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Country report

Non-discrimination

Slovakia

Janka Debrecéniová

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LIST OF ABBREVIATIONS:

ACEC – Association for Education and Culture

CERD – Convention on the Elimination of All Forms of Racial Discrimination

CJEU – Court of Justice of the EU

ECHR – European Convention on Human Rights

ECtHR – European Court of Human Rights

EXECUTIVE SUMMARY

1. Introduction

The Slovak Republic is a country of 5.4 million people. In addition to Slovak nationals, a wide range of minority groups live in the country. The largest groups are Hungarians (8.5 %) and the Roma minority. The official number of Roma in the last census (2011) was 105 738 (2 %),¹ although the Atlas of Roma Communities 2013 reveals that there are more than 400 000 Roma living in Slovakia, making up 7.45 % of the whole population.² The other minority groups include Czechs, Ukrainians, Croatians, Germans, Poles, Bulgarians, Moravians and Jews.³

In Slovakia, many individuals and groups face serious discrimination due to some of their traits. For example, the Roma people face widespread, deep prejudice and discrimination, which exists in all areas of life and is often segregational in character. In 2011 and 2012, the first ever case on ethnic segregation in education was won in national courts.⁴ Despite the positive judicial outcome, combating the educational segregation of the Roma has not been on the agenda of any Government, and the only public figure representing the state who openly challenges the situation is the Slovak ombudswoman.⁵

Widespread and often open racism and general disrespect towards minorities are omnipresent, not only among the general public but also at the highest political level. Racial and nationalist hatred raises additional concerns. In late 2013, a representative of an openly racist and nationalist political party was even elected chairman of one of the self-governing regions.

The discrimination faced by the LGBTI minority is also a very serious problem since, when compared to other grounds of discrimination and groups that are discriminated against, the LGBTI community has not acquired full legal and political recognition, e.g. through the ability to enter into marriage or a registered partnership. Homophobic voices and voices that contest the concept of gender equality are getting stronger and stronger and come not only from the Catholic Church hierarchies, but also from the highest political representatives.

Many other individuals and groups also face serious discrimination, often on combinations of several grounds. Women are especially affected by multiple discrimination.

2. Main legislation

The Slovak Republic is party to several international human rights treaties including the International Covenant on Civil and Political Rights, the International Covenant on

¹ See <http://census2011.statistics.sk/tabulky.html> (accessed 13 May 2015).

² See *Prvé výsledky ATLASU rómskych komunít na Slovensku 2013* (The First Results of the Atlas on Roma Communities in Slovakia 2013) (2013), which can be found on the website of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities (the document is available at http://www.minv.sk/?atlas_2013, accessed 25 April 2015).

³ Each making up less than 1 % of the national population. See <http://census2011.statistics.sk/tabulky.html> (accessed 13 May 2015).

⁴ Case *Poradňa pre občianske a ľudské práva vs Základná škola v Šarišských Michaľanoch* (Centre for Civil and Human Rights vs Šarišské Michaľany Primary School), decision of the District Court in Prešov of 5 December 2011, ref. No 25C 133/10-229-, and decision of the Regional Court in Prešov of 30 October 2012, ref. No 20Co 125/2012, 20Co 126/2012.

⁵ See for example Kancelária verejného ochrancu práv (2013), *Správa verejnej ochrankyne práv o uplatňovaní práva na vzdelanie detí/žiakov príslušníkov rómskej národnostnej menšiny so špeciálnymi výchovno-vzdelávacími potrebami* (Report of the Public Defender of Rights on the Observance of the Right to Education of Pupils/Children, Representatives of Roma National Minority, with Special Educational Needs), available at <http://www.vop.gov.sk/files/Sprava%20VOP-Vzdelavanie%20Romov.pdf> (accessed 25 April 2015).

Economic, Social and Cultural 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 (*národnosť*)⁶ or ethnic origin, property, lineage or any other status. No person can be denied their legal rights, discriminated against or favoured on any of these grounds.

The Anti-Discrimination Act (ADA) now in force was adopted in May 2004,⁷ immediately after Slovakia joined the EU. The ADA meets the minimum standards required by the directives and goes beyond them in some instances.

The ADA prohibits 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/gender⁸ or other status, or the reason of reporting criminality or other anti-social activity.⁹ In addition to the ADA, several special laws in all the fields covered by the directives refer to the ADA, sometimes extending the scope of grounds protected by it. Thus, in accordance with these other laws, discrimination is also prohibited on the grounds of unfavourable state of health, genetic features, trade union activities, or activities within associations. In some cases, these laws also contain special mechanisms for invoking the right to equal treatment. Some serious offensive and discriminatory behaviour is outlawed separately by the Criminal Code.

The ADA defines the principle of equal treatment not only as the prohibition of discrimination, but also as a duty to adopt measures to prevent it.¹⁰ The principle of equal treatment applies to all fields covered by the directives (these are all contained in the ADA) and to all grounds covered by the ADA.

3. Main principles and definitions

The ADA defines direct discrimination, indirect discrimination, harassment, sexual harassment, instruction to discriminate, incitement to discrimination,¹¹ and victimisation.¹² Except for incitement to discrimination (which is a form that goes beyond the scope of the directives and does not conflict with them), the definitions follow the patterns of both of the Directives 2000/43/EC and 2000/78/EC. Discrimination by association is also prohibited, but this only covers race, nationality (*národnosť*), ethnicity, religion and

⁶ In the Slovak law, the word 'nationality' (*národnosť*) is separate and distinct from the word 'citizenship' (*štátne občianstvo*). Whereas 'citizenship' is understood as meaning nationality in the sense of having a legal affiliation with a particular state (i.e. being a national or citizen of the Slovak Republic), 'nationality' is understood as an affiliation with a particular 'nation' (a group of people defined by common language, geographical and cultural roots etc.) or ethnic group. Thus, 'nationality' is often understood as meaning 'ethnicity', including in the practice of state bodies and public institutions.

⁷ Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection Against Discrimination (Anti-discrimination Act), as amended (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) v znení neskorších predpisov).

⁸ The Slovak word *rod* can be translated as either 'lineage' or 'gender'.

⁹ Section 2(1) of the ADA.

¹⁰ Sections 2(1) and 2(3) of the ADA.

¹¹ An instruction to discriminate is defined as abusive conduct towards 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.

¹² See Section 2a(1)-(8) of the ADA.

belief.¹³ In 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.¹⁴

The ADA also imposes on employers the duty to provide reasonable accommodation. In particular, it obliges them to take appropriate measures to enable a person with a disability to have access to employment, 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.¹⁵

An exception grounded on genuine and determining occupational requirements is permitted if it is justified in accordance with rules that are identical to those in the directives.¹⁶

The ADA 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 to the exercise of a certain occupation.¹⁷ The ADA stipulates that it does not apply to legal regulation of the status of third-country nationals¹⁸ and states that, in the armed forces and rescue services, discrimination on the grounds of disability and age is allowed.¹⁹

Under special circumstances, several exceptions concern differences in treatment on the ground of age, such as setting age restrictions for access to employment, entitlement to certain social benefits in employment or for the provision of insurance services.²⁰ 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.²¹

The existing legal rules 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 goes beyond the scope of the directives.

In particular, the principle of equal treatment must 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 services, social insurance, old-age pension insurance, supplementary pension insurance, state social support and social advantages, healthcare, education, and goods and services, including housing (explicitly, housing provided to the public by legal entities and natural persons who are entrepreneurs).²² In all these fields, discrimination is prohibited on all the grounds listed in the ADA. The implementation of the ADA applies to both the private and the public sector.

¹³ Sections 2a(11)(b) and 2a(11)(c) of the ADA.

¹⁴ Section 3(3) of the ADA.

¹⁵ See Section 7 of the ADA.

¹⁶ See Section 8(1) of the ADA.

¹⁷ Section 8(2) of the ADA.

¹⁸ See Section 4(1)(a) of the ADA.

¹⁹ See Section 4(1)(b) of the ADA.

²⁰ See Section 8(3) of the ADA.

²¹ See Sections 8(6) and 8(5) of the ADA.

²² See Section 3(1), 5 and 6 of the ADA.

5. Enforcing the law

Although anti-discrimination legislation is relatively progressive, its implementation is very weak in practice. Despite being poorly documented by the state and its bodies, discrimination seems to be hugely present in all fields covered by the directives (and beyond) and seems to be taking place through more subtle forms than in the past, due to the introduction of non-discrimination language to the discourse. One of the reasons for the weak implementation of the legislation may be the fact that there is very low enforcement through legal procedures. For example, between the ADA coming into force on 1 July 2004 and the end of June 2012, only about 120 proceedings were finalised before courts of all instances in Slovakia.²³ The number of proceedings had not increased dramatically by the end of 2014 (although the exact figures are not known).²⁴

A nationwide survey carried out in 2012²⁵ found that just a tiny percentage (4.7 %) of respondents who subjectively felt discriminated against have sought legal aid or defended themselves against discrimination by legal means. More than 92 % have not taken any steps to defend themselves, the reasons being mainly lack of trust in the institutions that might successfully resolve discrimination (13.1 % of responses), lack of evidence (11.8 % of responses), the fact that people who felt discriminated against did not consider it important to resolve their case (11.6 %) and a lack of information as to where and to whom to turn for legal assistance (over 10 %).²⁶

Anyone who considers themselves to have been wronged by a breach of the principle of equal treatment can bring the perpetrator to court. The person discriminated against (the claimant) can demand before a civil court (there are no special labour courts) that the person who breached the principle of equal treatment (the defendant) refrains from such conduct and, where possible, rectifies the illegal state of affairs. 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 financial compensation of non-pecuniary damage. The amount of compensation has no fixed scale.²⁷ It is up to the court to accept, reject or lower the proposed amount in each particular case. A claimant can in principle claim other remedies, for example that the court declares treatment by a defendant to be discriminatory, or that it declares a dismissal invalid. However, in case of the latter, there is no established judicial practice as yet. A person who has been discriminated against may also request material damages, if it is proved that such damage was caused by discriminatory behaviour.²⁸

The existing case law shows that courts are rather reluctant to impose sanctions on perpetrators that would be effective, proportionate and dissuasive. This is especially true for financial compensation of non-pecuniary damage.

There is a shift of the burden of proof in court proceedings once the claimant has communicated to the court facts giving rise to a reasonable presumption that violation of the principle of equal treatment has occurred. The defendant must prove that there has been no discrimination against the claimant or that the treatment was necessary and

²³ Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, Košice, Poradňa pre občianske a ľudské práva, p 66, also available at <http://poradna-prava.sk/wp-content/uploads/2012/11/Publikáciu-si-môžete-stiahnuť-tu-105-MB.pdf> (accessed 22 April 2015). The number of proceedings includes several proceedings for the same cases (i.e. the same cases being considered by courts at different levels, or numerous decisions by the same court being issued in the same case).

²⁴ The state does not register discrimination-related proceedings and decisions properly and hence reliable statistics do not exist.

²⁵ *Ibid*, pp. 27-49 and 129-131.

²⁶ *Ibid*, p. 129.

²⁷ See Section 9(1)-(3) of the ADA, in conjunction with Section 11(1).

²⁸ See Section 9(4) of the ADA.

justifiable.²⁹ In a decision of 2013, the Constitutional Court adhered to an assessment of a second instance court from an earlier stage of the proceedings that ‘the defendant proved that it is more likely that the discrimination hasn’t taken place than it is likely that the discrimination has taken place, and so he discharged his burden of proof’.³⁰ In this decision, the Constitutional Court seems to indicate that once the burden of proof is shifted on to the defendant, the defendant is not obliged to prove beyond any doubt that there has been no breach of the principle of equal treatment (as the directives presumably require), but that it is sufficient to provide evidence establishing some probability of non-discrimination, and that the probability of non-discrimination has to be higher than the probability of discrimination.

A person affected by discrimination may be represented in court by the Slovak National Centre for Human Rights (the equality body) or by an organisation that has protection against discrimination as its aim (in practice such organisations are mainly NGOs, but in principle they could also be trade unions).³¹

Sometimes, in cases of discrimination that affect a larger or non-specified number of people or otherwise threaten the public interest, such an organisation, or the Slovak National Centre for Human Rights, can sue the discriminating entity in its own name (so-called *actio popularis*).³² So far, very few such cases have been initiated (all by an NGO) and only one of them was won and finalised (a case of segregation of Roma children in education).³³

There are few NGOs in Slovakia that provide legal assistance to people affected by discrimination. One such NGO is the Centre for Civil and Human Rights in Košice,³⁴ and another is Citizen, Democracy and Accountability.³⁵

According to 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 a complaint without undue delay, perform restitution and abstain from discriminatory conduct.³⁶ However, the effect of this kind of 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 (due to fear of victimisation, for example).

Sanctions for discriminatory behaviour can also be imposed through the administrative imposition of fines. The labour, trade and school inspectorates are the bodies in charge. However, proceedings before inspectorates are still not much used in practice to enforce the anti-discrimination provisions, no shift in burden of proof applies in them, and even if such proceedings take place, fines are rarely imposed.

The ADA contains a provision enabling public administration bodies and other legal entities to adopt positive action measures (entitled ‘temporary equalising measures’). The act stipulates that these measures should be aimed at removing disadvantages following from the grounds of racial or ethnic origin, affiliation with a national minority or an ethnic group, gender or sex, age or disability, and that their aim should be to guarantee equality of

²⁹ See Section 11(2) of the ADA.

³⁰ Finding of the Constitutional Court of 10 July 2013 in a case of *V. S. v Primary School of Ivan Branislav Zoch in Revúca*, ref. No II. ÚS 383/2013-16.

³¹ See Section 10 of the ADA.

³² See Section 9a of the ADA.

³³ Case *Poradňa pre občianske a ľudské práva vs Základná škola v Šarišských Michalánoch (Centre for Civil and Human Rights vs Šarišské Michalany Primary School)*, decision of the District Court in Prešov of 5 December 2011, ref. No 25C 133/10-229-, and decision of the Regional Court in Prešov of 30 October 2012, ref. No 20Co 125/2012, 20Co 126/2012.

³⁴ This NGO deals mainly with cases of discrimination against Roma.

³⁵ Citizen, Democracy and Accountability focuses mainly on gender-related discrimination.

³⁶ See Section 13(5) of the Act No 311/2001 Coll. Labour Code (zákon č. 311/2001 Z. z. Zákonník práce).

opportunity in practice.³⁷ Some positive action measures are in place with regard to the Roma. For example, the programme Healthy Communities, which employs 190 health mediators of Roma origin in 165 marginalised Roma communities (the mediators come from these communities) who assist people with everyday health-related situations, was re-introduced in 2013 (after some breaks in earlier programmes of this kind).³⁸ Employment legislation provides for special protection for people with disabilities and there is a special quota system established for employers who employ at least 20 employees.³⁹ There are no specific positive action measures related to discrimination on the ground of sexual orientation and religion and belief.

Some form of dialogue with NGOs is taking place through the Council of the Government of the Slovak Republic for Human Rights, National Minorities and Gender Equality, the Government's advisory body.⁴⁰ Despite some positives, the functioning of the council also has a few systemic and practical drawbacks.

It appears that there is no constant and systematic dialogue between the Government and trade unions as regards non-discrimination. Trade unions are in general not very active in the field.

6. Equality bodies

The body designated for the promotion of equal treatment is the Slovak National Centre for Human Rights. The centre is an independent, non-judicial body, subsidised mainly through the state budget.⁴¹

The centre is empowered to draft expert opinions on compliance with the principle of equal treatment. It is also tasked with monitoring and evaluating the observance of human rights and of equal treatment and with collecting and providing information on racism, xenophobia and anti-Semitism, as well as with carrying out independent inquiries 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 obliged to publish an annual report on the observance of human rights, including the principle of equal treatment, in Slovakia. It is also required to secure legal aid for people affected by discrimination under the ADA and is empowered to represent the victims of discrimination in court.⁴² It may also file an *actio popularis* (see above). As the centre is competent to act in cases of discrimination defined by the ADA, it works on all the grounds defined by it.

³⁷ See Section 8a of the ADA.

³⁸ The programme is a joint initiative of NGOs associated in the platform for the support of health of disadvantaged groups that is coordinated by Association for Education and Culture (ACEC) and is funded by the Ministry of Finance and by the operational programme, 'Employment and Social Inclusion', of the structural funds.

³⁹ Pursuant to Sections 63-65 of Act No 5/2004 Coll. on Employment Services, any employer who employs at least 20 employees is obliged to ensure that people with disabilities make up at least 3.2 % of the workforce, provided that the local labour office has job seekers with disabilities on its register. Instead of employing a person with a disability, an employer can also decide to buy goods or services from a sheltered workshop or a sheltered workplace or a self-employed person with a disability.

⁴⁰ See Section 2(3) of Act No 575/2001 Z. z. on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration, as amended (zákon č. 575/2001 Z. z. o organizácii činnosti vlády a organizácii ústrednej štátnej správy v znení neskorších predpisov). The website of the Council of the Government: www.radavladyp.gov.sk/ (accessed 27 April 2015).

⁴¹ See Sections 1 and 2(1)-(3) of the Act No 308/1993 Coll. on Establishing the Slovak National Centre for Human Rights (zákon č. 308/1993 Z. z. o zriadení Slovenského národného strediska pre ľudské práva).

⁴² See Sections 1(2)-(4) of the Act No 308/1993 Coll. on Establishing the Slovak National Centre for Human Rights.

For a long time now, various sources have been reporting that the centre is not fulfilling its tasks efficiently and satisfactorily.⁴³ In 2011, the Slovak Government approved an analytical report on the functioning and status of the centre, the first (and last) of its kind. The report presented a number of findings, which resulted from a relatively complex data gathering exercise.

Among the most relevant findings presented were: the centre's lack of powers/unclear powers; its inadequate professional and personal capacity; inefficient management of the public resources allocated to the centre; inappropriate structure of the governing and supervisory bodies created within the centre and their inactivity; the centre's lack of preventive and strategic approaches; a lack of independence and mechanisms to protect it against abuse by particular interests, including political ones; lack of visibility of the centre's activities and their limited impact; the very low number of cases of discrimination that have been brought to court by the centre and that have been resolved by the centre in general.

The Government that was in power when the 2011 report on the centre was approved, tasked some of its members with analysing the possible financial and legal impacts of the necessary institutional changes to the centre. The new Government, which came into power on 4 April 2012, modified and limited these tasks, but remained committed to the need to resolve the situation. Although the Minister of Justice was supposed to present the analysis and the corresponding legislative bills by October 2012, by 1 January 2015, neither the analysis nor the legislative bill had been presented to the public.

7. Key issues

In general, the transposition of the directives has been carried out in a relatively satisfactory manner, going beyond the requirements of the directives in many instances, and, despite a lot of room for improvement (e. g. in some procedural rules), it could serve as a good departure point for the implementation of the principle of equal treatment in practice. However, at the moment, implementation is still far behind the requirements of the directives. The main reasons for this are: barriers to access to courts and to justice in general; lack of proper knowledge of anti-discrimination legislation by legal professionals and by decision-makers; lack of case law and deficiencies in the registration of cases on discrimination; lack of data and statistics connected to discrimination and its grounds; lack of effectiveness in the functioning of the equality body; lack of independence of the equality body; lack of public policies in the field of anti-discrimination; lack of mainstreaming of the principle of non-discrimination and lack of coordination among public bodies responsible for non-discrimination; lack of resources to be invested by the Government into non-discrimination, lack of systemic support of NGOs by the Government; the system of education not sufficiently integrating the principles and values of human rights and non-discrimination; politicians lacking commitment and interest in these values; a very high level of occurrence and tolerance of racism and discriminatory attitudes in society as a whole.

⁴³ See, for example, Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, Košice, Poradňa pre občianske a ľudské práva, pp. 110-112, also available at <http://poradna-prava.sk/wp-content/uploads/2012/11/Publikáciu-si-môžete-stiahnuť-tu-105-MB.pdf> (accessed 22 April 2015); Centre for Civil and Human Rights, People in Need Slovak Republic (2013), *Written comments concerning the Ninth and Tenth Periodic Reports of the Slovak Republic under the International Convention on the Elimination of All Forms of Racial Discrimination*, January 2013, pp. 2, 13, 16 (also available at: <http://poradna-prava.sk/wp-content/uploads/2013/03/PDF-236-KB1.pdf>, accessed 22 April 2015); *Concluding observations of the Committee on Economic, Social and Cultural Rights on Slovakia from 2012* (available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fSVK%2fC.O%2f2&Lang=en, last accessed 2 April 2014 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/433/84/PDF/G1243384.pdf?OpenElement>). See also the transcript of the 7th meeting of the Council for Human Rights and National Minorities of October 17, 2012, available at: http://www.radavladyp.gov.sk/data/att/10161_subor.pdf (accessed 22 April 2015).

RÉSUMÉ

1. Introduction

La République slovaque est un pays de 5,4 millions d'habitants où vivent, outre les ressortissants slovaques, toute une série de groupes minoritaires – les principaux étant les Hongrois (8,5 %) et la minorité rom qui, selon le dernier recensement (2011), comptait officiellement 105 738 personnes (2 % de la population).⁴⁴ L'Atlas 2013 des communautés roms révèle toutefois que plus de 400 000 Roms vivent en Slovaquie et représentent dès lors 7,45 % de l'ensemble de la population.⁴⁵ Parmi les autres minorités figurent les Tchèques, les Ukrainiens, les Croates, les Allemands, les Polonais, les Bulgares, les Moraves et les Juifs.⁴⁶

Bon nombre de personnes et de groupes font l'objet d'une forte discrimination en Slovaquie en raison de certaines de leurs caractéristiques. Ainsi par exemple les Roms sont-ils confrontés à des préjugés largement répandus et à une discrimination qui, observée dans tous les domaines de vie, revêt souvent un caractère ségrégationniste. En 2011 et 2012, les juridictions nationales se sont prononcées pour la première fois en faveur de la partie requérante dans une affaire de ségrégation scolaire.⁴⁷ En dépit de cette décision judiciaire positive, la lutte contre la ségrégation scolaire des Roms n'a été à l'ordre du jour d'aucun gouvernement et la seule personnalité publique représentant l'État qui conteste ouvertement la situation est la médiatrice slovaque.⁴⁸

Un racisme largement répandu et souvent déclaré ainsi qu'un manque général de respect à l'égard des minorités sont omniprésents, non seulement au sein du grand public mais également au plus haut niveau politique. La haine raciale et nationaliste est une source de préoccupation supplémentaire. Fin 2013, un représentant d'un parti politique ouvertement raciste et nationaliste a même été élu à la présidence de l'une des régions autonomes.

