliges them to take appropriate measures to enable a person with a disability to have access to employment, to promotion or other advance at work and to training. At the same time, accommodating the needs of a person with disabilities must not impose a disproportionate burden on an employer.

Differential treatment in employment (in particular the exception grounded on genuine and determining occupational requirements) is permitted if it is justified according to the rules identical with the Racial Equality and the Employment Equality Directive.

The Act also defines other exceptions to the principle of equal treatment. Discrimination on the ground of religion or belief is allowed for churches and religious organisations if a person's religion is fundamental for carrying out certain occupation. ADA provides that it does not apply to legal regulation of the status of third country nationals and states that in the armed forces and rescue services, discrimination on the grounds of disability and age is to be accepted. Under special circumstances, several exceptions concern differences in treatment on the ground of age, such as fixing age for access to employment, for entitlement to certain social benefits in employment or for the provision of insurance services. Discrimination on the ground of disability is not considered to be discrimination in providing insurance services or in employment where the health requirements are essential for carrying out certain occupational activities. The fixing of different retirement ages for men and women, as well as protection of pregnant women and mothers, is allowed if it is objectively justified. The existing legal rule and case-law do not explicitly deal with situations of multiple discrimination.

#### **4. Material scope**

The principle of equal treatment applies to all areas defined in the EU Directives and overall does not go beyond the scope of the Directives.

In particular, the principle of equal treatment has to be observed in the field of access to employment, occupation and other earning activity or function, including recruitment requirements, selection criteria and methods, vocational training, advanced vocational training and participation in active labour market policy



programmes, including vocational guidance services, membership and activity in employees' organisations, employers' organisations and in organisations whose members carry out a particular profession, including benefits provided by such organisations, and in the fields of social aid (social services), social insurance, old-age pension insurance, accessory pension insurance, state social support and social advantages, health care, education, goods and services, including housing, provided to the public by legal entities and natural persons – entrepreneurs. In all these fields, discrimination is prohibited on all the grounds listed in the Anti-discrimination Act. The implementation of the Anti-discrimination Act concerns both the private and the public sector.

## **5. Enforcing the law**

Anyone who considers themselves wronged by a breach of the principle of equal treatment can claim damages against the perpetrator through judicial proceedings. The discriminated person can demand before a civil court (there are no special labour courts) that a person who has breached the principle of equal treatment refrains from such conduct and where possible rectifies the illegal state. If the violation of the principle of equal treatment has considerably impaired the dignity, social status or social achievements of the victim, the victim may also seek non-pecuniary damages in cash. The amount of compensation has no fixed scale. It is up to the court to accept, reject or change the proposed amount in each particular case.

The existing cases show that the courts are rather reluctant to impose sanctions which would be effective and proportionate and dissuasive for perpetrators. There is a shift of the burden of proof in the court proceeding once the victim has communicated to the court facts giving rise to a reasonable presumption that violation of the principle of equal treatment has occurred. The defendant (alleged perpetrator) must prove that there has been no discrimination against the petitioner or that the treatment was necessary and justifiable. Statistical evidence has not been used in cases of discrimination until recently when the first cases on indirect discrimination in the area of social security and housing were lodged. The law does not exclude this kind of evidence. At the same time, there is no experience or developed case-law in this field.

Situation testing is also not explicitly excluded by law and some NGOs applied it before courts. Although the legal opinion as to the legality of hidden audio recording somewhat differs, courts accept audio-records and other testing-based evidence and have even confirmed their acceptability in the corresponding case-law.

The person who has been discriminated may also request material damages if it is proven that discriminatory behaviour caused such damage. The affected person may be represented in court by an organisation which has as its aim protection against discrimination.





Sometimes, in cases of discrimination that affect a higher or non-specified number of persons or otherwise endanger the public interest, such an organisation, or the Slovak National Centre for Human Rights, can sue the discriminating entity in its own name. So far, two such cases have been initiated and one of them has been won in the first instance (the case of segregation of Roma children in education mentioned above).

There are not many NGOs in Slovakia which provide legal aid to victims of discrimination. One of them is the Centre of Civil and Human Rights in Košice that deals mainly with cases of discrimination against the Roma. Another is the Citizen, Democracy and Accountability that deals mainly with gender-related discrimination but also with discrimination on other grounds. Cases of discrimination in courts received some media attention in 2011.

Under the Labour Code an employee may submit a complaint to an employer claiming infringement of the principle of equal treatment. The employer is obliged to respond to such complaint without undue delay, perform restitution and abstain from such conduct. However, the effect of such a remedy is questionable because there is no official authority outside the employment relationship to handle the complaints and employees may be deterred from using the law in this way (for example due to fear of victimisation or of losing their job).

Except for paying damages to the victim within a judicial proceeding, sanctions for discriminatory behaviour can also be imposed on the transgressor through the administrative imposition of fines. In access to goods and services, in employment relationships and education, the labour, trade and school inspectorates have the right to fix fines in such cases. However, the administrative proceedings are still not very much used in practice for enforcing the anti-discrimination provisions. A few known cases concern imposition of fines by the Slovak Trade Inspection due to ethnicity discrimination in access to services.

## **6. Equality bodies**

The body designated for the promotion of equal treatment is the Slovak National Centre for Human Rights. According to ADA, the Centre is an independent, non-judicial body, subsidised mainly through the state budget. The role and tasks of the Centre are quite complex.

The Centre is empowered to prepare expert opinions on compliance with the principle of equal treatment on request from natural persons or legal entities or on its own initiative. The Centre is obliged to monitor and evaluate the observance of human rights and of equal treatment and to collect and provide information on racism, xenophobia and anti-Semitism, as well as to carry out independent probes concerning discrimination. More generally, the Centre is obliged to conduct research and surveys for the purpose of providing data in the field of human rights. The Centre is also required to secure legal aid to persons affected by discrimination under ADA



and is empowered to represent the discriminated persons in courts, and also to file an *actio popularis* (an anti-discriminatory lawsuit in public interest). As the Centre is competent to act in cases of discrimination defined by ADA, it works on all grounds defined by it.

The Centre also annually publishes a report on the observance human rights including the principle of equal treatment in the previous year in Slovakia, and is also obliged to draft and publish reports and recommendations on issues connected to discrimination. A significant enlargement of the reach of the Centre was carried out in 2007. Seven regional branches of the Centre were created in order to operate more effectively in all regions of Slovakia. However, in 2011, allegedly due to lack of resources, the regional offices reduced to being represented by one half-time employer each. It is therefore very questionable how efficient can these regional centres be.

Various sources of information, albeit most of them fragmented, have for a long time been confirming that the Centre is not fulfilling its tasks efficiently and satisfactorily. Also, in 2011, the Slovak government approved an analytical report on the functioning and status of the Centre, the first of its kind ever. The report presented various findings that resulted from a relatively complex data gathering. Among the most relevant findings presented were: lack of powers/unclear powers of the Centre, lack of professional and personal capacities of the Centre, inefficient management of public resources allocated to the Centre, inappropriate structure of the governing and controlling bodies created within the Centre and their inactivity, lack of preventive and strategic approaches of the Centre, lack of independence and lack of mechanisms of protection against abuse of the Centre for particular interests including political ones, lack of visibility of the activities of the Centre and their limited impact, a very low amount of cases of discrimination that have been brought to courts by the Centre and that have been resolved by the Centre in general. Based on these serious findings, the government that was in power in 2011 intended to propose legislative changes that could contribute to the Centre becoming an efficient and respected equality body in compliance with the Directives. However, due to a change of government in April 2012 it is uncertain how the situation with the Centre is going to develop.