La discrimination envers la minorité formée des personnes homosexuelles, bisexuelles, transsexuelles et intersexuées constitue par ailleurs une problématique de taille, la communauté LGBTI n'ayant pas acquis, comme ce fut le cas pour d'autres motifs de discrimination et d'autres groupes visés par des discriminations, une pleine reconnaissance politique juridique qui permettrait, par exemple, de contracter un mariage ou un partenariat enregistré. Des voix homophobes et des voix contestant le concept de l'égalité des genres se font de plus en plus largement entendre; elles émanent non seulement de la hiérarchie de l'Église catholique, mais également de représentants politiques au plus haut niveau.

⁴⁴ Voir <http://census2011.statistics.sk/tabulky.html> (consulté le 13 mai 2015).

⁴⁵ Voir *Prvé výsledky ATLASU rómskych komunít na Slovensku 2013* (Les premiers résultats de l'Atlas 2013 des communautés roms) (2013) figurant sur le site web du Plénipotentiaire du gouvernement de la République de Slovaquie pour les communautés roms (document disponible sur http://www.minv.sk/?atlas_2013, consulté le 25 avril 2015).

⁴⁶ Chacune de ces minorités représentant moins de 1 % de la population nationale. Voir <http://census2011.statistics.sk/tabulky.html> (consulté le 13 mai 2015).

⁴⁷ Affaire *Poradňa pre občianske a ľudské práva vs Základná škola v Šarišských Michaľanoch* (Centre des droits civils et humains c. École primaire Šarišské Michaľany), arrêt du tribunal départemental de Prešov du 5 décembre 2011, réf. n° 25C 133/10-229, et arrêt de la cour régionale de Prešov du 30 octobre 2012, réf. n° 20Co 125/2012, 20Co 126/2012.

⁴⁸ Voir notamment Kancelária verejného ochrancu práv (2013), *Správa verejnej ochrany práv o uplatňovaní práva na vzdelanie detí/žiakov príslušníkov rómskej národnostnej menšiny so špeciálnymi výchovno-vzdelávacími potrebami* (Rapport du Défenseur public des droits concernant le respect du droit à l'éducation des élèves/enfants appartenant à la minorité nationale rom et ayant des besoins éducatifs spéciaux), disponible sur <http://www.vop.gov.sk/files/Sprava%20VOP-Vzdelavanie%20Romov.pdf> (consulté le 25 avril 2015).

Beaucoup d'autres personnes et groupes sont également confrontés à une forte discrimination, souvent fondée sur la combinaison de plusieurs motifs. Cette discrimination multiple vise plus particulièrement les femmes.

2. Législation principale

La République slovaque est partie à plusieurs traités internationaux relatifs aux droits de l'homme, dont le Pacte international relatif aux droits civils et politiques, le Pacte international relatif aux droits économiques, sociaux et culturels, la Convention européenne de sauvegarde des droits de l'homme, la Convention internationale sur l'élimination de toutes les formes de discrimination raciale et la Convention des Nations unies relative aux droits des personnes handicapées.

La Constitution de la République de Slovaquie déclare que les droits fondamentaux sont garantis à toute personne indépendamment de son sexe, de sa race, de la couleur de sa peau, de sa langue, de ses convictions, de sa religion, de son appartenance ou de ses options politiques, de son origine nationale ou sociale, de sa nationalité (*národnosť*)⁴⁹ ou de son origine ethnique, de sa fortune, de sa naissance ou de toute autre circonstance personnelle. Aucune personne ne peut se voir refuser sa protection juridique ni faire l'objet d'un traitement discriminatoire ou préférentiel pour l'un quelconque de ces motifs.

La loi antidiscrimination actuellement en vigueur a été adoptée en mai 2004,⁵⁰ immédiatement après l'adhésion de la Slovaquie à l'UE. Elle respecte les normes minimales imposées par les directives et va au-delà de celles-ci dans certains cas.

La loi antidiscrimination interdit la discrimination fondée sur le sexe, la religion ou les convictions, la race, l'appartenance à une nationalité ou un groupe ethnique, un handicap, l'âge, l'orientation sexuelle, l'état matrimonial et la situation familiale, la couleur de la peau, la langue, les opinions politiques ou autres, l'origine nationale ou sociale, la fortune, la naissance/le genre⁵¹ ou toute autre caractéristique personnelle, ou pour avoir signalé un délit ou une autre activité antisociale.⁵² Outre la loi antidiscrimination, plusieurs lois spéciales relevant des différents domaines visés par les directives font référence à la loi antidiscrimination et élargissent parfois le champ d'application des motifs qu'elle protège. C'est ainsi que, en vertu de ces autres lois, la discrimination fondée sur un état de santé précaire, des caractéristiques génétiques, des activités syndicales ou des activités au sein d'associations est également interdite. Ces lois contiennent également dans certains cas des mécanismes spéciaux pour l'invocation du droit à l'égalité de traitement. Plusieurs formes graves de comportement offensant et discriminatoire font l'objet d'une interdiction distincte dans le code pénal.

La loi antidiscrimination définit le principe de l'égalité de traitement non seulement comme l'interdiction de discrimination, mais également comme l'obligation d'adopter des mesures pour l'empêcher.⁵³ Le principe de l'égalité de traitement s'applique à tous les domaines

⁴⁹ En droit slovaque, le terme «nationalité» (*národnosť*) se distingue du terme «citoyenneté» (*štátne občianstvo*). Alors que le second s'entend comme la nationalité au sens d'une appartenance juridique avec un État particulier (autrement dit comme le fait d'être un ressortissant ou un citoyen de la République slovaque), le terme «nationalité» s'entend comme une appartenance à une «nation» particulière (à savoir un groupe de personnes définies par une même langue, des racines géographiques et culturelles communes, etc.) ou à un groupe ethnique. Il en découle que la «nationalité» s'entend souvent comme désignant «l'ethnicité», y compris dans la pratique des organes de l'État et des institutions publiques.

⁵⁰ Loi n° 365/2004 Coll. sur l'égalité de traitement dans certains domaines et sur la protection contre la discrimination (loi antidiscrimination), telle que modifiée (*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) v znení neskorších predpisov*).

⁵¹ Le terme slovaque «rod» peut se traduire par «naissance» ou par «genre».

⁵² Article 2, paragraphe 1, de la loi antidiscrimination.

⁵³ Article 2, paragraphes 1 et 3, de la loi antidiscrimination.

couverts par les directives (lesquels sont tous inclus dans la loi antidiscrimination) et à tous les motifs protégés par la loi antidiscrimination.

3. Principes généraux et définitions

La loi antidiscrimination définit la discrimination directe, la discrimination indirecte, le harcèlement, le harcèlement sexuel, l'incitation à discriminer⁵⁴ et les rétorsions.⁵⁵ Hormis en ce qui concerne l'incitation à la discrimination (forme de discrimination qui va au-delà du champ d'application des directives mais qui n'est pas incompatible avec elles), les définitions suivent le modèle des deux directives (2000/43/CE et 2000/78/CE). La discrimination par association est également interdite, mais seuls les motifs de la race, de la nationalité (*národnost*), de l'ethnicité, de la religion et des convictions sont couverts.⁵⁶ L'établissement de l'existence ou de la non-existence d'une discrimination ne tient pas compte du fait que celle-ci ait été fondée sur des faits réels ou sur une supposition erronée.⁵⁷

La loi antidiscrimination impose également aux employeurs une obligation d'aménagement raisonnable. Elle les oblige notamment à prendre les mesures appropriées pour qu'une personne handicapée puisse avoir accès à l'emploi, à la promotion ou tout autre avancement au travail, et à la formation. L'adaptation aux besoins d'une personne handicapée ne peut toutefois faire peser une charge disproportionnée sur l'employeur.⁵⁸

Une dérogation fondée sur des exigences professionnelles essentielles et déterminantes est admise pour autant qu'elle soit justifiée par des règles identiques à celles définies dans les directives.⁵⁹

La loi antidiscrimination définit d'autres exceptions au principe de l'égalité de traitement. Ainsi la discrimination fondée sur la religion ou les convictions est-elle autorisée pour les églises et les organisations religieuses lorsque la religion d'une personne s'avère essentielle pour l'exercice d'une profession déterminée.⁶⁰ La loi antidiscrimination dispose qu'elle ne s'applique pas à la réglementation juridique du statut des ressortissants de pays tiers⁶¹ et que la discrimination fondée sur le handicap et l'âge est admise dans les forces armées et les services de secours.⁶²

Plusieurs dérogations sont prévues, dans des matières particulières, en ce qui concerne les différences de traitement fondées sur l'âge: on songe ici à la fixation d'un âge pour accéder à l'emploi, pour prétendre à certains avantages sociaux liés à l'emploi ou pour bénéficier de services d'assurance.⁶³ La discrimination fondée sur le handicap n'est pas considérée comme une discrimination lorsqu'il s'agit de fournir des services d'assurance ou de prester un emploi lorsque les exigences de santé sont déterminantes pour l'exécution de certaines activités professionnelles.⁶⁴

Ni les règles de droit en vigueur ni la jurisprudence ne traitent explicitement des situations de discrimination multiple.

⁵⁴ Une instruction de discriminer est définie comme un comportement abusif envers une personne subordonnée visant à une discrimination à l'égard d'une tierce personne. L'incitation à la discrimination peut consister à persuader, engager ou inciter une personne à pratiquer une discrimination à l'encontre d'une tierce personne.

⁵⁵ Voir l'article 2a, paragraphes 1 à 8, de la loi antidiscrimination.

⁵⁶ Voir l'article 2a, paragraphe 11 sous b) et c), de la loi antidiscrimination.

⁵⁷ Article 3, paragraphe 3, de la loi antidiscrimination.

⁵⁸ Voir l'article 7 de la loi antidiscrimination.

⁵⁹ Voir l'article 8, paragraphe 1, de la loi antidiscrimination.

⁶⁰ Article 8, paragraphe 2, de la loi antidiscrimination.

⁶¹ Voir l'article 4, paragraphe 1 sous a), de la loi antidiscrimination.

⁶² Voir l'article 4, paragraphe 1 sous b), de la loi antidiscrimination.

⁶³ Voir l'article 8, paragraphe 3, de la loi antidiscrimination.

⁶⁴ Voir l'article 8, paragraphes 6 et 5, de la loi antidiscrimination.

4. Champ d'application matériel

Le principe de l'égalité de traitement s'applique à tous les domaines définis dans les directives de l'UE et va, de façon générale, au-delà du champ d'application de celles-ci.

Ce principe doit plus particulièrement être respecté dans les domaines de l'accès à l'emploi, au travail et à toute autre activité ou fonction rémunératrice, en ce compris les critères de recrutement, les critères et méthodes de sélection, la formation professionnelle, le perfectionnement professionnel et la participation à des programmes relevant de politiques actives sur le marché du travail (services d'orientation professionnelle inclus); l'affiliation et la participation active à des organisations de travailleurs, à des organisations d'employeurs et à des organisations dont les membres exercent une profession particulière, y compris les avantages octroyés par ces organisations; et dans les domaines des services sociaux, de la sécurité sociale, de l'assurance vieillesse, de l'assurance pension complémentaire, des prestations et avantages sociaux divers, des soins de santé, de l'éducation ainsi que des biens et des services, y compris du logement (explicitement décrit comme un logement mis à la disposition du public par des personnes morales et par des personnes physiques qui sont entrepreneurs).⁶⁵ Est interdite dans tous ces domaines la discrimination fondée sur n'importe lequel des motifs énoncés dans la loi antidiscrimination, laquelle s'applique à la fois au secteur privé et au secteur public.

5. Mise en application de la loi

La législation antidiscrimination est relativement progressiste, mais sa mise en œuvre sur le terrain reste fort limitée. Bien que mal documenté par l'État et ses différents organes, le phénomène discriminatoire semble très largement répandu dans tous les domaines couverts par les directives (ainsi que dans d'autres) tout en se manifestant sous des formes plus subtiles que par le passé grâce à l'introduction d'un langage non discriminatoire dans le discours. Le faible degré de mise en œuvre de la législation pourrait notamment s'expliquer par un recours extrêmement limité aux procédures judiciaires pour la faire appliquer: entre le 1^{er} juillet 2004 – date d'entrée en vigueur de la loi antidiscrimination – et la fin du mois de juin 2012, seules 120 procédures environ ont été conclues par les juridictions slovaques (toutes instances confondues).⁶⁶ Fin 2014, le nombre de poursuites engagées n'avait pas connu de forte augmentation (bien que les chiffres précis ne soient pas connus).⁶⁷

Une enquête nationale effectuée en 2012⁶⁸ constate que seul un pourcentage minime (4,7 %) de personnes interrogées se sentant subjectivement victimes de discrimination ont recherché une aide juridique ou se sont elles-mêmes défendues contre des faits discriminatoires par des voies légales. Plus de 92 % n'ont fait aucune démarche pour faire valoir leurs droits – les raisons étant principalement le manque de confiance dans les institutions susceptibles d'éradiquer la discrimination (13,1 % des réponses), le manque de preuves (11,8 %), le fait que les personnes s'estimant victimes de discrimination ne trouvent pas important de remédier à leur situation (11,6 %) et le manque d'information quant à l'endroit et à l'interlocuteur auquel il faut s'adresser pour obtenir une aide juridique (plus de 10 %).⁶⁹

⁶⁵ Voir articles 3, paragraphe 1, 5 et 6 de la loi antidiscrimination.

⁶⁶ Durbáková, V., Holubová, B., Ivanko, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, Košice, Poradňa pre občianske a ľudské práva, p 66, également disponible sur <http://poradna-prava.sk/wp-content/uploads/2012/11/Publikáciu-si-môžete-stiahnuť-tu-105-MB.pdf> (consulté le 22 avril 2015). Le nombre de procédures peut inclure plusieurs procédures pour la même affaire (à savoir l'examen de la même affaire par des juridictions de niveaux différents ou plusieurs arrêts rendus par la même juridiction dans la même affaire).

⁶⁷ L'État ne consignait pas de manière adéquate les procédures et décisions liées à des poursuites pour discrimination, on ne dispose d'aucune statistique fiable en la matière.

⁶⁸ *Ibid*, p. 27-49 et 129-131.

⁶⁹ *Ibid*, p. 129.

Quiconque estime avoir été lésé par une violation du principe de l'égalité de traitement peut en poursuivre l'auteur en justice. La personne visée par la discrimination (la partie requérante) peut demander à une juridiction civile (il n'existe pas de juridiction spéciale du travail) que la personne ayant enfreint le principe de l'égalité de traitement (la partie défenderesse) s'abstienne de ce type de comportement et qu'elle remédie, dans la mesure du possible, à la situation abusive. Si le non-respect du principe de l'égalité de traitement a porté gravement atteinte à sa dignité, à son statut social ou à ses acquis sociaux, la victime peut également réclamer une indemnisation financière pour préjudice moral. Le montant de l'indemnisation ne relève pas d'un barème établi.⁷⁰ C'est au tribunal qu'il appartient dans chaque cas d'accepter, de rejeter ou de réduire le montant proposé. Une partie requérante peut en principe réclamer d'autres réparations: que le tribunal déclare discriminatoire le traitement pratiqué par la partie défenderesse ou qu'il invalide un licenciement, par exemple. Aucune pratique judiciaire n'a cependant encore été établie dans ce dernier cas. Une personne ayant fait l'objet d'une discrimination peut également réclamer une indemnisation pour le préjudice matériel subi, pour autant qu'il soit démontré que le dit préjudice a été causé par un comportement discriminatoire.⁷¹

La jurisprudence actuellement disponible atteste d'une certaine réticence des cours et tribunaux d'imposer à l'égard des auteurs d'infractions des sanctions qui soient efficaces, proportionnées et dissuasives. Tel est particulièrement le cas en ce qui concerne l'indemnisation financière d'un préjudice moral.

La procédure judiciaire prévoit un renversement de la charge de la preuve lorsque la victime communique au tribunal des faits permettant de présumer raisonnablement l'existence d'une violation du principe de l'égalité de traitement. Il appartient alors au défendeur de démontrer l'absence de discrimination à l'encontre du requérant ou la nécessité et la justification du traitement incriminé.⁷² Dans une décision de 2013, la Cour constitutionnelle a suivi l'appréciation formulée à un stade antérieur de la procédure par une juridiction de deuxième instance selon laquelle «la partie défenderesse avait démontré qu'il y avait davantage de probabilité qu'il n'y ait pas eu discrimination que de probabilité qu'il y ait eu discrimination, et qu'elle était donc exonérée de la charge de la preuve».⁷³ La Cour constitutionnelle semble indiquer dans cette décision qu'une fois que la charge de la preuve incombe à la partie défenderesse, celle-ci n'est pas tenue de prouver de façon irréfutable qu'il n'y a pas eu violation du principe de l'égalité de traitement (ce qu'exige vraisemblablement les directives): il lui suffit de fournir des éléments permettant d'établir une certaine probabilité de non-discrimination et que la probabilité de non-discrimination est plus grande que la probabilité de discrimination.

Une personne visée par une discrimination peut être représentée en justice par le Centre national slovaque des droits de l'homme (organisme pour l'égalité) ou par une organisation ayant pour objet la protection contre la discrimination (il s'agit, en pratique, surtout d'ONG mais, en théorie, il pourrait également s'agir de syndicats).⁷⁴

Il arrive, lorsque la discrimination affecte un nombre de personnes plus important ou non spécifié, ou menace d'une autre manière l'intérêt public, que ce type d'organisation ou le Centre national slovaque des droits de l'homme poursuive en son propre nom (*actio popularis*) l'entité qui commet l'acte discriminatoire.⁷⁵ À ce jour, très peu d'actions ont été

⁷⁰ Voir l'article 9, paragraphes 1 à 3, de la loi antidiscrimination, lu conjointement à l'article 11, paragraphe 1.

⁷¹ Voir l'article 9, paragraphe 4, de la loi antidiscrimination.

⁷² Voir l'article 11, paragraphe 2, de la loi antidiscrimination.

⁷³ Conclusion de la Cour constitutionnelle du 10 juillet 2013 dans l'affaire *V. S. c. École primaire Ivan Branislav Zoch à Revúca*, réf. n° II. ÚS 383/2013-16.

⁷⁴ Voir l'article 10 de la loi antidiscrimination.

⁷⁵ Voir l'article 9a de la loi antidiscrimination.

engagées (toutes par une ONG) et une seule d'entre elle a abouti (une affaire de ségrégation d'enfants roms dans l'enseignement).⁷⁶

Quelques ONG slovaques apportent une assistance juridique aux personnes visées par des discriminations. Tel est notamment le cas du Centre des droits civils et humains de Košice,⁷⁷ et de l'ONG «Citoyenneté, démocratie et responsabilité».⁷⁸

Un salarié peut, en vertu du code du travail, porter plainte contre son employeur en invoquant une violation du principe de l'égalité de traitement. L'employeur est tenu de réagir sans délai, de procéder à une réparation et de s'abstenir de tout comportement discriminatoire.⁷⁹ On peut néanmoins douter de l'effet de ce type de recours car l'absence, en dehors de la relation de travail, d'autorité officielle habilitée à traiter les plaintes pourrait dissuader les travailleurs d'invoquer la loi de cette manière (par crainte de représailles notamment).

Des sanctions pour comportement discriminatoire peuvent également être imposées sous la forme d'amendes administratives – les organes compétents en la matière étant les inspections du travail, du commerce et de l'enseignement. Les actions auprès de ces inspections restent toutefois très peu utilisées dans la pratique pour faire appliquer les dispositions antidiscrimination, aucun renversement de la charge de la preuve n'est prévu et même lorsque de telles actions sont engagées, des amendes sont rarement infligées.

La loi antidiscrimination contient une disposition permettant aux organes de l'administration publique et à d'autres entités juridiques d'adopter des mesures d'action positive (appelées «mesures temporaires d'égalisation»). La loi précise que ces mesures doivent viser à supprimer des désavantages associés aux motifs de l'origine raciale ou ethnique, de l'appartenance à une minorité nationale ou un groupe ethnique, du genre ou du sexe, de l'âge ou du handicap, et qu'elles doivent avoir pour finalité de garantir l'égalité des chances dans la pratique.⁸⁰ Certaines mesures d'action positive sont en place en faveur des Roms. Ainsi par exemple, le programme pour des communautés saines, qui emploie 190 médiateurs de santé d'origine rom dans 165 communautés roms marginalisées (dont ces médiateurs sont issus) pour venir en aide aux personnes dans le cadre de situations courantes en rapport avec leur santé, a été réintroduit en 2013 (après plusieurs interruptions de précédents programmes de ce type).⁸¹ La législation en matière d'emploi prévoit une protection spéciale à l'intention des personnes handicapées, et un système de quota a été instauré pour les employeurs occupant 20 salariés au moins.⁸² Aucune mesure d'action positive n'a été spécifiquement adoptée en rapport avec la discrimination fondée sur l'orientation sexuelle ou la religion et les convictions.

⁷⁶ Affaire *Poradňa pre občianske a ľudské práva vs Základná škola v Šarišských Michaľanoch* (Centre des droits civils et humains c. École primaire Šarišské Michaľany), arrêt du tribunal départemental de Prešov du 5 décembre 2011, réf. n° 25C 133/10-229, et arrêt de la cour régionale de Prešov du 30 octobre 2012, réf. n° 20Co 125/2012, 20Co 126/2012.

⁷⁷ Cette ONG traite principalement de cas de discrimination envers les Roms.

⁷⁸ Cette ONG se concentre pour sa part sur la discrimination liée au genre.

⁷⁹ Voir l'article 13, paragraphe 5, de la loi n° 311/2001 Coll. – Code du travail (*zákon č. 311/2001 Z. z. Zákonník práce*).

⁸⁰ Voir l'article 8a de la loi antidiscrimination.

⁸¹ Le programme est une initiative conjointe d'ONG regroupées au sein de la plateforme pour l'amélioration de la santé des groupes défavorisés, coordonnée par l'Association pour la culture, l'éducation et la communication (ACEC) et financée par le ministère des Finances et par le programme opérationnel «Emploi et inclusion sociale» des Fonds structurels.

⁸² En vertu des articles 63 à 65 de la loi n° 5/2004 Coll. sur les services de l'emploi, tout employeur occupant au moins 20 salariés est tenu de veiller à ce que des personnes handicapées représentent 3,2 % au moins de son personnel pour autant que le bureau local pour l'emploi ait des demandeurs d'emploi handicapés sur ses listes. Plutôt que d'engager une personne handicapée, l'employeur peut également décider d'acheter des biens ou des services auprès d'un atelier protégé ou d'un travailleur indépendant handicapé.

Un certain dialogue est organisé avec les ONG par l'intermédiaire du Conseil du gouvernement de la République slovaque pour les droits de l'homme, les minorités nationales et l'égalité entre les sexes, qui est l'organe consultatif du gouvernement.⁸³ S'il comporte plusieurs aspects positifs, le fonctionnement du Conseil présente aussi quelques défauts systémiques et pratiques.

Il n'y a apparemment pas de dialogue permanent et systémique entre le gouvernement et les syndicats en ce qui concerne la non-discrimination. Les syndicats ne sont généralement pas très actifs dans ce domaine.

6. Organismes de promotion de l'égalité de traitement

L'organisme désigné pour la promotion de l'égalité de traitement est le Centre national slovaque des droits de l'homme. Il s'agit d'un organisme indépendant et non judiciaire principalement subventionné par le budget de l'État.⁸⁴

Le Centre est habilité à rédiger des avis d'expert sur la conformité avec le principe de l'égalité de traitement. Il est également chargé de surveiller et d'évaluer le respect des droits de l'homme et de l'égalité de traitement, et de collecter et de fournir des informations sur le racisme, la xénophobie et l'antisémitisme, ainsi que de procéder à des investigations indépendantes à propos des discriminations. Le Centre a l'obligation plus générale de réaliser des études et des recherches afin de fournir des données dans le domaine des droits de l'homme. Le Centre a aussi l'obligation de publier annuellement un rapport sur le respect des droits de l'homme, y compris le principe de l'égalité de traitement, en Slovaquie. Il est également tenu en vertu de la loi antidiscrimination de fournir une assistance juridique aux victimes de discrimination et il est habilité à représenter des victimes de discrimination en justice.⁸⁵ Il peut également intenten une *actio popularis* (voir plus haut). Étant compétent pour agir dans les cas de discrimination définis par la loi antidiscrimination, le Centre traite tous les motifs visés par celle-ci.

Des sources diverses signalent de longue date que le Centre n'accomplit pas ses tâches de manière efficace et satisfaisante.⁸⁶ En 2011, le gouvernement slovaque a approuvé un rapport analytique sur le fonctionnement et la situation du Centre – lequel rapport, qui fut le premier (et le dernier) de ce type, présente une série de conclusions issues d'un exercice de collecte de données relativement complexe.

⁸³ Voir l'article 2, paragraphe 3, de la loi n° 575/2001 Z. z. relative à l'organisation des activités du gouvernement et à l'organisation de l'administration centrale de l'État, telle que modifiée (*zákon č. 575/2001 Z. z. o organizácii činnosti vlády a organizácii ústrednej štátnej správy v znení neskorších predpisov*). Site web du Conseil du gouvernement: www.radavladyp.gov.sk/ (consulté le 27 avril 2015).

⁸⁴ Voir les articles 1 et 2, paragraphes 1 à 3, de la loi n° 308/1993 Coll. portant création du Centre national slovaque des droits de l'homme (*zákon č. 308/1993 Z. z. o zriadení Slovenského národného strediska pre ľudské práva*).

⁸⁵ Voir l'article 1, paragraphes 2 à 4, de la loi n° 308/1993 Coll. portant création du Centre national slovaque des droits de l'homme.

⁸⁶ Voir notamment Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, Košice, Poradňa pre občianske a ľudské práva, p. 110-112, également disponible sur <http://poradna-prava.sk/wp-content/uploads/2012/11/Publikáciu-si-môžete-stiahnuť-tu-105-MB.pdf> (consulté le 22 avril 2015); Centre des droits civils et humains et Personnes dans le besoin en République slovaque (2013), *Commentaires écrits concernant les neuvième et dixième rapports périodiques de la République slovaque dans le cadre de la Convention internationale sur l'élimination de toutes les formes de discrimination raciale*, janvier 2013, p. 2, 13, 16 (également disponible sur: <http://poradna-prava.sk/wp-content/uploads/2013/03/PDF-236-KB1.pdf>, consulté le 22 avril 2015); Observations finales du Comité des droits économiques, sociaux et culturels – Slovaquie, 2012 (disponible sur: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fSVK%2fC.O%2f2&Lang=en, consulté en dernier lieu le 2 avril 2014 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/433/84/PDF/G1243384.pdf?OpenElement>). Voir également la retranscription de la 7^e réunion du Conseil pour les droits de l'homme et les minorités nationales le 17 octobre 2012, disponible sur: http://www.radavladyp.gov.sk/data/att/10161_subor.pdf (consulté le 22 avril 2015).

Les principales constatations sont les compétences insuffisantes/mal définies du Centre; l'inadéquation de ses capacités professionnelles et personnelles; la gestion inefficace des ressources publiques qui lui sont allouées; la structure inadéquate des organes de direction et supervision institués dans le cadre du Centre et leur inactivité; l'absence d'approches préventives et stratégiques de la part du Centre; un manque d'indépendance et de mécanismes pour le protéger d'abus émanant d'intérêts particuliers, y compris des intérêts politiques; la visibilité insuffisante des activités du Centre et leur impact limité; le nombre extrêmement faible d'actions intentées en justice par le Centre et d'affaires résolues par lui de façon générale.

Le gouvernement au pouvoir lorsque le rapport 2011 a été approuvé a chargé certains de ses membres d'analyser les répercussions financières et juridiques que pourraient avoir les changements institutionnels requis au niveau du Centre. Le nouveau gouvernement entré en fonction le 4 avril 2012 a modifié et restreint la teneur de cette mission, mais conserve une volonté de remédier à la situation. Le ministre de la Justice était censé présenter cette analyse et les projets de loi y afférents en octobre 2012 au plus tard mais, au 1^{er} janvier 2015, ni l'analyse ni le projet législatif n'avaient été présentés au public.

7. Points essentiels

La transposition des directives a été, de façon générale, effectuée de manière relativement satisfaisante: elle va, à de nombreux égards, au-delà de leurs exigences et, même si cette transposition reste largement perfectible (en ce qui concerne certaines règles de procédure notamment), elle pourrait constituer un bon point de départ pour la mise en œuvre concrète du principe de l'égalité de traitement. À l'heure actuelle toutefois, cette mise en œuvre est encore loin de satisfaire aux exigences des directives. Cette situation résulte principalement des entraves à l'accès aux tribunaux et à la justice en général; d'une méconnaissance de la législation antidiscrimination de la part des professionnels du droit et des décideurs; d'une jurisprudence insuffisante et de lacunes dans la consignation des cas de discrimination; d'une pénurie de données et de statistiques en rapport avec la discrimination et ses motifs; d'un manque d'efficacité au niveau du fonctionnement de l'organisme pour l'égalité; du manque d'indépendance de cet organisme; d'une absence de politiques publiques en matière de lutte contre la discrimination; d'une intégration insuffisante du principe de non-discrimination dans l'ensemble des politiques (mainstreaming) et d'un manque de coordination entre les organismes publics en charge de la non-discrimination; d'une pénurie de ressources à investir par le gouvernement dans la lutte contre la discrimination; d'un apport insuffisant de soutien systémique aux ONG par le gouvernement; d'un système éducatif n'intégrant pas suffisamment les principes et les valeurs relevant des droits de l'homme et de la non-discrimination; du manque d'engagement et d'intérêt des politiciens à l'égard de ces valeurs; d'un degré d'occurrence et de tolérance extrêmement élevé quant au racisme et aux attitudes discriminatoires dans l'ensemble de la société.

ZUSAMMENFASSUNG

1. Einleitung

Die Slowakische Republik hat 5,4 Millionen Einwohner. Neben den Slowaken leben zahlreiche Minderheiten im Land. Die größten Gruppen sind die Ungarn (8,5 %) und die Minderheit der Roma. In der letzten Volkszählung (2011) lag die offizielle Zahl der Roma bei 105 738 (2 %),⁸⁷ allerdings zeigt der Atlas der Roma-Gemeinschaften von 2013, dass in der Slowakei 400 000 Roma leben, was 7,45 % der Gesamtbevölkerung entspricht.⁸⁸ Weitere Minderheiten sind Tschechen, Ukrainer, Kroaten, Deutsche, Polen, Bulgaren, Mährer und Juden.⁸⁹

In der Slowakei werden viele Einzelpersonen und Gruppen aufgrund bestimmter Merkmale schwer diskriminiert. Beispielsweise sind Vorurteile gegenüber den Roma tief verankert und diese Gruppe wird in allen Lebensbereichen diskriminiert und häufig auch ausgegrenzt. 2011 und 2012 waren die ersten Klagen gegen ethnische Segregation im Bildungssystem vor Gericht erfolgreich.⁹⁰ Trotz dieser juristischen Erfolge hat bisher keine Regierung den Kampf gegen die Ausgrenzung der Roma im Bildungsbereich ernsthaft betrieben und die einzige Vertreterin des Staates, die diese Situation offen anprangert, ist die slowakische Ombudsfrau.⁹¹

Allgemeine Missachtung von Minderheiten und oft auch offener Rassismus sind weit verbreitet, nicht nur in der Bevölkerung, sondern auch auf höchster politischer Ebene. Rassenhass und nationalistisch motivierter Hass geben weiteren Anlass zur Besorgnis. Ende 2013 wurde der Vertreter einer offen rassistischen und nationalistischen Partei sogar zum Landesobmann einer der selbstverwalteten Regionen des Landes gewählt.

Auch die Diskriminierung der LGBTI-Gemeinschaft ist ein ernstes Problem, weil diese Minderheit, anders als andere diskriminierte Gruppen, keine juristische und politische Anerkennung genießt, z. B. durch ein Recht auf Eheschließung oder eine eingetragene Partnerschaft. Homophobe Äußerungen und Stimmen, die die Gleichstellung der Geschlechter in Frage stellen, werden stärker und stammen nicht nur aus den Rängen der katholischen Kirche, sondern auch von hohen politischen Vertretern des Landes.

Auch andere Personen und Gruppen sind schweren Diskriminierungen ausgesetzt, oft aufgrund mehrerer Diskriminierungsgründe. Frauen sind besonders häufig von Mehrfachdiskriminierung betroffen.

⁸⁷ Siehe <http://census2011.statistics.sk/tabulky.html> (zuletzt aufgerufen am 13. Mai 2015).

⁸⁸ Siehe *Prvé výsledky ATLASU rómskych komunit na Slovensku 2013* (Die ersten Ergebnisse des Atlas der Roma-Gemeinschaften in der Slowakei von 2013) (2013), die auf der Website des Bevollmächtigten der slowakischen Regierung für die Roma-Gemeinschaften veröffentlicht wurden (das Dokument ist verfügbar unter http://www.minv.sk/?atlas_2013, zuletzt aufgerufen am 25. April 2015).

⁸⁹ Jede dieser Gruppen stellt weniger als 1 % der Bevölkerung. Siehe <http://census2011.statistics.sk/tabulky.html> (zuletzt aufgerufen am 13. Mai 2015).

⁹⁰ Rechtssache *Poradňa pre občianske a ľudské práva vs Základná škola v Šarišských Michaľanoch* (Zentrum für Bürger- und Menschenrechte gegen Šarišské Michaľany Grundschule, Urteil des Amtsgerichts Prešov vom 5. Dezember 2011, Aktenzeichen 25C 133/10-229-, und Urteil vom Bezirksgericht Prešov vom 30. Oktober 2012, Aktenzeichen 20Co 125/2012, 20Co 126/2012).

⁹¹ Siehe zum Beispiel Kancelária verejného ochrancu práv (2013), *Správa verejnej ochranky práv o uplatňovaní práva na vzdelanie detí/žiakov príslušníkov rómskej národnostnej menšiny so špeciálnymi výchovno-vzdelávacími potrebami* (Bericht der Ombudsfrau über die Beachtung des Rechts von Kindern bzw. Schülern, Mitgliedern der nationalen Minderheit der Roma und Kindern mit pädagogischem Förderbedarf auf Bildung), verfügbar unter <http://www.vop.gov.sk/files/Sprava%20VOP-Vzdelavanie%20Romov.pdf> (zuletzt aufgerufen am 25. April 2015).

2. Wichtigste Gesetze

Die slowakische Republik hat mehrere internationale Menschenrechtsabkommen ratifiziert, unter anderem den Internationalen Pakt über bürgerliche und politische Rechte, den Internationalen Pakt über wirtschaftliche, soziale und kulturelle Rechte, die Europäische Menschenrechtskonvention, das Übereinkommen zur Beseitigung jeder Form von Rassendiskriminierung und das Übereinkommen über die Rechte von Menschen mit Behinderungen der Vereinten Nationen.

Die Verfassung der Slowakischen Republik garantiert die Menschenrechte aller Menschen ungeachtet von Geschlecht, Rasse, Hautfarbe, Sprache, Weltanschauung, Religion, politischer Zugehörigkeit oder Überzeugung, nationaler oder sozialer Herkunft, Nationalität (*národnosť*)⁹² oder ethnischer Herkunft, Vermögen, Abstammung oder jedem anderen Status. Niemand darf wegen der genannten Gründe in seinen Rechten beschnitten, diskriminiert oder bevorzugt werden.

Das gültige Antidiskriminierungsgesetz (ADG) wurde im Mai 2004 verabschiedet,⁹³ unmittelbar nach dem Beitritt der Slowakei zur Europäischen Union. Das ADG erfüllt die von den Richtlinien geforderten Mindeststandards und geht in einigen Bereichen über diese hinaus.

Das ADG verbietet Diskriminierung aufgrund von biologischem Geschlecht, Religion oder Weltanschauung, Rasse, Zugehörigkeit zu einer Nationalität oder ethnischen Gruppe, Behinderung, Alter, sexueller Ausrichtung, Ehe- oder Personenstand, Hautfarbe, Sprache, politischer oder sonstiger Überzeugung, nationaler oder sozialer Herkunft, Eigentum, Abstammung bzw. sozialem Geschlecht⁹⁴ oder einem sonstigen Status oder wegen der Anzeige von Straftaten oder anderen kriminellen Aktivitäten.⁹⁵ Mehrere andere Gesetze zu den Bereichen, die unter die Richtlinien fallen, beziehen sich auf das ADG und dehnen dessen Diskriminierungsschutz in manchen Fällen auf weitere Diskriminierungsgründe aus. Daher ist durch diese anderen Gesetze Diskriminierung aufgrund eines schlechten Gesundheitszustands, genetischer Merkmale, Tätigkeit für eine Gewerkschaft oder Tätigkeit in Vereinigungen ebenfalls verboten. In einigen Fällen sehen diese Gesetze auch spezielle Mechanismen zur Durchsetzung des Gleichbehandlungsgrundsatzes vor. Einige besonders beleidigende und diskriminierende Handlungen sind außerdem durch das Strafgesetzbuch verboten.

Im ADG begründet der Grundsatz der Gleichbehandlung nicht nur ein Verbot von Diskriminierung, sondern auch eine Pflicht zu positiven Maßnahmen, die Diskriminierung verhindern.⁹⁶ Der Gleichbehandlungsgrundsatz gilt für alle Bereiche, die unter die Richtlinien fallen (diese sind alle vom ADG abgedeckt) und für weitere im ADG genannten Bereiche.

⁹² Im slowakischen Recht sind die Begriffe „Nationalität“ (*národnosť*) und „Staatsangehörigkeit“ (*štátne občianstvo*) klar getrennt. Während „Staatsangehörigkeit“ die rechtliche Zugehörigkeit zu einem bestimmten Staat bezeichnet (d. h. den Status als Staatsangehöriger oder Bürger der Slowakischen Republik), meint „Nationalität“ die Zugehörigkeit zu einer bestimmten „Nation“ (Gruppe von Menschen, die durch eine gemeinsame Sprache, geografische und kulturelle Wurzeln usw. verbunden sind) oder ethnischen Gruppe. Daher wird „Nationalität“ häufig im Sinne von „ethnischer Zugehörigkeit“ verwendet, auch von staatlichen Stellen und öffentlichen Institutionen.

⁹³ Gesetz Nr. 365/2004 über Gleichbehandlung in bestimmten Bereichen und zum Schutz vor Diskriminierung (Antidiskriminierungsgesetz), in der geltenden Fassung (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) v znení neskorších predpisov).

⁹⁴ Das slowakische Wort *rod* kann sowohl „Abstammung“ als auch „biologisches Geschlecht“ bedeuten.

⁹⁵ Artikel 2(1) des ADG.

⁹⁶ Artikel 2(1) und Artikel 2(3) des ADG.

3. Wichtigste Grundsätze und Begriffe

Das ADG definiert unmittelbare und mittelbare Diskriminierung, Belästigung, sexuelle Belästigung, Anweisung zur Diskriminierung, Anstiftung zur Diskriminierung⁹⁷ und Viktimisierung.⁹⁸ Außer in Bezug auf Anstiftung zur Diskriminierung (die über die Richtlinien hinausgeht und nicht gegen sie verstößt), folgen die Definitionen den Vorgaben der beiden Richtlinien 2000/43/EG und 2000/78/EG. Auch Diskriminierung aufgrund von Assoziierung ist verboten, jedoch nur bei den Diskriminierungsgründen Rasse, Nationalität (*národnost*), ethnische Zugehörigkeit, Religion und Weltanschauung.⁹⁹ Bei der Bewertung einer Handlung als Diskriminierung spielt es keine Rolle, ob die Gründe für die Diskriminierung auf Tatsachen oder irrtümlichen Annahmen beruhen.¹⁰⁰

Das ADG verpflichtet zudem Arbeitgeber zu angemessenen Vorkehrungen. Insbesondere sind sie verpflichtet, Menschen mit Behinderungen durch entsprechende Maßnahmen den Zugang zu Beschäftigung, Beförderung oder zu anderen beruflichen Verbesserungen und zur Weiterbildung zu ermöglichen. Allerdings dürfen die Vorkehrungen für Menschen mit Behinderungen den Arbeitgeber nicht unverhältnismäßig belasten.¹⁰¹

Ausnahmen für wesentliche und entscheidende berufliche Anforderungen sind zulässig, wenn sie gemäß den in den Richtlinien genannten Vorgaben gerechtfertigt sind.¹⁰²

Das ADG erlaubt noch weitere Ausnahmen vom Grundsatz der Gleichbehandlung. Diskriminierung wegen der Religion oder Weltanschauung ist Kirchen und religiösen Organisationen erlaubt, wenn die Religion für die Ausübung einer bestimmten Tätigkeit grundlegend ist.¹⁰³ Das ADG gilt nicht für Rechtsvorschriften, die den Status von Menschen mit fremder Staatsangehörigkeit betreffen,¹⁰⁴ und erlaubt den Streitkräften und Rettungsdiensten eine Ungleichbehandlung aufgrund von Behinderung und Alter.¹⁰⁵

Unter besonderen Umständen ist eine Ungleichbehandlung aufgrund des Alters zulässig, beispielsweise in Form von Altersgrenzen beim Zugang zu Beschäftigung, bei den Ansprüchen auf bestimmte soziale Vergünstigungen im Berufsleben oder bei der Bereitstellung von Versicherungsdienstleistungen.¹⁰⁶ Ungleichbehandlung aufgrund einer Behinderung gilt bei der Bereitstellung von Versicherungsdienstleistungen nicht als Diskriminierung und auch nicht im Beruf, wenn gesundheitliche Anforderungen für die Ausübung bestimmter Tätigkeiten wesentlich sind.¹⁰⁷

Die geltenden Rechtsvorschriften und das Fallrecht enthalten keine ausdrücklichen Regeln für Fälle von Mehrfachdiskriminierung.

4. Sachlicher Anwendungsbereich

Der Grundsatz der Gleichbehandlung gilt in allen in den EU-Richtlinien vorgegebenen Bereichen und geht insgesamt über den Anwendungsbereich der Richtlinien hinaus.

⁹⁷ Anweisung zur Diskriminierung ist definiert als missbräuchliches Verhalten gegenüber einem Untergebenen zum Zweck der Diskriminierung eines Dritten. Als Anstiftung zur Diskriminierung gilt es, wenn man eine Person überredet, darin bestätigt oder dazu aufhetzt, eine dritte Person zu diskriminieren.

⁹⁸ Siehe Artikel 2a(1)-(8) des ADG.

⁹⁹ Siehe 2a(11)(b) und Artikel 2a(11)(c) des ADG.

¹⁰⁰ Artikel 3(3) des ADG.

¹⁰¹ Siehe Artikel 7 des ADG.

¹⁰² Siehe Artikel 8(1) des ADG.

¹⁰³ Artikel 8(2) des ADG.

¹⁰⁴ Siehe Artikel 4(1)(a) des ADG.

¹⁰⁵ Siehe Artikel 4(1)(b) des ADG.

¹⁰⁶ Siehe Artikel 8(3) des ADG.

¹⁰⁷ Artikel 8(6) und Artikel 8(5) des ADG.

Insbesondere gilt das Gleichbehandlungsgebot in Bezug auf unselbstständige, selbstständige oder sonstige Erwerbstätigkeit oder berufliche Funktionen, einschließlich Einstellungsbedingungen, Auswahlkriterien und -verfahren, den Zugang zur Berufsausbildung, beruflichen Weiterbildung und Teilnahme an arbeitsmarktpolitischen Programmen, einschließlich von Berufsberatung, bei der Mitgliedschaft und Mitwirkung in einer Arbeitnehmer- oder Arbeitgeberorganisation oder einer Organisation, deren Mitglieder einer bestimmten Berufsgruppe angehören, einschließlich der Inanspruchnahme der Leistungen solcher Organisationen, sowie in den Bereichen der sozialen Dienste, Sozialversicherung, der Rentenversicherung, der zusätzlichen Rentenversicherung, staatlicher Sozialleistungen und sozialer Vergünstigungen, Gesundheitsdienste, Bildung sowie Güter und Dienstleistungen, einschließlich von Wohnraum (genauer gesagt, Wohnraum, den juristische oder natürliche Personen, die Unternehmer sind, der Öffentlichkeit zur Verfügung stellen).¹⁰⁸ In all diesen Bereich ist Diskriminierung aufgrund der im ADG aufgezählten Gründe verboten. Das ADG gilt sowohl für den privaten als auch für den öffentlichen Sektor.

5. Rechtsdurchsetzung

Obwohl das Antidiskriminierungsrecht relativ progressiv ist, gibt es erhebliche Schwächen bei der praktischen Umsetzung. Zwar dokumentieren der Staat und seine Organe das Problem kaum, dennoch ist Diskriminierung in allen Bereichen, die unter die Richtlinien fallen, (und darüber hinaus) weit verbreitet. Allerdings scheint die Einführung einer nicht diskriminierenden Sprache im gesellschaftlichen Diskurs dazu geführt zu haben, dass Diskriminierung heute subtilere Formen annimmt als früher. Einer der Gründe für die ungenügende Umsetzung der Rechtsvorschriften ist vermutlich die Tatsache, dass nur sehr wenige Opfer ihre Rechte auf juristischem Wege durchsetzen. So wurden seit dem Inkrafttreten des ADG am 1. Juli 2004 und Ende Juni 2012 von allen gerichtlichen Instanzen in der Slowakei nur rund 120 Urteile in Diskriminierungsfällen gesprochen.¹⁰⁹ Und die Fallzahlen sind wohl auch bis Ende 2014 nicht wesentlich gestiegen (obwohl hierzu keine genauen Zahlen vorliegen).¹¹⁰

Eine landesweite Umfrage aus dem Jahr 2012¹¹¹ hat ergeben, dass nur ein winziger Prozentsatz (4,7 %) der Befragten, die sich subjektiv diskriminiert fühlten, sich rechtlich beraten ließ oder auf juristischem Weg gegen die Diskriminierung gewehrt hat. Über 92 % unternahmen keinen Versuch, ihre Rechte durchzusetzen. Die genannten Gründe waren vor allem mangelndes Vertrauen in die Fähigkeit der Institutionen, gegen Diskriminierung vorzugehen (13,1 % der Befragten), fehlende Beweise (11,8 % der Antworten), das Gefühl der Diskriminierungsopfer, die Sache sei nicht wichtig genug, (11,6 %) und fehlende Informationen über die Stellen, die Diskriminierungsopfern Rechtshilfe anbieten (über 10 %).¹¹²

Jeder, der durch eine Verletzung des Gleichbehandlungsgrundsatzes benachteiligt wurde, kann den Verantwortlichen vor Gericht bringen. Die Person, die diskriminiert wurde (der Kläger), kann vor einem Zivilgericht (es gibt keine spezialisierten Arbeitsgerichte) darauf klagen, dass die Person, die den Gleichbehandlungsgrundsatz verletzt hat (der Beklagte), die entsprechende Handlung einstellt und, wenn möglich, den unrechtmäßigen Zustand

¹⁰⁸ Artikel 3(1), 5 und 6 des ADG.

¹⁰⁹ Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, Košice, Poradňa pre občianske a ľudské práva, S. 66, auch verfügbar unter <http://poradna-prava.sk/wp-content/uploads/2012/11/Publikáciu-si-môžete-stiahnuť-tu-105-MB.pdf> (zuletzt aufgerufen am 22. April 2015). In diesen Zahlen sind außerdem mehrere Urteile zu einzelnen Fällen enthalten (z. B. wenn Fälle durch mehrere Instanzen verhandelt werden oder eine Instanz zu einem Rechtsstreit mehrere Urteile spricht).

¹¹⁰ Der Staat erfasst Verfahren und Urteile in Diskriminierungsfällen nicht systematisch, sodass keine verlässlichen Daten vorliegen.

¹¹¹ *Ibid*, S. 27-49 und 129-131.

¹¹² *Ibid*, S. 129.

korrigiert. Wenn die Verletzung des Gleichbehandlungsgrundsatzes der Würde, dem sozialen Status oder den sozialen Errungenschaften des Opfers wesentlichen Schaden zugefügt hat, kann das Opfer außerdem Schadenersatz oder Schmerzensgeld fordern. Es gibt keine festen Grenzwerte für die Höhe der Entschädigung.¹¹³ Das Gericht kann den geforderten Betrag in jedem Einzelfall akzeptieren, senken oder ganz ablehnen. Kläger können grundsätzlich auch auf andere Rechtsbehelfe klagen, beispielsweise, dass das Gericht die Handlungen des Klägers als Diskriminierung anerkennt oder eine diskriminierende Kündigung für unwirksam erklärt. Allerdings gibt es für letzteres noch kein einschlägiges Fallrecht. Personen, die diskriminiert wurden, können außerdem auf eine Entschädigung klagen, wenn sie nachweisen können, dass durch die Diskriminierung ein Schaden entstanden ist.¹¹⁴

Das bisherige Fallrecht zeigt, dass die Gerichte gegen die Täter nur sehr selten wirksame, verhältnismäßige und abschreckende Sanktionen aussprechen. Dies gilt insbesondere für Schmerzensgeld für nicht-materielle Schäden.

Sobald der Kläger Tatsachen glaubhaft macht, die eine Verletzung des Gleichbehandlungsgrundsatzes vermuten lassen, gilt in Gerichtsverfahren die umgekehrte Beweislast. Der Beklagte muss dann beweisen, dass er den Kläger nicht diskriminiert hat oder dass die Ungleichbehandlung notwendig und gerechtfertigt war.¹¹⁵ In einem Urteil von 2013 bestätigte das Verfassungsgericht die Einschätzung der zweiten Instanz aus einer früheren Phase des Verfahrens, nach welcher „der Beklagte bewiesen hat, dass es wahrscheinlicher ist, dass keine Diskriminierung stattgefunden hat, als dass eine Diskriminierung vorliegt. Damit hat er seine Beweislast erfüllt.“¹¹⁶ Mit dieser Entscheidung scheint das Verfassungsgericht anzudeuten, dass auch wenn die Beweislast beim Beklagten liegt, dieser nicht ohne jeden Zweifel beweisen muss, dass der Gleichbehandlungsgrundsatz nicht verletzt wurde (wie die Richtlinie vorgibt), sondern dass es ausreicht, wenn er Tatsachen vorlegt, die eine Nichtdiskriminierung glaubhaft machen, und zwar glaubhafter als die mutmaßliche Diskriminierung.

Opfer von Diskriminierung können sich vor Gericht vom Slowakischen nationalen Zentrum für Menschenrechte (der Gleichbehandlungsstelle) oder einer anderen Organisation vertreten lassen, die dem Schutz vor Diskriminierung dient (in der Praxis sind das vor allem NRO, grundsätzlich könnte es sich dabei aber auch um Gewerkschaften handeln).¹¹⁷

Wenn die Diskriminierung mehrere oder eine nicht genau abgegrenzte Anzahl von Menschen betrifft oder anderweitig von öffentlichem Interesse ist, können diese Organisationen, wie das Slowakische nationale Zentrum für Menschenrechte, in eigenem Namen gegen die diskriminierende Stelle klagen (so genannte *Popularklage*).¹¹⁸ Bisher wurden allerdings nur sehr wenige Verfahren eingeleitet (alle von einer NRO) und nur eines wurde in letzter Instanz gewonnen (ein Fall von segregierter Bildung für Roma-Kinder).¹¹⁹

In der Slowakei gibt es nur wenige NRO, die Rechtsbeistand für Diskriminierungsopfer anbieten. Eine davon ist das Zentrum für Bürger- und Menschenrechte in Košice,¹²⁰ eine

¹¹³ Siehe Artikel 9(1)-(3) des ADG, in Verbindung mit Artikel 11(1).

¹¹⁴ Siehe Artikel 9(4) des ADG.

¹¹⁵ Siehe Artikel 11(2) des ADG.

¹¹⁶ Urteil des Verfassungsgerichts vom 10. Juli 2013 in der Rechtssache *V. S. gegen die Grundschule von Ivan Branislav Zoch in Revúca*, Aktenzeichen II. ÚS 383/2013-16.

¹¹⁷ Siehe Artikel 10 des ADG.

¹¹⁸ Siehe Artikel 9a des ADG.

¹¹⁹ Rechtssache *Poradňa pre občianske a ľudské práva vs Základná škola v Šarišských Michaľanoch* (Zentrum für Bürger- und Menschenrechte gegen Šarišské Michaľany Grundschule, Urteil des Amtsgerichts Prešov vom 5. Dezember 2011, Aktenzeichen 25C 133/10-229-, und Urteil vom Bezirksgericht Prešov vom 30. Oktober 2012, Aktenzeichen 20Co 125/2012, 20Co 126/2012).

¹²⁰ Diese NRO befasst sich hauptsächlich mit Fällen, in denen Roma diskriminiert wurden.

andere die NRO „Občan, demokracia a zodpovednosť (ODZ)“ (Bürger, Demokratie und Verantwortung).¹²¹

Nach dem Arbeitsgesetz können sich Arbeitnehmer im Fall einer Verletzung des Gleichbehandlungsgrundsatzes bei ihrem Arbeitgeber beschweren. Der Arbeitgeber muss unverzüglich auf die Beschwerde reagieren, die Schäden erstatten und diskriminierende Handlungen einstellen.¹²² Allerdings ist die Wirksamkeit dieses Rechtsmittels zweifelhaft, weil es keine offizielle Stelle außerhalb des Beschäftigungsverhältnisses gibt, die die Beschwerden prüft, und die Arbeitnehmer sich häufig scheuen, diese rechtliche Möglichkeit wahrzunehmen (z. B. aus Angst vor Viktimisierung).

Diskriminierendes Verhalten kann auch durch Verhängung einer Geldbuße in einem Verwaltungsverfahren sanktioniert werden. Für diese Verfahren sind die Arbeitsaufsichtsbehörde, die Gewerbeaufsicht und die Schulbehörden zuständig. Allerdings werden diese Verfahren zur Durchsetzung des Diskriminierungsverbots vor den Aufsichtsbehörden noch kaum genutzt, sie sehen keine Umkehrung der Beweislast vor und selbst wenn entsprechende Verfahren eingeleitet werden, führen sie nur selten zu Verhängung einer Geldbuße.

Nach dem ADG sind öffentliche Behörden und andere juristische Personen berechtigt, positive Maßnahmen zu beschließen (so genannte „vorübergehende Ausgleichsmaßnahmen“). Nach dem Gesetz müssen diese Maßnahmen dazu dienen, Benachteiligungen aufgrund von Rasse oder ethnischer Herkunft, Zugehörigkeit zu einer nationalen Minderheit oder ethnischen Gruppe, sozialem oder biologischem Geschlecht, Alter oder Behinderung auszugleichen und eine praktische Chancengleichheit herzustellen.¹²³ In Bezug auf die Roma gibt es bereits eine Reihe von positiven Fördermaßnahmen. So wurde beispielsweise das Programm „Gesundheitsgemeinschaften“ im Jahr 2013 (nach dem Ablauf ähnlicher Vorgängerprogramme) wieder eingeführt. Das Programm beschäftigt in 165 marginalisierten Roma-Gemeinden 190 Gesundheitsmediatoren, die selbst aus der Gemeinde stammen und die Bewohner bei alltäglichen Gesundheitsproblemen unterstützen.¹²⁴ Das Arbeitsrecht sieht für Menschen mit Behinderung einen speziellen Schutz vor und es gibt ein Quotensystem für Arbeitgeber, die mindestens 20 Mitarbeiter beschäftigen.¹²⁵ Für Menschen, die aufgrund der sexuellen Ausrichtung oder ihrer Religion oder Weltanschauung diskriminiert werden, gibt es keine speziellen Fördermaßnahmen.

Über den Rat der Regierung der slowakischen Republik für Menschenrechte, nationale Minderheiten und Gleichstellung von Frauen und Männern, einem Beratungsorgan der Regierung, findet ein gewisser Austausch mit NRO statt.¹²⁶ Trotz einiger Erfolge wird die Arbeit des Rates durch systematische und praktische Probleme behindert.

¹²¹ ODZ konzentriert sich vor allem auf Diskriminierung aufgrund des Geschlechts.

¹²² Siehe Artikel 13(5) des Gesetzes Nr. 311/2001 Kurztitel Arbeitsgesetz (zákon č. 311/2001 Z. z. Zákonník práce).

¹²³ Siehe Artikel 8a des ADG.

¹²⁴ Das Programm ist eine gemeinsame Initiative von NRO, die sich in der Plattform zur Förderung der Gesundheit benachteiligter Gruppen zusammengeschlossen haben, und wird vom Verband für Bildung und Kultur (ACEC) koordiniert und vom Finanzministerium und dem Förderprogramm „Beschäftigung und soziale Eingliederung“ des Strukturfonds finanziert.

¹²⁵ Nach Artikel 63-65 des Gesetzes Nr. 5/2004 über Arbeitsvermittlungsdienste ist jeder Arbeitgeber, der mindestens 20 Mitarbeiter beschäftigt, verpflichtet zu gewährleisten, dass Menschen mit Behinderungen mindestens 3,2 % seiner Belegschaft ausmachen, sofern das staatliche Arbeitsamt Arbeitssuchende mit Behinderungen vermitteln kann. Statt der Beschäftigung von Menschen mit Behinderungen kann der Arbeitgeber aber auch Güter oder Dienstleistungen von beschützenden Werkstätten oder selbständig Beschäftigten mit Behinderung kaufen.

¹²⁶ Siehe Artikel 2(3) des Gesetzes Nr. 575/2001 Z. z. über die Organisation der Tätigkeit der Regierung und die Organisation der zentralen Staatsverwaltung, in der aktuellen Fassung (zákon č. 575/2001 Z. z. o organizácii činnosti vlády a organizácii ústrednej štátnej správy v znení neskorších predpisov). Die Website des Rates der Regierung: www.radavladyp.gov.sk/ (zuletzt aufgerufen am 27. April 2015).

Es gibt keinen ständigen und systematischen Dialog zwischen der Regierung und den Gewerkschaften zum Thema Antidiskriminierung. Die Gewerkschaften sind in diesem Bereich generell nicht besonders aktiv.

6. Gleichbehandlungsstellen

In der Slowakei ist das Slowakische nationale Zentrum für Menschenrechte für die Förderung der Gleichbehandlung zuständig. Das Zentrum ist eine unabhängige, außergerichtliche Stelle, die vorwiegend aus dem Staatshaushalt finanziert wird.¹²⁷

Das Zentrum kann Rechtsgutachten über die Einhaltung des Gleichbehandlungsgrundsatzes erstellen. Zu seinen Aufgaben gehören außerdem die Überwachung und Auswertung der Menschenrechtslage und des Gleichbehandlungsgrundsatzes, die Erfassung und Bereitstellung von Daten über Rassismus, Fremdenfeindlichkeit und Antisemitismus sowie die Durchführung unabhängiger Studien über Diskriminierung. Allgemein ist das Zentrum verpflichtet, Untersuchungen und Umfragen durchzuführen, die Daten zur Menschenrechtslage liefern. Außerdem muss das Zentrum einen Jahresbericht zur Menschenrechtslage in der Slowakei verfassen, bei der auch der Grundsatz der Gleichbehandlung berücksichtigt wird. Gemäß dem ADG muss das Zentrum Opfern von Diskriminierung Rechtsbeistand leisten und kann sie vor Gericht vertreten.¹²⁸ Außerdem kann es *Popularklagen* einreichen (siehe oben). Da das Zentrum für alle Fälle von Diskriminierung im Sinne des ADG zuständig ist, liegen alle im Gesetz genannten Diskriminierungsgründe in seiner Zuständigkeit.

Seit längerem berichten mehrere Quellen, dass das Zentrum seine Aufgaben nicht effizient und zufriedenstellend erfüllt.¹²⁹ Im Jahr 2011 genehmigte die slowakische Regierung einen analytischen Bericht über Funktionsweise und Status des Zentrums, den ersten (und letzten) dieser Art. Der Bericht enthält einige Schlussfolgerungen, die in einem relativ komplexen Verfahren der Datenerhebung ermittelt wurden.

Dies sind die wichtigsten Ergebnisse: mangelnde bzw. unklare Befugnisse des Zentrums, zu wenige und ungenügend qualifizierte Mitarbeiter, ineffiziente Verwaltung der staatlichen Mittel, ungeeignete Struktur und Untätigkeit der Leitungs- und Kontrollgremien innerhalb des Zentrums, Fehlen vorbeugender und strategischer Konzepte, mangelnde Unabhängigkeit und fehlende Mechanismen zum Schutz vor Missbrauch zu Einzelinteressen, insbesondere zu politischen Zwecken, geringer Bekanntheitsgrad seiner Tätigkeit und beschränkte gesellschaftliche Wirkung und die niedrigen Fallzahlen, die das Zentrum vor Gericht gebracht oder anderweitig behandelt hat.

Die Regierung, die bei Annahme des Berichts im Jahr 2011 im Amt war, beauftragte einige Regierungsmitglieder, die finanziellen und rechtlichen Folgen der erforderlichen

¹²⁷ Siehe Absatz 1 und 2(1)-(3) des Gesetzes Nr. 308/1993 über die Einrichtung des Slowakischen nationalen Zentrums für Menschenrechte (*zákon č. 308/1993 Z. z. o zriadení Slovenského národného strediska pre ľudské práva*).

¹²⁸ Siehe Artikel 1(2)-(4) des Gesetzes Nr. 308/1993 über die Einrichtung des Slowakischen nationalen Zentrums für Menschenrechte.

¹²⁹ Siehe z. B. Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, Košice, Poradňa pre občianske a ľudské práva, S. 110-112, auch verfügbar unter <http://poradna-prava.sk/wp-content/uploads/2012/11/Publikáciu-si-môžete-stiahnuť-tu-105-MB.pdf> (zuletzt aufgerufen am 22 April 2015), Zentrum für Bürger- und Menschenrechte, People in Need Slovak Republic (2013), *Written comments concerning the Ninth and Tenth Periodic Reports of the Slovak Republic under the International Convention on the Elimination of All Forms of Racial Discrimination*, Januar 2013, S. 2, 13, 16 (auch verfügbar unter: <http://poradna-prava.sk/wp-content/uploads/2013/03/PDF-236-KB1.pdf>, zuletzt aufgerufen am 22. April 2015). *Concluding observations of the Committee on Economic, Social and Cultural Rights on Slovakia from 2012* (verfügbar unter: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fSVK%2fC.O%2f2&Lang=en, (zuletzt aufgerufen am 2. April 2014). <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/433/84/PDF/G1243384.pdf?OpenElement>). Siehe auch das Protokoll der 7. Tagung des Rates für Menschenrechte und nationale Minderheiten am 17. Oktober 2012, verfügbar unter: http://www.radavladyp.gov.sk/data/att/10161_subor.pdf (zuletzt aufgerufen am 22. April 2015).

Umstrukturierung des Zentrums zu untersuchen. Die neue Regierung, die am 4. April 2012 ihre Arbeit aufnahm, schränkte die Aufgabe der Untersuchungskommission etwas ein, hält aber ansonsten am Umbau des Zentrums fest. Obwohl der Justizminister bis Oktober 2012 eine Analyse und entsprechende Gesetzesentwürfe vorlegen sollte, lagen bis zum 1. Januar 2015 weder das eine noch das andere vor.

7. Wichtige Punkte

Grundsätzlich wurden die Richtlinien relativ gut in nationales Recht umgesetzt, wobei dieses in vielen Bereichen über die Vorgaben der Richtlinien hinausgeht. Trotz einiger Verbesserungsmöglichkeiten (z. B. bei manchen Verfahrensvorschriften) bietet es einen guten Ausgangspunkt für die praktische Umsetzung des Gleichbehandlungsgrundsatzes. Allerdings fällt die praktische Durchsetzung derzeit noch weit hinter die Anforderungen der Richtlinien zurück. Dafür gibt es die folgenden Gründe: mangelhafter Zugang zu Gerichtsverfahren und zum Recht im allgemeinen, fehlende Kenntnisse über das Antidiskriminierungsrecht bei Juristen und Entscheidungsträgern, fehlendes Fallrecht und Mängel bei der Erfassung von Diskriminierungsfällen, fehlende Daten und Statistiken über Diskriminierungsfälle und Diskriminierungsgründe, ineffiziente Arbeit und fehlende Unabhängigkeit der Gleichbehandlungsstelle, keine politischen Strategien für den Kampf gegen Diskriminierung, der Grundsatz der Gleichbehandlung wird nicht regelmäßig bei allen politischen Entscheidungen beachtet und die zuständigen Stellen arbeiten zu wenig zusammen, fehlende staatliche Mittel für die Durchsetzung des Diskriminierungsverbots, keine systemische Unterstützung von NRO durch die Regierung, im Bildungssystem sind die Grundsätze und Werte der Menschenrechte und Nichtdiskriminierung nicht ausreichend verankert, Politikern fehlt das Engagement und Interesse für diese Werte, Rassismus und diskriminierende Einstellungen sind in der gesamten Bevölkerung weit verbreitet und werden allgemein toleriert.

INTRODUCTION

The national legal system

The Slovak Republic has a parliamentary form of government and a statutory law system, its basic law being the Constitution,¹³⁰ which lays down the scope of guaranteed fundamental rights. International treaties on human rights and fundamental freedoms, international treaties for the exercise of which no other law is necessary, and international treaties that directly confer rights or impose duties on natural persons or legal persons and that were ratified by Slovakia and promulgated as prescribed by the law, take precedence over national laws.¹³¹ Legally binding acts of the European Union take precedence over the laws of the Slovak Republic.¹³² Regulations of the Government and generally binding legal regulations of ministries have to be in compliance with the Constitution, with international treaties that were promulgated as prescribed by the law, and with laws.¹³³

In matters of local and regional self-governance and in the exercise of tasks stipulated by the law, municipalities and self-governing regions may adopt generally binding legal regulations.¹³⁴ In the field of non-discrimination, this has relevance mainly in the field of social protection (e.g. social services, social advantages) and housing. Generally binding legal regulations of municipalities and self-governing regions must be in compliance with the Constitution, with international treaties that were promulgated as prescribed by the law, with laws, with governmental regulations, and with generally binding legal regulations of ministries.¹³⁵

Together with the Constitution, the Act on Equal Treatment in Certain Areas and Protection against Discrimination (Anti-discrimination Act),¹³⁶ which was adopted by the National Council of the Slovak Republic (the Slovak Parliament) on 20 May 2004 and came into force on 1 July 2004, establishes the basic legal framework of Slovak anti-discrimination law.

According to the Anti-discrimination Act, the statutory obligation to observe the principle of equal treatment within the areas stipulated by law applies to 'everyone'.¹³⁷ The duty to observe the principle of equal treatment is defined as comprising the prohibition of discrimination¹³⁸ on the prohibited grounds (sex, religion or belief, race, affiliation with a 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, or the reason of reporting criminality or other anti-social activity).¹³⁹ It also requires 'measures for protection against discrimination'¹⁴⁰

¹³⁰ The Constitution of the Slovak Republic No. 460/1992 Coll. as amended (*Ústava Slovenskej republiky č. 460/1992 Zb. v znení neskorších predpisov*). The English text of the Constitution can be found at <http://www.concourt.sk> (accessed 15 April 2015). All other laws published in the Collection of Laws from 1998 onwards can be found in the Slovak language at <http://www.zbierka.sk> (accessed 15 April 2015).

¹³¹ Article 7(5) of the Constitution, which came into effect on 1 July 2001. Until then, the precedence of international human rights instruments over national law was guaranteed only if international law provided for 'broader fundamental rights and freedoms' than the relevant national law.

¹³² Article 7(2) of the Constitution.

¹³³ Article 125(1)(b) of the Constitution.

¹³⁴ Article 71(2) of the Constitution.

¹³⁵ Article 125(1)(d) of the Constitution.

¹³⁶ Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination, amending and supplementing certain laws (Anti-discrimination Act), as amended (*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) v znení neskorších predpisov*).

¹³⁷ See Section 3(1) of the Anti-discrimination Act.

¹³⁸ According to Section 2a (1) of the Anti-discrimination Act, discrimination can take the following forms: direct discrimination, indirect discrimination, harassment, sexual harassment, victimisation, instruction to discriminate and incitement to discriminate.

¹³⁹ See Section 2(1) of the Anti-discrimination Act.

¹⁴⁰ See Section 2(3) of the Anti-discrimination Act.

to be adopted. The Anti-discrimination Act also stipulates that, 'when observing the principle of equal treatment, it is also necessary to take into consideration good morals for the purposes of extending protection against discrimination'.¹⁴¹

In addition to the Anti-discrimination Act, the duty to observe the principle of equal treatment in particular spheres of life is also regulated by other laws, which either refer to the Anti-discrimination Act or contain their own equal treatment/anti-discrimination clauses that usually duplicate some of the provisions contained in the Anti-discrimination Act and/or add some details specific to the personal and material scope of the piece of legislation.

List of main legislation transposing and implementing the directives

Title of the law: Act No. 365/2004 Coll.¹⁴² on Equal Treatment in Certain Areas and Protection Against Discrimination (Anti-discrimination Act) (*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)*)

Abbreviation: ADZ (*antidiskriminačný zákon*)

Date of adoption: 20.05.2004

Latest amendments: 16.10.2014 (No. 307/2014 Coll.)

Entry into force: 01.07.2004

Grounds covered: sex, religion or belief, race, affiliation with a 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, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act (and some other grounds contained in some other acts, mainly trade union involvement, unfavourable state of health and genetic features, contained, for example, in the Labour Code)

Material scope: employment and occupation, social security, social advantages, healthcare, provision of goods and services including housing and education

Title of the law: Labour Code No. 311/2001 Coll. (*zákon č. 311/2001 Z. z. Zákonník práce*)

Abbreviation: ZP (*Zákonník práce*)

Date of adoption: 02.07.2001

Latest amendments: 16.10.2014 (No. 307/2014 Coll.)

Entry into force: 01.04.2002

Grounds covered: sex, religion or belief, race, affiliation with a 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, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act as well as trade union involvement, unfavourable state of health and genetic features

Material scope: employment

Title of the law: Act No. 400/2009 Coll. on Civil Service, as amended (*zákon č. 400/2009 Z. z. o štátnej službe a o zmene a doplnení niektorých zákonov*)

Abbreviation:

Date of adoption: 16.09.2009

Latest amendments: 27/11/2014 (No. 362/2014 Coll.)

Entry into force: 01.11.2009

Grounds covered: all grounds covered by the Anti-discrimination Act as well as unfavourable state of health, duties to family, membership of or involvement in a political party or a political movement, a trade union or another association

¹⁴¹ See Section 2(2) of the Anti-discrimination Act.

¹⁴² 'Coll.' is an abbreviation for the official 'Collection of Laws of the Slovak Republic'.

Material scope: employment

Title of the law: Act No. 5/2004 Coll. on Employment Services, amended (*zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov*)

Abbreviation:

Date of adoption: 04.12.2003

Latest amendments: 16.10.2014 (No. 311/2014 Coll.)

Entry into force: 01.02.2004

Grounds covered: sex, religion or belief, race, affiliation with a 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, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act as well as activity in trade unions

Material scope: employment

Title of the law: Act No. 245/2008 Coll. on Education (Schools Act) (*zákon č. 245/2009 Z. z. o výchove a vzdelávaní (školský zákon) a o zmene a doplnení niektorých zákonov*)

Abbreviation:

Date of adoption: 22.05.2008

Latest amendments: 09.12.2014 (No. 337/2014 Coll.)

Entry into force: 01.09.2008

Grounds covered: sex, religion or belief, race, affiliation with a 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, or the reason of reporting criminality or other anti-social activity contained in Section 2(1) of the Anti-discrimination Act as well as social disadvantage

Material scope: education

Title of the law: Act No 131/2002 Coll. on Higher Education, as amended

Abbreviation:

Date of adoption: 21.02.2002

Latest amendments: 04.12.2013 (No 464/2013 Coll.)

Entry into force: 01.04.2002

Grounds covered: sex, religion or belief, race, affiliation with a 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, or the reason of reporting criminality or other anti-social activity contained in Section 2(1) of the Anti-discrimination Act

Material scope: education

Title of the law: Act No. 576/2004 Coll. on Healthcare, Services Related to the Provision of Healthcare and on amending and supplementing certain acts, as amended (*zákon č. Act No. 576/2004 Z. z. o zdravotnej starostlivosti, službách súvisiacich s poskytovaním zdravotnej starostlivosti a o zmene a doplnení niektorých zákonov*)

Abbreviation:

Date of adoption: 21.10.2004

Latest amendments: 25.06.2014 (No. 204/2014 Coll.)

Entry into force: 01.01.2005

Grounds covered: sex, religion or belief, race, affiliation with a 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, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act

Material scope: healthcare

Title of the law: Act No. 461/2003 Coll. on Social Insurance, as amended (*zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov*)

Abbreviation:

Date of adoption: 30.10.2003

Latest amendments: 15.10.2014 (No. 298/2014 Coll.)

Entry into force: 01.01.2004

Grounds covered: sex, religion or belief, race, affiliation with a 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, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act

Material scope: social security

Title of the law: Act No. 448/2008 Coll. on Social Services and on amending and supplementing Act No. 455/1991 Coll. on Licensed Trades (Small Business Act), as amended (*zákon č. 448/2008 Z. z. o sociálnych službách a o zmene a doplnení zákona č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov*)

Abbreviation:

Date of adoption: 30.10.2008

Latest amendments: 04.12.2014 (No. 376/2014 Coll.)

Entry into force: 01.01.2009

Grounds covered: sex, religion or belief, race, affiliation with a 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, or the reason of reporting criminality or other anti-social activity contained in Section 2(1) of the Anti-discrimination Act, as well as unfavourable social situation

Material scope: social security

Title of the law: Act No. 308/1993 Coll. on Establishing the Slovak National Centre for Human Rights (*zákon č. 308/1993 Z. z. o zriadení Slovenského národného strediska pre ľudské práva*)

Abbreviation:

Date of adoption: 15.12.1993

Latest amendments: 14.02.2008 (No. 85/2008 Coll.)

Entry into force: 01.01.1994

Grounds covered: all grounds covered by national law: sex, religion or belief, race, affiliation with a 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, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act, as well as some other grounds contained in other acts (unfavourable state of health, genetic features, duties to family, membership of or involvement in a political party or a political movement, a trade union or other association)

Material scope: employment and occupation, social security, social advantages, healthcare, provision of goods and services including housing and education

Title of the law: Act No. 99/1963 Coll. Civil Procedure Act, as amended (*zákon č. 99/1963 Z. z. Občiansky súdny poriadok v znení neskorších predpisov*)

Abbreviation: OSP (*Občiansky súdny poriadok*)

Date of adoption: 04.12.1963

Latest amendments: 27.11.2014 (No. 353/2014 Coll.)

Entry into force: 01.04.1964

Grounds covered: all grounds covered by national law: sex, religion or belief, race, affiliation with a 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, or the reason of reporting criminality

or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act (as well as some other grounds contained in other acts, mainly trade union involvement and unfavourable state of health, which are contained in the Labour Code)

Material scope: employment and occupation, social security, social advantages, healthcare, provision of goods and services including housing and education

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

The Slovak Constitution includes the following Articles dealing with non-discrimination:

- Article 12 – a general clause. Article 12(1) states that ‘people are free and equal in dignity and rights’. Article 12(2) stipulates 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/gender¹⁴³ or any other status. No person shall be denied their legal rights, discriminated against or favoured on any of these grounds’.
- Article 12(3) of the Constitution guarantees free choice of ‘nationality’.¹⁴⁴ The right to be treated equally is an accessory right and can only be claimed in connection with the protection of particular fundamental rights and freedoms listed in the Constitution.¹⁴⁵ The list of prohibited grounds of discrimination in the Constitution is open-ended (‘any other status’) and the Constitutional Court has already declared that sexual orientation is a constitutionally prohibited ground of discrimination.¹⁴⁶ Given the fact that the list is open-ended, it can be argued that disability and age, as well as any other grounds covered by the legislation¹⁴⁷ or even not covered by generally binding Slovak legal acts, are also constitutionally protected grounds.¹⁴⁸
- Article 24 – freedom of thought, conscience, religion and belief.
- Article 33 – the affiliation to any national minority or an ethnic group cannot be to the detriment of anyone.
- Article 34 – special rights of citizens belonging to national minorities or ethnic groups.
- Article 38 – special work-related protection for women, minors and people with disabilities.
- Article 41(2) – special care and work-related protection for pregnant women.

These provisions apply to all areas covered by the directives. Their material scope is broader than those of the directives.

The constitutional anti-discrimination provisions are directly applicable, but only have vertical effect. The Constitutional Court held explicitly that Articles 12(1) and 12(2) of the Constitution do not have direct horizontal effect.¹⁴⁹

¹⁴³ The Slovak Constitution uses the word *rod*, which is equivalent to both ‘lineage’ and ‘gender’. The Constitutional Court has not interpreted the concept of *rod* directly yet. However, it has already used the word *rod* in the sense of gender when it referred to the ‘gender context’ of one of the cases that it was deciding (minimum pay threshold stated by law for nurses – see the finding of the Constitutional Court in case No PL. ÚS 13/2012-90, paragraph 139), albeit without a direct reference to the word *rod* contained in the list of prohibited grounds of discrimination in Article 12(2) of the Constitution.

¹⁴⁴ In Slovak law, the word ‘nationality’ (*národnosť*) is separate and distinct from the word ‘citizenship’ (*štátne občianstvo*). Whereas ‘citizenship’ is understood as meaning nationality in the sense of having a legal affiliation with a particular state (i.e. being a national or citizen of the Slovak Republic), ‘nationality’ is understood as an affiliation with a particular ‘nation’ (a group of people defined by common language, geographical and cultural roots etc.) or ethnic group. Thus, ‘nationality’ is often understood as meaning ‘ethnicity’, including in the practice of state bodies and public institutions.

¹⁴⁵ Finding of the Constitutional Court of the Slovak Republic, ref. No I. ÚS 17/99 of 22 September 1999.

¹⁴⁶ See the Finding of the Constitutional Court of the Slovak Republic No PL. ÚS 8/04-202 of 18 October 2005.

¹⁴⁷ Such as marital and family status, which are covered, for example, by the Anti-discrimination Act or by the Labour Code.

¹⁴⁸ The Constitutional Court has already stated that the fact of being a minister of a certain church constitutes just such ‘another status’ and hence such a person cannot be advantaged or disadvantaged on this ground (see the finding of the Constitutional Court No III. ÚS 64/00-65 from 31 January 2001).

¹⁴⁹ See the Finding of the Constitutional Court No PL. ÚS 8/04-202 of 18 October 2005.

Thus, the constitutional equality clauses cannot be enforced against private actors (as opposed to the state).

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

The following grounds of discrimination are explicitly prohibited in national law:

Grounds explicitly covered by the Constitution: sex, race, skin colour, language, belief, religion, political affiliation or conviction, national or social origin, nationality or ethnic origin, property, lineage/gender or any other status.¹⁵⁰ The Constitutional Court has also confirmed that sexual orientation is a constitutionally prohibited ground of discrimination.¹⁵¹

Grounds explicitly covered by the Anti-discrimination Act (relevant for the fields of 'labour relations and related legal relations, social security, healthcare, provision of goods and services and in education'):¹⁵² 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, or the reason of reporting criminality or other anti-social activity.¹⁵³

Grounds explicitly covered by other laws (in addition to those listed in the Anti-discrimination Act) are, for example, trade union activities,¹⁵⁴ unfavourable state of health¹⁵⁵ and genetic features.¹⁵⁶

2.1.1 Definition of the grounds of unlawful discrimination within the directives

The Anti-discrimination Act does not define any of the prohibited grounds of discrimination listed in it.

- Race and ethnic origin

The terms racial and ethnic origin are used in the provisions of many laws (especially in connection with anti-discrimination provisions or provisions prohibiting racism and intolerance), albeit without any legal definition. Criminal law literature and commentaries state that race means a group of people differing from others due to various typical features, especially physical ones (e.g. colour of skin), regardless of the fact that the members of the race concerned live within the territory of the state. This literature characterises an 'ethnic group' as a

'historically formed group of people connected by common history, distinct cultural features (mainly language) and common mentality, traditions, and possibly a distinct way of life. Representatives of a given ethnic group have their own name ... and have an understanding of mutual belonging and at the same time distinctiveness from other communities. An ethnic group usually exists beyond the borders of one state. In Slovakia an example would be the Roma'.¹⁵⁷

The Slovak courts have a strong tendency to interpret the concept of (Roma) ethnicity, in the context of hate speech and hate crimes based on these grounds, narrowly. Evidence

¹⁵⁰ See Article 12(2) of the Constitution.

¹⁵¹ See the Finding of the Constitutional Court of the Slovak Republic No PL. ÚS 8/04-202 of 18 October 2005.

¹⁵² Section 3(1) of the Anti-discrimination Act.

¹⁵³ Section 2(1) of the Anti-discrimination Act.

¹⁵⁴ Section 13(2) of the Labour Code (Act No 311/2001 Coll. Labour Code, as amended).

¹⁵⁵ See Article 1 of the Basic Principles of the Labour Code.

¹⁵⁶ See Article 1 of the Basic Principles of the Labour Code and Section 13(2) of the Labour Code.

¹⁵⁷ Samaš, O., Stiffel, H, Toman, P (2006), *Trestný zákon – Stručný komentár* (The Criminal Code: a brief commentary), Bratislava, IURA EDITION, spol. s r. o., pp. 301-302.

of this can also be found in a decision of the Supreme Court of 2013.¹⁵⁸ The Supreme Court argued, *inter alia*, that the word 'Gypsy' (both as a noun and as an adjective) belongs to a group of words that are frequently used as a part of the codified state language, and that the usage of this word alone cannot indicate that a crime of defamation of nation, race and conviction pursuant to Section 423(1) of the Criminal Code has been committed.¹⁵⁹

- Religion and belief

Slovak law provides no definition of the terms of religion and belief. The Criminal Code instead uses the expression 'confession/creed', which is explained in law commentaries 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 faith'.¹⁶⁰

Act 308/1991 on Freedom of Religious Belief and the Status 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 a religion is considered to be a believer. The agreement on religious education¹⁶¹ between the Slovak Republic and the registered churches and religious societies deals only with 'religion' as defined by the doctrine of churches or religious societies registered in Slovakia:

'religion and religious education is taught according to the educational programmes and curricula approved by a registered church or religious society after receiving an opinion of the Ministry of Education of the Slovak Republic'.¹⁶²

The Slovak legal system makes no clear distinction between religion, confession/creed and belief.

Both the Constitution and the Anti-discrimination Act state explicitly that discrimination against a person without a religion shall be deemed to be discrimination on the ground of religion or belief. In 2001, the Constitutional Court also stated that the fact that someone is a minister of a certain church constitutes 'another status' (a formulation at the end of the list of prohibited grounds of discrimination contained in the Slovak Constitution) and hence such a person must not be advantaged or disadvantaged on this ground.¹⁶³

Act 308/1991 on Freedom of Religious Belief and the Status of Churches and Religious Societies stipulates rules for the registration of churches and religious societies in Slovakia. Under these rules, a church or a religious society can be registered only when it submits a statutory declaration from 20,000 adult members confirming their membership of the church or religious society and their permanent residency in Slovakia. The registration process is important, since only registered churches and religious societies are legally acknowledged by the state. The registered churches and religious societies have significant advantages (with regard to the legal and economic environment in which they operate) in comparison with those that are not registered, which can lead to discrimination against individuals belonging to non-registered churches and religious societies.¹⁶⁴

¹⁵⁸ Decision of the Supreme Court of the Slovak Republic of 19 March 2013, ref. No 4 Tdo 49/2012.

¹⁵⁹ Decision of the Supreme Court of the Slovak Republic of 19 March 2013, ref. No 4 Tdo 49/2012, pp. 6-7.

¹⁶⁰ See e.g., Stiffel, H., Kočica, J. (2001), *Trestný zákon: Stručný komentár* (The Criminal Code: A Brief Commentary), Bratislava, p. 403.

¹⁶¹ Published in the Collection of Laws under No. 395/2004.

¹⁶² Article 2(7) of the Agreement between the Slovak Republic and Registered Churches and Religious Societies regarding Religious Education.

¹⁶³ See the finding of the Constitutional Court No III. ÚS 64/00-65 of 31 January 2001.

¹⁶⁴ Only registered churches and religious societies can legitimately claim state support (including payment of clergy or exemption from taxation), organise religious education in schools, establish their own schools (partly funded by the state), establish and run hospitals and social services facilities etc. Small churches that cannot be registered do not exist legally; they can only be established as civil society organisations.

- Disability

Neither the Anti-discrimination Act nor other acts include the definition of disability that is to be used in the area of anti-discrimination. Disability (or some aspects of it) is defined by social security, employment and school legislation for the purposes of those areas (the duty to apply the principle of equal treatment in relation to disability applies to all of them).

The Labour Code defines an 'employee with a disability' as an employee who is officially acknowledged as disabled on the basis of the Social Insurance Act¹⁶⁵ and who submits to their employer a decision proving entitlement to a disability pension.¹⁶⁶ The Social Insurance Act defines the following conditions to qualify for a disability pension:

- at least 40 % loss of the ability to work (when compared to a 'healthy' person);
- attainment of a sufficient number of years of pension insurance;
- long-term unfavourable state of health, i.e. state of health causing a loss of ability to perform gainful activities, which is expected, on the basis of medical assessment, to last at least one year.¹⁶⁷

However, it is also important to state that Article 1 (of the Basic Principles of the Labour Code and Section 13(2) of the Labour Code also prohibit discrimination on the ground of unfavourable state of health and on the ground of genetic characteristics.

A similar test for determining whether someone has a disability is used by the Act on Employment Services,¹⁶⁸ which regulates the system of institutions and measures to support and help participants in the labour market. This act considers a person with a disability to be a citizen who is officially registered disabled in accordance with the Social Insurance Act and who can also prove their disability with a decision or a notification from the Social Insurance Agency.¹⁶⁹

The Act on Benefits for Compensation of Serious Disability¹⁷⁰ uses the term 'serious disability' and defines it as a 'disability with a level of functional impairment of at least 50 %'.¹⁷¹ 'Functional impairment' is defined as a lack of physical ability, sensory ability or mental ability with a prognosis in excess of 12 months.¹⁷²

It is possible that state authorities, as well as courts, will in some cases base their understanding of the concept of 'disability' on the legal definitions listed above. This may become problematic, especially in cases where the concept of disability being defined falls outside the scope of employment (in case of employment, the definition generated in *Ring and Skouboe Werge* will have to apply; the concept of the prohibition of discrimination on the ground of unfavourable state of health contained in Article 1 of the basic principles of the Labour Code would probably also mitigate the perception of 'disability' for labour law purposes). However, it must be considered that the Anti-discrimination Act also prohibits discrimination on the grounds of past disability and presumed disability ('discrimination

¹⁶⁵ Act. No 461/2003 Coll. on Social Insurance as amended (*Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov*).

¹⁶⁶ Section 40(8) of the Labour Code.

¹⁶⁷ See Sections 70-72 of the Social Insurance Act.

¹⁶⁸ Act No 5/2004 Coll. on employment services and on changing and supplementing other laws, as amended (*Zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

¹⁶⁹ See Section 9 of the Act on Employment Services.

¹⁷⁰ Act No 447/2008 Coll. on Benefits for Compensation of Serious Disability, amending and Supplementing Certain Laws, as amended (*Zákon č. 447/2008 Z. z. o peňažných príspevkoch na kompenzáciu ťažkého zdravotného postihnutia a o zmene a doplnení niektorých zákonov, v znení zákona č. 8/2009 Z. z.*).

¹⁷¹ Section 2(3) of the Act on Benefits for Compensation of Serious Disability.

¹⁷² Section 2(4) of the Act on Benefits for Compensation of Serious Disability.

against a person who could be presumed, based on external signs, to have a disability’).¹⁷³ It should also be borne in mind that Slovakia signed and ratified the Convention on the Rights of Persons with Disabilities, which, in conjunction with Article 7(5) of the Slovak Constitution, takes precedence over Slovak laws. Therefore, for anti-discrimination purposes, the concept of disability should be understood much more broadly than the restrictive legal definitions that apply in fields covered by specific laws, mainly in the context of employment and social insurance.

Neither the Constitutional Court nor the Supreme Court has provided any explicit and comprehensive interpretative framework for the concept of disability as yet. However, in a case concerning an individual with psycho-social and intellectual disabilities,¹⁷⁴ which were not temporary, the Constitutional Court took it as a given that the complainant had a disability (without examining the complainant’s circumstances in relation to national, EU and international legal definitions of disability). The case did not concern the Framework Directive or fall under the Anti-discrimination Act but concerned the illegality of a district court and a regional court decision fully depriving an individual of their legal capacity to act, which the Constitutional Court ruled breached various Articles of the Constitution, the European Convention and Article 12 of the UN Convention on the Rights of Persons with Disabilities.¹⁷⁵ The Constitutional Court also included an *obiter dictum* in this particular decision, which, while not defining disability, provided some hints on the court’s perception of the legal definition of disability as a social concept. In particular, the Constitutional Court stated:

‘Experts nowadays (and in Slovakia, it is more jurisprudence and legal theory – a [court’s] note) perceive disability as well as the rights of people with disabilities differently from in the past. Today, disability is not only understood within a medical (individual) framework but the meanings of the social and legal framework are also increasing – which, when compared to the past, integrate the values that represent the substrate of human rights, such as respect and the protection of dignity (...).’¹⁷⁶

The Schools Act,¹⁷⁷ regulating legal relations in the field of primary and secondary education and in related facilities, also uses the term ‘health disadvantage’. A child or a pupil with a ‘health disadvantage’ is defined, in section 2(k), as a child or a pupil: with a ‘disability’; or who is ‘ill or their health is impaired’; or who has ‘developmental disorders’, or a ‘behavioural disorder’.

- Age

Slovak law provides no specific definition, and neither does case law.

- Sexual orientation

Slovak law provides no specific definition, and neither does case law.

2.1.2 Multiple discrimination

In Slovakia prohibition of multiple discrimination is not included in the law.

¹⁷³ Section 2a(11)(d) of the Anti-discrimination Act.

¹⁷⁴ However, the disability of the complainant concerned was not clear from the decision – the Constitutional Court did not deal with the particular type of disability and the courts of first and second instance used disability terminology confusingly, randomly and interchangeably (in a literal translation, the courts of first and second instance used the terms ‘psychiatric disorder’ and ‘mental disability’). The expert opinions issued during the proceedings, and to which the courts of first and second instance referred, used the terms (in a literal translation) ‘psychiatric disorder’ and ‘mental retardation’.

¹⁷⁵ Finding of the Constitutional Court of the Slovak Republic of 28 November 2012, ref. No I. ÚS 313/2012-52, available at www.zpmprvsk.sk/dokumenty/I_US_313_2012.pdf (accessed 20 April 2015).

¹⁷⁶ Finding of the Constitutional Court of 28 November 2012, ref. No I. ÚS 313/2012-52, Paragraph 34.

¹⁷⁷ Act No 245/2008 Coll. on Education (Schools Act), as amended.

There are no legal rules or case law that would explicitly deal with situations of multiple discrimination. The concept sometimes appears in policy documents but its use is more often theoretical rather than relating to the proposal and implementation of specific measures. To the author's knowledge, there are no plans to amend the Anti-discrimination Act in a way that would explicitly include the prohibition of multiple discrimination.

Section 2(1) of the Anti-discrimination Act, when listing the prohibited grounds of discrimination, does not contain any explicit prohibition of multiple discrimination. However, nor does it say that discrimination or other breaches of the duty to observe the principle of equal treatment must take place on individual prohibited grounds of discrimination. Thus, it could be argued that the concept of prohibition of multiple discrimination is contained in the act implicitly (although it will be up to the courts to establish this interpretation more authoritatively, which has not happened so far).

In Slovakia, no case law deals with multiple discrimination. The multiple discrimination element has either not been dealt with by the courts, or the cases are still pending.

The only known cases where multiple discrimination has been invoked were cases relating to multiple discrimination against Roma women (with the multiple grounds of discrimination being sex/gender and ethnicity) initiated by the Centre for Civil and Human Rights (*Poradňa pre občianske a ľudské práva*),¹⁷⁸ an NGO based in Košice.

The Centre for Civil and Human Rights has litigated various cases concerning unlawful sterilisations of Roma women. However, as these sterilisations took place before the adoption of the Anti-discrimination Act and the rights pursuant to this act could not therefore be invoked, the Centre for Civil and Human Rights used other legal routes. In three of the cases on unlawful sterilisations that have already been decided by the European Court of Human Rights (ECtHR), the court did not address violations of Article 14, although they were claimed in all of the cases.¹⁷⁹

The Centre for Civil and Human Rights also initiated a case, using the concept of *actio popularis* (to sue the state) against a provision in the Act on Childbirth Allowance¹⁸⁰ that conditions the provision of such subsidy on the woman not leaving the healthcare facility (in practice, a maternity hospital) upon giving birth without the consent of the healthcare facility. The Centre for Civil and Human Rights argued that the provision is discriminatory against women in general but that it also specifically discriminates against Roma women, who are in very vulnerable positions and who, for various reasons, including ill-treatment by the maternity hospitals, often leave the hospital upon giving birth without being given the consent of the hospital. The case was dismissed by the court of first instance in May 2014¹⁸¹ and is pending before the second instance court. See also section 3.2.7 of this report.

In autumn 2013, the Centre for Civil and Human Rights submitted a new *actio popularis* against a hospital in Eastern Slovakia and at the same time against the Ministry of Health. The *actio popularis* concerns segregation of Roma women in maternity hospitals and

¹⁷⁸ See www.poradna-prava.sk, accessed 20 April 2015.

¹⁷⁹ See ECtHR's judgments in cases *V. C. v. Slovakia* (No. 18968/07), *I. G. and Others v. Slovakia* (No. 15966/04), and *N. B. v. Slovakia* (No. 29518/10).

¹⁸⁰ The Act No 235/1998 Coll. on Childbirth Allowance and on Allowances for Parents who have Three or More Concurrently Born Children or Twins More than Once within Two Years, Section 3(5). In 2013, the act was renumbered and renamed Act No 383/2013 on Childbirth Allowance and on Allowance on More Concurrently Born Children and on changing and supplementing other laws (*zákon č. 383/2013 Z. z. o príspevku pri narodení dieťaťa a príspevku na viac súčasne narodených detí a o zmene a doplnení niektorých zákonov*). The relevant provision against which the Centre for Civil and Human Rights filed its lawsuit is now Section 3(4)(b).

¹⁸¹ Decision of the District Court Bratislava I (exact date unknown), file No 12C 231/2010. The argumentation of the court is unknown since the decision has not been published yet.

qualifies it as discrimination on the (multiple) grounds of ethnicity and sex. The case is still pending before the first instance court (in April 2015).

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

In Slovakia the following national law prohibits discrimination based on perception or assumption of what a person is: the Anti-discrimination Act, Section 3(3) and Section 2a (11)(d) (assumed discrimination on the ground of disability). There is no case law addressing assumed discrimination.

Section 3(3) of the Anti-discrimination Act stipulates that, in determining whether discrimination has occurred, no account shall be taken of whether the underlying reasons were based on facts or mistaken beliefs.

According to Section 2a (11)(d) of the Anti-discrimination Act, discrimination on grounds of past disability or discrimination against a person who could be presumed, based on external signs, to have a disability, shall be deemed to constitute discrimination based on disability.

b) Discrimination by association

In Slovakia the following national law prohibits discrimination based on association with persons with particular characteristics: Anti-discrimination Act, Sections 2a(11)(b) and (c). There is no case law dealing with discrimination by association.

Sections 2a(11)(b) and (c) of the Anti-discrimination Act state that discrimination on the grounds of someone's relationship with a person of a particular racial, national or ethnic origin shall also be deemed to constitute discrimination based on racial, national or ethnic origin, and that discrimination on grounds of someone's relationship with a person of a particular religion or belief, or discrimination against a natural person without a religion, shall be deemed to constitute discrimination based on religion or belief.

These rules are, in principle, in compliance with the judgment in *Coleman v Attridge Law and Steve Law*, although the Anti-discrimination Act does not explicitly refer to association with a person with a disability (or to association with persons possessing or presumed to possess other characteristics covered by the other prohibited grounds of discrimination contained in the Anti-discrimination Act).

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

a) Prohibition and definition of direct discrimination

In Slovakia, direct discrimination is prohibited in national law. It is defined.

Direct discrimination is one of the forms of discrimination listed and prohibited by the Anti-discrimination Act. Like the other forms of discrimination contained in Section 2a(1) of the Anti-discrimination Act, it has to take place in connection with the prohibited ground/s, listed in Section 2(1) (see also section 2.1 of this report).

Section 2a(2) of the Anti-discrimination Act defines direct discrimination as 'any action or omission where one person is treated less favourably than another is, has been or would be treated in a comparable situation.'

b) Justification of direct discrimination

The Anti-discrimination Act does not permit any general justification of direct discrimination. However, since the Anti-discrimination Act is silent on the issue of justification of direct discrimination, its impermissibility can only be derived by logical interpretation (a clause on the admissibility of justification in cases of direct discrimination is missing in its definition) and systematic interpretation (when interpreted in conjunction with the definition of indirect discrimination where justification is explicitly permissible).

There are a number of specific exceptions, called 'permissible differential treatment',¹⁸² which will be dealt with in sections 4 and 5 of this report.

2.2.1 Situation testing

a) Legal framework

In Slovakia situation testing is permitted in national law. It is, however, not permitted on an explicit basis (and the term 'situation testing' is not used in legislation). The possible use of situation testing follows the general admissibility conditions for evidence in civil courts.

The Civil Procedure Act,¹⁸³ which applies to judicial proceedings in cases of breaches of the Anti-discrimination Act, provides 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 from bodies, natural persons and legal entities, documents, inspections and examination of the parties.¹⁸⁴ It follows from the above that the Code of Civil Procedure does not exclude any kind of potential evidence. Thus, although situation testing is not specified in the non-exhaustive list of examples of possible proofs in the Civil Procedure Act, the general definition of 'proof' makes situation testing possible in principle (and the courts basically accept it).

However, in connection with situation testing, a more problematic issue is the use of audio recording. There are legal provisions, in particular on protection of 'personhood' (Sections 11 and 12 of the Civil Code) and on the crime of 'breaching the confidentiality of oral expression and of other expression of a personal nature' (Section 377 of the Criminal Code), which hinder potential testers and/or persons affected by discrimination from recording discriminatory actions.

According to Sections 11 and 12 of the Civil Code, natural persons have the right to the 'protection of personhood', which includes the protection of privacy and of 'manifestations of a personal nature' (e.g. pictures, drawings, literary outputs), and 'pictures and video and audio recordings related to a natural person or manifestation of their individual nature can be made or used only with the consent of the individual'. Under Section 377 of the Criminal Code, anyone who breaches the confidentiality of privately presented words or other expressions of a personal nature by means of illegitimate recording and provides this recording to another person or uses it in another way, thereby causing serious detriment to the rights of an individual, will be punished by imprisonment of up to two years. Although these provisions do not make situational testing illegal and courts generally accept it, the lack of explicit legal permission for the use of this legal concept is certainly discouraging, as is the threat of potential criminal proceedings. It also encourages defendants to contest the evidence of claimants who allege that they have been discriminated against and who rely on evidence gained through sound recording.

¹⁸² See Sections 8 and 8a of the Anti-discrimination Act.

¹⁸³ Act No 99/1963 Coll. Civil Procedure Act, as amended (*zákon č. 99/1963 Zb. Občiansky súdny poriadok, v znení neskorších predpisov*).

¹⁸⁴ Section 125 of the Civil Procedure Act.

At the time of drafting this report (April 2015), the adoption of a new Civil Dispute Procedure Act was pending (the bill is currently being discussed in the Parliament).¹⁸⁵ The bill contains provisions that make it clear that illegally acquired evidence will not be admissible any more in general (compared to the present situation), but that there will nevertheless be instances when this principle can be legally overruled, which should include cases of discrimination.¹⁸⁶

b) Practice

In Slovakia situation testing is used in practice. However, the use of situation testing is not widespread and is mainly carried out by NGOs.

With some minor exceptions,¹⁸⁷ courts usually do not have a problem with accepting evidence gained as a result of testing (witness testimonies, audio recordings). However, the fact of evidence being gained through testing seems to have an impact on the amount of non-pecuniary compensation awarded to claimants relying on testing: if situation testing has been used as evidence, the courts usually do not award non-pecuniary compensation or only award it on a symbolic level.

The key player in using testing for judicial proceedings is the NGO Centre for Civil and Human Rights (*Poradňa pre občianske a ľudské práva*), based in Košice, which has already successfully litigated a few discrimination cases using this method. The use of testing by the Centre for Civil and Human Rights has focused mainly on proving discrimination in access to goods and services, access to employment and access to education, and involves creating comparable situations on the spot and securing the evidence (testimonies, audio recordings and transcripts of the audio recordings).

The first important case concerns three Roma activists who were refused access to a café. They made a sound recording of their encounter with the bar personnel, as well as a sound recording of non-Roma activists from the Centre for Civil and Human Rights who followed them a few minutes later and had no problem entering. Although the first instance court accepted the sound recording and ordered the owner to issue a written apology, it did not grant the financial compensation requested, reasoning, *inter alia*, that the claimants must have expected the discrimination, given that the whole action was planned.¹⁸⁸ After the decision was overturned by a higher instance court decision,¹⁸⁹ the first instance court again obliged the defendant to send the victims a written apology, and again refused the claim for financial compensation. The first instance court again had no problem admitting the sound recording, stating that

‘no provision of the Civil Procedure Act nor any other piece of legislation prevents [a court] from considering evidence, such as the transcript of a sound recording which was made in public and which in no way interferes with the privacy of the parties to the proceedings or of third parties.’¹⁹⁰

¹⁸⁵ The bill is available at <https://lt.justice.gov.sk/Material/MaterialDocuments.aspx?instEID=1&matEID=7581&langEID=1&tStamp=20150211153256833> (accessed 26 April 2015).

¹⁸⁶ See Article 16(2) and 3(1) of the Basic Principles of the Civil Dispute Procedure Bill, available at <https://lt.justice.gov.sk/Document/DocumentDetails.aspx?instEID=1&matEID=7581&docEID=383879&docFormEID=-1&docTypeEID=1&langEID=1&tStamp=20150211153256833> (accessed 26 April 2015), and see also the Explanatory Report to the Civil Dispute Procedure Bill, Special Part (*Osobitná časť*), p 4. available via the same link.

¹⁸⁷ For example, a judge refused to play an audio recording in a court hearing.

¹⁸⁸ Decision of the District Court in Michalovce of 31 August 2006 (the reference number not known).

¹⁸⁹ Decision of the Regional Court in Košice of 25 October 2007, ref. No 2Co/430/2006-148.

¹⁹⁰ Decision of the District Court in Michalovce of 29 January 2008, reference No 12C/139/2005-158.

After the claimants appealed again against the first instance court decision (specifically against the part of the judgment in which the court refused to grant the pecuniary compensation), the upper courts, including the Constitutional Court, rejected the claims again. On 15 August 2014, the case was decided by the Committee on the Elimination of Racial Discrimination,¹⁹¹ which did not find a violation of the Convention on the Elimination of All Forms of Racial Discrimination (CERD). The CERD Committee noted that

‘the judicial decisions taken by the domestic courts in the present case, which concluded that an act of racial discrimination has occurred and awarded the petitioners with a remedy, were reasoned and based on the Anti-discrimination Act. The Committee considers therefore that the facts before it do not show that the Courts’ decisions were manifestly arbitrary or amounted to denial of justice (...)’.¹⁹²

The Regional Court in Košice, deciding on an appeal in a case of a Roma man who was refused a contract with a mobile phone operator and who had a sound recording of this refusal and of non-Roma comparators trying to enter into contracts with the same operator and not being refused, held that given the fact that the recording was made in the publicly accessible premises of the defendants and did not affect the privacy of any of the persons present, the use of the recording as a form of evidence was not conditional on the defendant’s consent.¹⁹³ The court also rejected the suggestion that the fact that the claimant prepared his evidence in order to prove discriminatory treatment renders this type of evidence inadmissible. The appeal court also held that if a claimant submits a transcription of a sound recording, the court should compare it with the recording itself so that its credibility can be verified. With regard to testing, the court said explicitly that

‘for the purpose of acquiring comparative information, testing by means of which a comparator organises a comparable situation to that of the claimant is admissible as evidence’.

The court specified that,

‘the situations of the claimant and the comparator do not have to be absolutely identical, i.e. they do not have to ask absolutely the same questions but the questions (possibly formulated differently) must be directed at obtaining information about the same thing (...). The testing does not have to be performed in relation to the same employee of the entity involved [the defendant in this case], because it is not the conduct of a particular employee which is at stake but that of the entity in the name of which the employee communicates with the person interested in the services of this entity’.

The Regional Court in Banská Bystrica was deciding, in the second instance, on the admissibility of audio recordings in connection to potential or on-going judicial proceedings for a crime of ‘breaching the confidentiality of oral expression and of other expression of a personal nature’ (Section 377 of the Criminal Code, described in section 2.2.1(a) of this report). The case concerned a female claimant (alleging gender-based discrimination in the field of employment) who, during first instance court proceedings, submitted evidence in the form of an audio recording from a meeting with her employer during which she was given notice. Following the submission of this evidence, the defendant initiated criminal proceedings against the claimant, alleging that she had committed a crime under Section 377 of the Criminal Code, and asked that the court of first instance suspend the pending

¹⁹¹ The Committee on the Elimination of Racial Discrimination is the body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Racial Discrimination by its State parties. As part of its tasks, the Committee examines individual complaints against States (after exhaustion of national remedies).

¹⁹² Case L.A et al v. Slovak Republic, ref. No CERD/C/85/D/49/2011, Communication No 49/2011, officially available at CERD/C/85/D/49/2011, para 7.2).

¹⁹³ A decision of the Regional Court in Košice of 18 March 2010, ref. No 1Co/334/2008-238. The case is not final yet and is pending before the Supreme Court.

anti-discrimination proceedings until a decision on the criminal proceedings had been made (one of the defendant's main arguments was that evidence obtained illegally cannot be used in civil proceedings and hence the proceedings should be suspended). The court of first instance decided not to suspend the proceedings, and the Regional Court in Banská Bystrica upheld the decision, arguing, *inter alia*, that

‘if a claimant submitted a sound recording as evidence in [civil] proceedings, with which she is proving a breach of the principle of equal treatment in an employment relationship, the district court [i.e. the court of first instance] must evaluate this evidence with regard to the subject matter of the given proceeding. ... In addition, with regard to other evidence submitted, the district court will therefore evaluate and judge whether it will use this evidence further in the proceeding. Not even a regional court can intervene in the evaluation by the court of first instance at this stage of the proceedings.’¹⁹⁴

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

a) Prohibition and definition of indirect discrimination

In Slovakia, indirect discrimination is prohibited in national law. It is defined.

According to Section 2a(3) of the Anti-discrimination Act, indirect discrimination means

‘an apparently neutral regulation, decision, instruction or practice that puts or could put a person at a disadvantage as compared with another person, unless such regulation, decision, instruction or practices are objectively justified by following a legitimate aim and are appropriate and necessary to achieving that aim’.

There are three differences between the definitions of indirect discrimination contained in the directives and the definition contained in the Anti-discrimination Act, all of which seem to go beyond the scope of the directives.

The first difference is that, whereas the definition contained in the directives requires that the provision, criterion or practice in question ‘would put’ persons with a particular feature at a disadvantage, the definition in the Slovak Anti-discrimination Act is more concrete and admits both actual disadvantage (‘puts at a disadvantage’) as well as the possibility of disadvantage (‘could put at a disadvantage’).

The second difference is that, whereas the directives require a ‘particular disadvantage’ to take place in order to qualify certain treatment as indirectly discriminatory, the definition of indirect discrimination contained in the Slovak Anti-discrimination Act only requires a ‘disadvantage’. Although the concept of a ‘particular disadvantage’ contained in the directives may still require judicial interpretation, it can be argued that, with regard to the concept of disadvantage, the Slovak definition may be more flexible and favourable than the EU one.

The third difference is that the definition contained in the Anti-discrimination Act does not apply the ‘collective approach’ (‘persons’) but goes for an individual approach (‘person’). This may lead to more favourable conditions for proving indirect discrimination (there might be no need to provide very precise and significant statistical evidence), although it is unclear yet how the individualised concept of indirect discrimination will be applied.

b) Justification test for indirect discrimination

¹⁹⁴ Decision of the Regional Court in Banská Bystrica of 28 April 2011, ref. No 14Co/82/2011-371; 6710201619.

Indirect discrimination can be objectively justified by a legitimate aim if the regulation, decision, instruction or practice in question is appropriate and necessary to achieve that aim.

No expert discussions or judicial interpretation exist as far as the nature of legitimate aim or the proportionality and necessity test are concerned. So far there is only the wording of the law.

c) Comparison in relation to age discrimination

The existing law does not specify any rule on how to compare different situations relating to age discrimination. It seems that the role of a comparator is simply to demonstrate causation, i.e. that the reason for the detrimental treatment was age. Making a comparison and the interpretation of the age discrimination provision will be up to the courts and the jurisprudence.

2.3.1 Statistical evidence

a) Legal framework

In Slovakia there are national rules permitting data collection – in particular the Act on Protection of Personal Data¹⁹⁵ and Section 2(3) of the Anti-discrimination Act. These rules do not directly and explicitly permit (or require) data collection.

It could be argued that a duty to collect data is implicitly contained in the preventive component of the principle of equal treatment (the duty to adopt measures that prevent discrimination enshrined in Section 2(3) of the Anti-discrimination Act), as it is hard to imagine effective prevention of discrimination without the collection of relevant data. This duty, as generally framed in the preventive component of the duty to adopt measures against discrimination, would apply equally to all prohibited grounds of discrimination contained in the Anti-discrimination Act and hence also in the directives.

It should also be noted that Slovakia is a party to all the principal UN human rights conventions (such as the CERD, CESC, CEDAW, CRPD etc.), the committees of which require data collection and which, in accordance with the Slovak Constitution, form part of Slovak law and even take precedence over national laws (see also section 0.1 of this report).

However, it is well known and has also been confirmed by a survey conducted in 2009 by a civil society organisation, Citizen, Democracy and Accountability, that neither public nor private institutions collect data relating to prohibited grounds of discrimination in general (including the grounds covered by the directives)¹⁹⁶— although some minor exceptions have emerged since the survey was carried out.¹⁹⁷ The survey also found that the institutions concerned do not collect data as they wrongfully deem it illegal in the context of the Act on Protection of Personal Data.¹⁹⁸

¹⁹⁵ Act No 122/2013 Coll. on Protection of Personal Data and on changing and supplementing other laws, as amended (*zákon č. 122/2013 Z. z. o ochrane osobných údajov a o zmene a doplnení niektorých zákonov v znení neskošých predpisov*).

¹⁹⁶ See Hodoňová, S. (2010), *Analýza stavu najčastejších problémov v oblasti zberu dát týkajúcich sa zakázaných dôvodov diskriminácie* (Analysis of the State of the Most Frequent Problems in the Field of Collection of Data Relating to Prohibited Grounds of Discrimination), Bratislava, Občan, demokracia a zodpovednosť, available at www.oad.sk/sites/default/files/downloads/Akcny_plan_Zber_dat_analyza.doc (accessed 22 April 2015).

¹⁹⁷ Mainly with regard to ethnicity.

¹⁹⁸ See Hodoňová, S. (2010), *Analýza stavu najčastejších problémov v oblasti zberu dát týkajúcich sa zakázaných dôvodov diskriminácie* (Analysis of the State of the Most Frequent Problems in the Field of Collection of Data Relating to Prohibited Grounds of Discrimination), Bratislava, Občan, demokracia

According to Section 13(1) of the Act on Protection of Personal Data, the 'processing of 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 is prohibited'. It is, however, important to note that Section 3(1) of the Act on Protection of Personal Data defines personal data as

'data concerning a specific or identifiable natural person (...) who may be identified either directly or indirectly, mainly on the basis of a generally usable identifier¹⁹⁹ or on the basis of one or more features or characteristics that compose her physical, physiological, psychological, mental, economic, cultural or social identity'.

Thus, it follows that if data are collected on an anonymous basis and using methodology that would prevent direct or indirect identification of the person(s) concerned, the Act on Protection of Personal Data is not breached (as the data thus collected do not represent 'personal data' as defined by this act). In practice, this type of data collection would have to be on a voluntary basis and so implicitly presumes the consent of the persons concerned.

The 'Strategy of the Slovak Republic for Roma Integration to 2020', adopted on 11 January 2012,²⁰⁰ seeks in its introductory section to present the relevant data pertaining to Roma communities and their situation in the fields covered by the strategy. However, the majority of the data are only estimates (i.e. they do not go beyond quantitative research conducted by the Government). Furthermore, although the strategy repeatedly mentions the unsatisfactory nature of data collection on ethnicity and positive action measures related to ethnicity, it does not appear to have any particular ambition to resolve these problems.

A similar situation can be seen with the 'Revised National Action Plan for the Decade of Roma Inclusion 2005-2015 for 2011-2015',²⁰¹ which was adopted on 10 August 2011 and later became part of the strategy. One of the most problematic aspects of the action plan is that it relies on out-of-date data contained in the Roma Communities Atlas 2004, which no longer provides a realistic picture of the location of Roma communities. It also makes no attempt to contribute to resolving the problem of the non-existence of data collection based on ethnicity (as well as on other grounds) and relies only on the existing inadequate and insufficient data.

Nevertheless, there have been some improvements in the field of data collection in 2012-2014, mainly with regard to ethnicity and age.²⁰²

a zodpovednosť, available at www.oad.sk/sites/default/files/downloads/Akcny_plan_Zber_dat_analyza.doc (accessed 22 April 2015).

¹⁹⁹ A so-called birth number (a unique number assigned to each person at birth and used throughout their whole life for various official purposes).

²⁰⁰ The document was adopted by Government resolution No 1/2012 and can be found at www.rokovania.sk/Rokovanie.aspx/GetUznesenia/?idRokovanie=622 (accessed 22 April 2015).

²⁰¹ Revidovaný akčný plán Dekády začleňovania rómskej populácie 2005-2015 na roky 2011-2015, adopted by Government resolution No 522/2011. The document is available at www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=19992 (accessed 22 April 2015).

²⁰² For example, in September 2013 the Regional Centre of United Nations Development Programme in Bratislava, together with the Association of Towns and Municipalities in Slovakia, University in Prešov and the Government Plenipotentiary for Roma Communities, announced the first results of a project called Atlas of Roma Communities which is the second large sociographic mapping of Roma communities carried out in Slovakia (the first one was carried out in 2004 and the data contained therein became very outdated in the course of the years to follow; the 2013 Atlas is available at http://www.minv.sk/?atlas_2013, accessed 22 April 2015). In 2013, the Centre of Education of the Ministry of Employment, Social Affairs and Family carried out a project called Strategy of Active Ageing for the Slovak Republic under which it collected a significant amount of age-related data (the outputs of the project can be found at <http://www.cvmpsvr.sk/index.php/projekty/programove-obdobie-2007-2013/39-strategia-aktivneho-starnutia-pre-slovensku-republiku-kod-itms-27120230107>, accessed 22 April 2015).

The Slovak National Centre for Human Rights (the national equality body) collects information on positive action measures carried out by public administration bodies and other legal entities in accordance with article 8a of the Anti-discrimination Act (such entities are obliged to report to the equality body on these measures).²⁰³ The Slovak National Centre for Human Rights then summarises the information in its annually published reports on the observance of human rights. One conclusion that can be drawn from these reports (as well as from the generally known facts about the way in which public bodies and their policies operate) is that the adopted measures do not stem from data-based analyses, but rather from general knowledge/perceptions about existing problems and/or from wider policy documents.

In Slovakia, statistical evidence is permitted by national law in order to establish indirect discrimination. The potential to use statistical evidence follows the general admissibility conditions of evidence in courts. As has already been stated in section 2.2.1 of this report, all means that can prove the fact(s) stated by parties to the proceeding can serve as evidence before a court (Section 125 of the Civil Procedure Act).

b) Practice

In Slovakia statistical evidence in order to establish indirect discrimination is used in practice.

However, the use of statistical evidence is very scarce, in fact, it has actually only been used by one NGO, the Centre for Civil and Human Rights. One reason for this may be the non-existence of sufficient volumes of relevant data collected by the state, as per its international and national human rights obligations (the fact that there is no data means that such data cannot be used in court). Equally, the Slovak National Centre for Human Rights (the national equality body), which is obliged, *inter alia*, to monitor the situation in the field of equality and (non)discrimination, is not fulfilling its duty in a satisfactory manner (see section 7 below for more detail). Employers and institutions in general (both public and private) do not collect statistics – first, because they do not perceive it to be their duty and, secondly, because they believe it to be illegal (see section 2.3.1(a) above).

When the concept of indirect discrimination does start to be invoked,²⁰⁴ the Slovak courts are likely to look to other countries and/or the CJEU and/or the ECtHR for inspiration. However, since the concept of indirect discrimination is individualised under Slovak legislation (see section 2.3.1(a)), as compared to the group approach adopted in most jurisdictions, inspiration taken from European or foreign courts could in practice lead to an unjustifiably and illegitimately restrictive interpretation of the Slovak legislation in force (the courts may seek more ‘solid’ statistical evidence than might be required by the Slovak legislation, which relies on an individualised rather than a group approach to indirect discrimination).

The relevant cases, with legal representation provided by the Centre for Civil and Human Rights, concerned discrimination claims connected to a refusal by an office of labour, social affairs and family to pay a childbirth allowance to Roma women, pursuant to a law that was indirectly discriminatory (see section 3.2.7 for more details). The Centre for Civil and Human Rights used its own statistical data, obtained through fact-finding and surveys (e.g.

²⁰³ See Section 8a(4) of the Anti-discrimination Act.

²⁰⁴ So far, there have only been a very few instances when claimants have claimed indirect discrimination – and in these few cases the courts held correctly that indirect discrimination had not taken place; on the other hand, there have been a few cases where indirect discrimination, although not claimed by claimants, was identified by courts, but in only one of the cases was the identification correct (for more information, see Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, Košice: Poradňa pre občianske a ľudské práva, pp. 78-79. The publication is also available at <http://poradna-prava.sk/wp-content/uploads/2012/11/Publikáciu-si-môžete-stiahnuť-tu-105-MB.pdf>, accessed 22 April 2015.

figures on ethnicity of patients from hospitals in Eastern Slovakia, and numbers of refusals by offices of labour, social affairs and family in regions with a large Roma population).

Although the courts ruled in favour of the Roma women and ordered the offices of labour, social affairs and family to pay the childbirth allowance and the Supreme Court upheld the decisions, none of the courts dealt with the indirectly discriminatory nature of the claim or the statistics submitted, and the proposal to bring a preliminary question before CJEU was also ignored. Thus, in 2010, the Centre for Civil and Human Rights submitted an *actio popularis* on the same matter, using the same statistical data (the centre sued the Slovak Republic for adopting a provision that is discriminatory – see section 2.1.2). The case is pending before the court of second instance after it was dismissed by the first instance court in May 2014.²⁰⁵

In late 2014, the Centre for Civil and Human Rights also submitted a preliminary injunction request to the District Court in Stará Ľubovňa whereby it sought to prevent the construction of a so-called 'container school' (such schools have a strong element of racial segregation – see section 3.2.8 for more details). In its argumentation, the Centre for Civil and Human Rights relied on the Atlas of Roma Communities (a large sociographic mapping of Roma communities) to document overlaps between places where container schools are built and places where Roma communities live. This can also be considered to be a specific use of statistics in judicial proceedings. By the end of 2014, the preliminary injunction had not been delivered.

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Slovakia, harassment is prohibited in national law. It is defined.

Section 2a(4) of the Anti-discrimination Act defines harassment as

‘such conduct which results or can result in an intimidating, unfriendly, shameful, humiliating, insulting, degrading or offensive environment and the purpose or effect of which is or can be violation of freedom or human dignity’.

It should be noted that the definition of harassment does not explicitly stipulate that the conduct must be unwanted. This may lead to interpretations under which courts or defendants would require the application of 'objectivity tests' with regard to the capacity of the environment in question to meet the required statutory characteristics.

It is also worth noting that the general provision on prohibition of discrimination on the grounds contained in Section 2(1) of the Anti-discrimination Act ('observing the principle of equal treatment shall lie in prohibition of discrimination on the ground of sex, religion or belief, race...') provides the basic framework for applying the provisions on particular forms of discrimination in relation to the prohibited grounds (the definitions of the particular forms of discrimination do not reiterate that discrimination must take place on the prohibited grounds but rather implicitly include the general definition contained in Section 2(1), which states that discrimination must take place on the prohibited grounds). Therefore it can be argued that the definition of harassment contained in the Anti-discrimination Act is narrower than that contained in the directives, as it must take place 'on [the prohibited] grounds', as compared to the directives where it is sufficient for it to be 'related to' any of the grounds.

²⁰⁵ Decision of the District Court Bratislava I (exact date unknown), file No 12C 231/2010. The argumentation of the court is unknown since the decision has not yet been published.

In Slovakia harassment does explicitly constitute a form of discrimination. Section 2a(1) of the Anti-discrimination Act explicitly mentions harassment as a form of discrimination.

b) Scope of liability for harassment

Where harassment is perpetrated by an employee, in Slovakia the employer is liable and probably the employee would also be liable (although judicial interpretation is required on the responsibility of the latter).

The Anti-discrimination Act does not provide a direct answer as to who is to be held liable for unlawful actions breaching the principle of equal treatment; it only uses the term 'the person violating the principle of equal treatment'.²⁰⁶ Section 11(1) of the act further states that 'the claimant is obliged to identify the person who has allegedly violated the principle of equal treatment'.

The liability rules (although not explicit) are universal with regard to all forms of discrimination contained in the Anti-discrimination Act and to the duty to carry out measures to prevent discrimination (Section 2(3) of the Anti-discrimination Act). The basic interpretative frameworks to answer the above question are provided by two specific provisions of the Anti-discrimination Act.

First, according to Section 3(1) of the act, the duty to comply with the principle of equal treatment in all the areas covered by the act lies with 'everyone'. Given the fact that the provision uses the term 'everyone' and does not mention that a particular breach of the principle of equal treatment can only lead to the liability of one person, it is arguable that liability for breaches of the principle of equal treatment is not vested in sole and mutually exclusive liability holders but can lie in parallel with individuals who breach the principle of equal treatment with their direct personal actions/omissions (such as (co-)employees) and at the same time with persons with overall responsibility (such as employers). However, what is problematic in the context of this interpretation is the fact that the principle of equal treatment only applies in connection with rights of persons as stipulated by special laws (Section 3(2) of the Anti-discrimination Act) and it is therefore hard to establish the rights to which, for example, an employee of a service provider is entitled as opposed to a customer of the service provider, or as opposed to a co-employee.

Secondly, the concept of the principle of equal treatment encompassing the duty to adopt measures to prevent discrimination (Section 2(3) of the Anti-discrimination Act) also has interpretative significance in terms of liability. Provided some kind of causation is established between the actions/omissions of individuals in certain environments relevant from the point of view of the Anti-discrimination Act (such as workplaces), and negligence on the part of persons with decision-making/statutory powers in these environments is identified, the liability should also lie with these entities (e.g. employers).

Also relevant is the content of Section 5(2) of the Anti-discrimination Act, which stipulates that the principle of equal treatment must be applied in the fields of 'access and provision of' social security, healthcare, education and goods and services including housing. Thus, it follows from the quoted provision that both persons who access as well as persons who provide the specified items are entitled to protection against violations of the principle of equal treatment, and those who interact with them in these environments should be held liable for the breaches (as 'everyone' is obliged to observe the principle of equal treatment). However, the wording of Section 6(1) of the Anti-discrimination Act, which states that discrimination shall be prohibited in 'employment relationships, similar legal relationships, and in related legal relationships' is confusing in the framework of that interpretation. As labour legislation does not define any of the terms 'employment

²⁰⁶ Section 9(2) of the Anti-discrimination Act.

relationship, similar legal relationship, and related legal relationships' and legal theory defines legal relationships basically as relationships between employers and employees,²⁰⁷ it is hard to state unambiguously whether there is individual liability for discrimination between co-workers – especially given that the Labour Code does not specify the duty to observe the principle of equal treatment/prohibition of discrimination among the explicit responsibilities of the employee.²⁰⁸ The situation in respect of executive employees is different because it is easier to argue that they are also personally liable for discrimination (in any form). Although the duty to act in accordance with the principle of equal treatment is not made explicit by legislation in the case of executive employees either, the Labour Code contains various specific duties of executive employees from which the duty to observe the principle of equal treatment can be undoubtedly inferred (at least to some extent).²⁰⁹

There are also some additional statutory provisions that apply to liability for discrimination/other breaches of the principle of equal treatment. According to the general provisions of the Civil Code regarding liability for damages,²¹⁰ the damage is caused by a legal entity or a natural person provided it was caused during the performance of their business and by the people engaged to perform the business. It is of no importance whether the person engaged performs an activity in the context of an employment relationship, self-employment or on the basis 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 in relation to the employee for damage occurring to the employee due to a breach of legal regulations or due to intentional behaviour in breach of good morals during the performance of work or in direct connection with such behaviour. The employer is liable to the employee for damages occurring due to a breach of legal obligations by the personnel performing the tasks of the employer on behalf of the employer.

No court has yet dealt explicitly with any of the above-mentioned issues.

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In Slovakia, instructions to discriminate are prohibited in national law. Instructions are defined. A definition is given in Section 2a(6) of the Anti-discrimination Act and means conduct consisting of abuse of the subordinate position of a person for the purpose of discriminating against a third person.

In Slovakia instructions do explicitly constitute a form of discrimination (Section 2a(1) of the Anti-discrimination Act).

²⁰⁷ See for example Barancová, H., Schronk, R. (2007), *Pracovné právo (Labour Law)*, Bratislava, Sprint, pp. 197-208.

²⁰⁸ See Sections 81 and 82 of the Labour Code respectively.

²⁰⁹ See Section 82 of the Labour Code which lists the fundamental obligations of executive employees and reads as follows: 'An executive employee, apart from the obligations stipulated in Section 81 [general obligations of an employee], shall also be obliged in particular:

- a) to manage and check the work of employees;
- b) to create favourable working conditions and ensure safety and health protection at work;
- c) to secure remuneration of employees in accordance with generally binding legal regulations, collective agreements and employment contracts, and to comply with the principle of equal pay for equal work or work of equal value (...);
- d) to create favourable conditions for improving the professional standard of employees and for satisfying their social needs;
- e) to ensure that breaches of labour discipline shall not transpire;
- f) to ensure the adoption of timely and effective measures for protection of the employers' property.'

²¹⁰ Section 420 (2) of the Civil Code No 40/1964 Coll., as amended.

The Anti-discrimination Act also defines incitement to discriminate as ‘persuading, affirming or inciting a person to discriminate against a third person’.²¹¹ Under Section 2a(1) of the Anti-discrimination Act, incitement to discriminate is considered a form of discrimination.

There is no case law dealing with instructions or incitement to discriminate.

b) Scope of liability for instructions to discriminate

In Slovakia the instructor and the discriminator are liable.

Since instruction to discriminate is considered a form of discrimination, the general rules for liability for discrimination (see section 3.1.2 of this report) apply also to liability for discrimination by employers or service providers in cases of instruction to discriminate given by their employees. The general liability rules described in detail in section 3.1.2 below also apply to the individuals who give instructions to discriminate.

With regard to the individual liability of those who discriminate because they have received such an instruction, Section 81(a) of the Labour Code stipulates that an employee is obliged, *inter alia*, to follow the instructions of their superiors that have been given in accordance with legal regulations. It therefore follows that following instructions of superiors is only legal when these instructions do not violate the law (which is not the case of following an instruction to discriminate). Hence the rules of individual liability for following an instruction to discriminate are the same as the general rules for individual liability for any form of discrimination (see section 3.1.2 below).

The Civil Service Act²¹² stipulates that a civil servant has the right to refuse to carry out a civil task (a task to be carried out pursuant to this act) that is in conflict with generally legally binding legal regulations²¹³ (which also includes anti-discrimination legislation). A civil servant is also obliged to respect *inter alia* the Constitution and laws (which includes the duty to observe the principle of equal treatment) and apply them to the best of their knowledge and belief, and to respect and protect human dignity and human rights.²¹⁴ Civil servants are also obliged to follow the instructions of their superiors unless these instructions are in conflict with generally binding legal regulations²¹⁵ (which includes all anti-discrimination legislation). If a civil servant believes that an instruction given by their superior is in conflict with generally binding legal regulations, she or he is obliged to notify the superior in question of that fact before starting to follow the instruction. If the superior nevertheless insists on the civil servant following the instruction, she or he is obliged to notify them of that fact in writing.²¹⁶ Thus it follows that a civil servant is basically liable for following an instruction to discriminate (in accordance with the general rules of liability described in section 3.1.2), with the possible exception of a superior insisting in writing that the civil servant in question follow the instruction to discriminate (after being notified in writing by the civil servant in question of the illegality of the instruction given). Therefore, in practice, if a public employer gives an instruction to discriminate to a civil servant and the civil servant follows the instruction (without informing their superior of its illegality and without subsequently being notified in writing by the superior that she or he insist on following the instruction), both parties could be liable.

²¹¹ See Section 2(7) of the Anti-discrimination Act.

²¹² Act No 400/2009 Coll. on Civil Service and on Changing and Supplementing Some Other Laws, as amended (zákon č. 400/2009 Z. z. o štátnej službe a o zmene a doplnení niektorých zákonov v znení neskorších predpisov).

²¹³ Section 59(1)(d) of the Civil Service Act.

²¹⁴ Section 60(1)(a) of the Civil Service Act.

²¹⁵ Section 60(1)(i) of the Civil Service Act.

²¹⁶ Section 60(3) of the Civil Service Act.

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

- a) Implementation of the duty to provide reasonable accommodation in the field of employment

In Slovakia the duty to provide reasonable accommodation is included in the law. It is defined.

Under Section 7 of the Anti-discrimination Act, an employer is obliged to take measures to enable a person with a disability to have access to employment, to exercise certain activities at work, to promotion or other advancement in employment or to training. This does not apply if the adoption of such measures would impose a disproportionate burden on the employer.²¹⁷ To determine whether the measures give rise to a disproportionate burden, account must be taken of:

- the benefit that the adoption of the measure would mean for the person with a disability;
- the 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.²¹⁸

The measure shall not be considered as giving rise to a disproportionate burden if its adoption by the employer is mandatory under separate provisions.²¹⁹

Employers' duties in this regard are also prescribed by the Labour Code: Sections 158-159 of the Labour Code state 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 for employees to have the possibility of applying themselves in 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 as they can’ (Section 158(1)).

As regards employees with disabilities who cannot be employed under usual working conditions, employers ‘may set up for them sheltered workshops or sheltered workplaces’ (Section 158(2)). 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 to technological progress with a view to safeguarding their employment’. Employers must cooperate with trade unions or employee representatives in these activities.

However, the enforceability of the above-quoted provisions is very questionable. For example, according to Section 158(3) of the Labour Code, the duties of an employer stipulated by paragraphs 1 and 2 of Section 158 should be regulated in more detail by special regulations. However, no such regulations exist – unless section 7 of the Anti-discrimination Act is perceived as this type of regulation (which should serve as the interpretative framework for Sections 158 and 159 of the Labour Code in any case).

There is no case law yet on the duty to provide reasonable accommodation.

²¹⁷ Section 7(1) of the Anti-discrimination Act.

²¹⁸ Section 7(2)(a)-(c) of the Anti-discrimination Act.

²¹⁹ Section 7(3) of the Anti-discrimination Act.

b) Practice

There is no case law yet on the duty to provide reasonable accommodation. To the author's knowledge, there is no information or data available publically on how the duty to provide reasonable accommodation is administered by employers in practice.

c) Definition of disability and non-discrimination protection

There is no definition of disability contained in anti-discrimination legislation, neither in general nor for the purposes of the duty to provide reasonable accommodation. Please see section 2.1.1 for details on problems related to the definition of disability contained in Slovak legislation.

d) Duties to provide reasonable accommodation outside the field of employment

In Slovakia, there is a duty to provide reasonable accommodation for people with disabilities outside the employment field.

It should be noted that the Anti-discrimination Act, which generally applies to the fields of employment and occupation, social security, healthcare, provision of goods and services including housing and education (also in relation to disability) stipulates a legally enforceable duty to adopt measures to prevent discrimination in all the fields covered (Section 2(3) of the Anti-discrimination Act). Thus, the duty to provide reasonable accommodation for people with disabilities outside employment can be regarded to be implicitly contained in this generally framed legal duty to prevent discrimination. It is, however, not accompanied by any kind of justification test (the provision on reasonable accommodation contained in Section 7 of the Anti-discrimination Act and quoted above in Sections 2.6(a) and 2.6(b) only applies to the field of employment).

There are also some specific duties contained in other pieces of legislation. For example, the Schools Act contains special provisions designed to accommodate the needs of children and pupils with disabilities in kindergartens, primary and secondary schools and in school facilities.²²⁰ A special provision is also included in the Act on Higher Education, guaranteeing reasonable accommodation for students with specific needs, including financial support in certain circumstances.²²¹ The Road Transport Act²²² and the Railways Act²²³ also contain some special provisions that relate to creating conditions for access for people with disabilities.

e) Failure to meet the duty of reasonable accommodation

In Slovakia, failure to meet the duty of reasonable accommodation does count as discrimination (or, more accurately, as a violation of the principle of equal treatment).

A breach of the employer's duty to provide reasonable accommodation for a person with a disability as well as a refusal or failure to take certain measures is considered to be a breach of the principle of equal treatment.²²⁴

It is regarded as a violation of this principle (which is broader than the prohibition of discrimination in its individual forms and encompasses also the duty to adopt measures to prevent discrimination) and it does not equate to direct or indirect discrimination. However,

²²⁰ Act No 245/2008 Coll. on Education (Schools Act), as amended (*zákon č. 245/2008 Z. z. o výchove a vzdelávaní (Školský zákon) a o zmene a doplnení niektorých zákonov*).

²²¹ Section 16a, 57, 96 and 100 of the Act No 131/2002 Coll.

²²² Act No 56/2012 Coll. on Road Transport, as amended (*zákon č. 56/2012 Z. z. o cestnej doprave v znení neskorších predpisov*).

²²³ Act No 513/2009 Coll. on Railways and on Changing and Supplementing Other Laws, as amended (*zákon č. 513/2009 Z. z. o dráhach a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

²²⁴ Section 7(4) of the Anti-discrimination Act.

this does not mean that, in specific situations, the actions or omission of an employer cannot at the same time also fall under definitions of the specific forms of discrimination as defined by the Slovak Anti-discrimination Act – mainly direct discrimination, indirect discrimination or harassment.

There is no case law yet dealing with the application of the concept of reasonable accommodation. Nor have there been any specific measures taken or discussions initiated on appropriate ways to implement the reasonable accommodation duty. However, since the duty to provide reasonable accommodation is a part of the duty to observe the principle of equal treatment, it is judicially enforceable in accordance with Sections 9-11 of the Anti-discrimination Act, and all procedural rules contained in these sections apply, including the shift in burden of proof. In principle, the same could apply to fields falling outside the scope of employment since the duty to adopt measures to prevent discrimination applies across all fields and grounds falling under the scope of the Anti-discrimination Act (see also answer to the previous section 2.6(d)).

In the field of employment, the observance of all the duties stipulated by the Anti-discrimination Act (and hence also of the duty to provide reasonable accommodation under Section 7) and also the observance of the specific duties on the protection of employees with disabilities contained in the Labour Code (see section 2.6(a) above) are subject to supervision by the national labour inspectorate, and hence also to the fines imposed by it. On finding breaches of the Labour Code provisions on the conditions of work of persons with disabilities, the labour inspectorate is obliged to impose a fine of EUR 1 000 to 200 000 (see section 6.5(a) of this report for more details on labour inspection and on the fines).

In the field of transport, for example, the Transport Office (a regulatory body for railways) shall impose a fine of EUR 800 to 10 000 on a railway operator who ‘has not carried out sufficient measures to enable the use of public transport on railways to persons with disabilities and to persons with prams and animals’.²²⁵

f) Duties to provide reasonable accommodation in respect of other grounds

In Slovakia there is a duty to provide reasonable accommodation in respect of other grounds in the public and the private sector.

The Anti-discrimination Act sets out in its basic provisions the general characteristics of the principle of equal treatment. According to this provision (Section 2(3) of the Anti-discrimination Act) compliance with this principle will also (apart from prohibition of discrimination on the specified grounds) involve the adoption of measures to prevent discrimination. From this principle it can be inferred that the duty to provide reasonable accommodation applies not only to employers and people with disabilities in the area of employment, but to all other areas and grounds that are regulated by the existing laws prohibiting discrimination. Therefore, the duty to provide reasonable accommodation applies in the fields of employment, social security (including social advantages), healthcare, and provision of goods and services (including housing and education). It applies to the grounds of sex, religion or belief, race, affiliation with nationality (*národnosť*) 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, or the reason of reporting criminality or other anti-social activity (grounds protected under the Anti-discrimination Act), and in principle also to additional grounds contained in other legislation where the duty to observe the principle of equal treatment is entrenched. However, this general duty to provide reasonable accommodation following from the duty to prevent discrimination is definitely not of the same quality as the above-mentioned regulation on the obligations of employers – especially because the legislation does not provide any detail on how the duty is supposed to be fulfilled nor whether any justification is possible.

²²⁵ See Section 109(8)(d) of the Act No 513/2009 Coll. on Railways as amended.

There is no case law on the issue yet. No guidelines have been issued by the equality body or by any other body on how the duty to prevent discrimination should be carried out.

g) Accessibility of services, buildings and infrastructure

In Slovakia, national law requires services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way.

The regulation determining details of general technical requirements in construction requires buildings (for example, residential buildings, non-residential buildings designed for use by the public, buildings in which people with limited mobility and orientation are likely to be employed) and infrastructure (for example, pavements and paths for pedestrians, car parks, access to parks, access to post boxes and cash dispensers etc.) to be designed and built in a disability-accessible way.²²⁶ Buildings and infrastructure that do not meet the criteria set by the regulation should not receive approval from the relevant construction office (however, in reality, these rules are often ignored or violated).

A building constructed after 1 December 2002 (the date when the regulation came into force) and not made accessible for persons with disabilities could be considered in breach of the principle of equal treatment (although the link is only implicit and interpretative), in the context of the legal definition of the principle of equal treatment, which also encompasses the duty to adopt measures to prevent discrimination. This interpretation is basically applicable to all the areas covered by the Anti-discrimination Act (employment and occupation, social security, healthcare and provision of goods and services including housing and education). There is no case law on this issue yet.

In Slovakia, national law contains a general duty to provide accessibility by anticipation for people with disabilities. However, this general duty is not explicit and is a result of interpretation of the existing legislative provisions.

In all the fields covered by the Anti-discrimination Act (employment and occupation, social security, healthcare, provision of goods and services including housing and education), account must be taken of the general duty to adopt measures aimed at the prevention of discrimination that is enshrined in Section 2(3) of the Anti-discrimination Act and which represents, besides the prohibition of discrimination, a legally enforceable component of the principle of equal treatment. It also serves as an interpretative framework for the legal duties mentioned below.

In the other fields covered by the directives (but also in the field of employment to a significant extent), the regulation determining details of general technical requirements in construction applies. It sets out special technical requirements taking account of the needs of people with disabilities in buildings (for example, residential buildings, non-residential buildings designed for use by the public, buildings in which persons with limited mobility and orientation are likely to be employed) and infrastructure (for example, pavements and paths for pedestrians, car parks, access to parks, access to post boxes and cash dispensers etc.). Anyone who is involved in construction (mainly architects, builders and so on) is bound by these requirements. Justification for non-compliance includes 'serious cultural, historical or technical/operational reasons; the justification must be contained in project documentation'.²²⁷

²²⁶ Regulation of the Ministry of Environment of the Slovak Republic No 532/2002 Coll. Determining Details of General Technical Requirements in Construction and General Technical Requirements for Buildings used by Persons with Restricted Mobility and Orientation (*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*).

²²⁷ Section 2(4) of the regulation.

Section 4(2) of the Road Transport Act²²⁸ stipulates that carriers are obliged to have transport orders that contain, *inter alia*, 'the scope of special rights and duties of passengers with a disability and of passengers with limited mobility including accompanying persons, as well as of pensioners, pupils and students'.²²⁹ It also stipulates that the transport order should contain the 'conditions of transport of a specially trained dog that provides assistance to a person with a serious disability'.²³⁰ Section 13(4) of the Road Transport Act also stipulates that 'passengers with a disability who are accompanied by a specially trained dog or passengers with limited mobility shall have the right to a reserved seat'. There is no justification clause applicable in case of a failure to satisfy the duties mentioned.

The Railways Act²³¹ contains general rules for creating conditions for access for people with disabilities. Special regulations allowing reduced fares for public transport are adopted by the self-governing regions.

There is no case law in this field yet.

h) Accessibility of public documents

There is no universal duty on the state administration and public services in general to translate all their documents into Braille and/or make their information automatically and universally accessible to all people with visual impairments. There are a few laws containing some partial duties in this regard.

For example, the Free Access to Information Act²³² (enabling *inter alia* requests for information from public bodies and some other bodies about their everyday activities,²³³ apart from a few exceptions stipulated by the law)²³⁴ makes it explicit that it is also possible to request information in Braille and in an enlarged font.²³⁵ If a person (who has to demonstrate that she or he is a blind person or a person with visual impairment – by submitting the corresponding certificate issued by the relevant state body)²³⁶ requests information in Braille or in an enlarged font, the body addressed with the request is obliged to provide the information requested in the form requested.²³⁷ However, in case of information requested in Braille, the standard maximum statutory period for providing the information requested extends from 8 working days to 15 working days,²³⁸ and it can even be extended (for example in cases when a higher amount of separated or different pieces of information is sought by one request, or in cases of technical problems with searching for the information by the public body concerned, or in cases of technical problems) for another maximum 15 working days (instead of maximum 8 days when information is requested in all other forms).²³⁹

There are also some other partial duties and entitlements that relate to providing services to people who are blind or have visual impairments. For example Act 308/2000 on

²²⁸ Act No 56/2012 Coll. on Road Transport, as amended (zákon č. 56/2012 Z. z. o cestnej doprave v znení neskorších predpisov).

²²⁹ Section 4(2)(f) of the Road Transport Act.

²³⁰ Section 4(2)(h) of the Road Transport Act.

²³¹ Act No 513/2009 Coll. on Railways, as amended (zákon č. 513/2009 Z. z. o dráhach v znení neskorších predpisov).

²³² Act No 211/2000 Coll. on the Free Access to Information and on changing and supplementing other laws, as amended (Free Access to Information Act) (zákon č. 211/2000 Z. z. o slobodnom prístupe k informáciám a o zmene a doplnení niektorých zákonov (zákon o slobode informácií) v znení neskorších predpisov).

²³³ The list of the bodies obliged to provide information is contained in Section 2 of the act.

²³⁴ The list of exceptions is contained in Sections 8-13 of the act.

²³⁵ Section 16(2)-(4) of the Free Access to Information Act.

²³⁶ Sections 16(3) and 16(4) of the Free Access to Information Act.

²³⁷ Section 16(5) of the Free Access to Information Act.

²³⁸ Section 17(1) of the Free Access to Information Act.

²³⁹ Section 17(2) of the Free Access to Information Act.

Broadcasting and Re-Transmission requires the broadcaster to ensure that for every television programme service that is broadcast digitally at least 20 % of all the programmes are accompanied by audio commentary for people who are blind.²⁴⁰

The situation for people who are deaf or who have hearing difficulties is somewhat better as there is a special law on sign language for the deaf.²⁴¹ The act stipulates that people who are deaf have the right to use sign language, to educate themselves using sign language, and to access information with the help of sign language in television broadcasts of public institutions, in libraries and in film libraries.²⁴² The act also stipulates that deaf people have the right to a sign language interpreter who can translate into or from the state language to resolve basic life problems of deaf people who are in contact with state bodies, bodies of regional self-administration and other legal entities and natural persons.²⁴³ These translation services are provided for free unless special legal regulations stipulate for compensation of costs (connected mainly to legal proceedings).²⁴⁴ Although this law is relatively complex and is unambiguous in that it provides the right to interpretation to deaf people in many everyday situations, the practice shows that there are many cases where people are unable to access this service, mainly because of information and communication barriers. The service is used mainly by younger people, people from bigger cities and people with a higher degree of education as compared to people who are older, have a lower degree of education and live in rural places.

The Free Access to information Act (cited above) also emphasises the right of a deaf person or a person with a hearing impairment to choose the way in which they want to receive the information requested in accordance with the act.²⁴⁵

In judicial, administrative and other proceedings it is common (at least in theory – the practice has not yet been mapped) for an interpreter to be provided to anyone who does not speak the language of the proceedings. For example, the Act on the Administrative Code and on the Office Code for Courts stipulates that ‘if a citizen acts before a court in a language other than Slovak, the court engages an interpreter’ and that this applies also applies to hearings involving persons who are ‘deaf, dumb or deaf-dumb’.²⁴⁶

As far as the communication of public authorities and their representatives is concerned, cases in which they translate their direct media communication (e.g. press conferences) into sign language are very rare. This has only happened in few instances so far (for example, in some Ministry of Justice press conferences in 2011-2012, and in a few press conferences held by political parties).

²⁴⁰ See Section 18(3) of the Act No 308/2000 Coll. on Broadcasting and Re-Transmission and on Changing the Act No 195/2000 Coll. on Telecommunications, as amended (*zákon č. 308/2000 Z. z. o vysielaní a retransmisii a o zmene zákona č. 195/2000 Z. z. o telekomunikáciách v znení neskorších predpisov*).

²⁴¹ Act No 149/1995 Coll. on the Sign Language of Persons who are Deaf (*zákon č. 149/1995 Z. z. o posunkovej reči nepočujúcich osôb*). The act also considers a person who is not able to perform workaday audio communication even with a compensatory equipment as person who is deaf (see Section 2 of the act).

²⁴² Section 4 of the Act No 149/1995 Coll. on the Sign Language of Persons who are Deaf.

²⁴³ Section 5(1) of the Act No 149/1995 Coll. on the Sign Language of Persons who are Deaf.

²⁴⁴ Section 5(2) of the Act No 149/1995 Coll. on the Sign Language of Persons who are Deaf.

²⁴⁵ Section 16(5) of the Free Access to Information Act.

²⁴⁶ Sections 51(1) and 51(2) of the Ordinance of the Ministry of Justice of the Slovak Republic No 543/2005 Coll. on the Administrative Code and on the Office Code for Courts, as amended (*vyhláška Ministerstva spravodlivosti SR č. 543/2005 Z. z. o Spravovacom a kancelárskom poriadku pre okresné sudy, krajské sudy, Špeciálny súd a vojenské sudy v znení neskorších predpisov*).

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

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)

In Slovakia, there are no residence or citizenship/nationality requirements for protection under the relevant national laws transposing the directives. In other words, protection against discrimination in the national legal system is not conditional on a person's citizenship or nationality and the Anti-discrimination Act has no specific requirements in this regard.

However, Section 4(1)(a) of the Anti-discrimination Act explicitly stipulates that the provisions of the act will not apply to differences of treatment resulting from the requirements for entry and residence for foreigners in Slovakia, including the treatment of these foreigners provided for under separate provisions,²⁴⁷ except for citizens of EU Member States, a state which is party to the European Economic Area Agreement, Swiss citizens and stateless persons and their family members.

According to the Act on the Residence of Foreigners, a foreigner is anybody who is not a citizen of the Slovak Republic.²⁴⁸

In addition, separate acts set out the requirement to be a citizen of the Slovak Republic for specific professions or employment.²⁴⁹

Article 35 of the Constitution guarantees the right to choose a profession and appropriate training freely, the right to conduct entrepreneurial or other gainful activity, as well as the right to work and to material welfare for those who, through no fault of their own, are unable to enjoy the right to work. Article 35(4) states that the law may provide a different regulation of these rights for foreigners.²⁵⁰

3.1.2 Protection against discrimination (Recital 16 Directive 2000/43)

a) Natural and legal persons

In Slovakia the personal scope of anti-discrimination law covers natural and legal persons for the purpose of protection against discrimination.

The Anti-discrimination Act contains a specific definition of what constitutes discrimination against legal persons. According to Section 2a(9), discrimination against a legal person is

‘a failure to comply with the principle of equal treatment in relation to this person on the grounds of discrimination listed in Section 2(1) of the Anti-discrimination Act²⁵¹ with respect to its members, associates, shareholders, members of its bodies,

²⁴⁷ E.g. Act. No 404/2011 Coll. on the Residence of Foreigners and on amending and supplementing certain laws, as amended (*zákon č. 404/2011 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*), Act. No 480/2002 Coll. on Asylum and on amending and supplementing certain laws, as amended (*zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

²⁴⁸ Section 2(2) of the Act No 404/2011 Coll. on the Residence of Foreigners and on amending and supplementing certain laws.

²⁴⁹ Senior state officials, prosecutors, constitutional judges, judges, police officers, customs officers, fire and rescue service members, mountain rescue service members and professional soldiers.

²⁵⁰ E.g. the Act No 404/2011 Coll. on the Residence of Foreigners and on amending and supplementing certain other laws, Act No 480/2002 Coll. on Asylum and on amending and supplementing certain other laws.

²⁵¹ 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, or the reason of reporting criminality or other anti-social activity.

employees, persons acting on its behalf or persons on behalf of which such a legal entity is acting’.

Therefore, with regard to protection, the Anti-discrimination Act does not distinguish between natural and legal persons. The national provisions comply with the directives.

In Slovakia the personal scope of anti-discrimination law covers natural and legal persons for the purpose of liability for discrimination.

Section 3(1) of the Slovak Anti-discrimination Act introduced a general provision according to which the principle of equal treatment is binding on ‘everyone’. This means that in terms of liability for discrimination, the Anti-discrimination Act does not distinguish between natural and legal persons. The only explicit exception is housing where the duty to apply the principle of equal treatment does not apply to natural persons who are not entrepreneurs.²⁵² There is no case law on the issue.

b) Private and public sector including public bodies

In Slovakia the personal scope of national law covers private and public sector including public bodies for the purpose of protection against discrimination.

Under Section 2a(9), discrimination against a legal person is:

‘a failure to comply with the principle of equal treatment in relation to this person on the grounds of discrimination listed in Section 2(1) of the Anti-discrimination Act²⁵³ with respect to its members, associates, shareholders, members of its bodies, employees, persons acting on its behalf or persons on behalf of whom such a legal entity is acting’.

Therefore, with regard to protection, the Anti-discrimination Act does not distinguish between natural and legal persons, and, with regard to legal persons, nor does it distinguish between the type of entity protected (i. e. whether it is public or private). The national provisions comply with the directives, although there is no case law on the issue, and the issue of protection of public bodies has not yet been subject to public discussion in Slovakia.

In Slovakia the personal scope of anti-discrimination law covers private and public sector including public bodies for the purpose of liability for discrimination.

The Anti-discrimination Act does not distinguish between public and private bodies in terms of liability. This can be inferred from the general rule contained in Section 3(1) of the Anti-discrimination Act, which stipulates that the principle of equal treatment is binding on ‘everyone’, and also from Sections 5 and 6 of the Anti-discrimination Act which provide details on the material scope of the act (fields covered) without specifying what kind of bodies they cover (e.g. whether public or private). The only explicit exception where the liability does not apply to a part of the ‘private sector’ is housing, where the duty to apply the principle of equal treatment does not apply to natural persons who are not entrepreneurs.²⁵⁴

However, it is questionable whether some statutory duties that are carried out by public bodies and are generally perceived as services to the public (such as the provision of

²⁵² See Section 5(2)(d) of the Anti-discrimination Act.

²⁵³ 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, or the reason of reporting criminality or other anti-social activity.

²⁵⁴ See Section 5(2)(d) of the Anti-discrimination Act.

information on request by public bodies, or aid provided by the state in case of emergencies) can be perceived as 'services' in the sense of the directives.

3.2 Material scope

3.2.1 Employment, self-employment and occupation

In Slovakia, national legislation applies to all sectors of private and public employment, self-employment and occupation, military service, holding statutory office, for the five grounds. If contract work falls outside legal relations covered by the Labour Code, it is probably not covered by the anti-discrimination provisions.

Section 6(1) of the Anti-discrimination Act stipulates that the principle of equal treatment must be applied in employment relationships, similar legal relationships and related legal relationships.²⁵⁵ Section 6(2)(a) states further that the principle of equal treatment will be applied only in connection with rights of persons provided for under special laws regulating mainly the field of employment, occupation and other gainful activities or functions, and contains a footnote referring (through a non-exhaustive list) to the Labour Code (which regulates the whole sphere of private employment and a part of public employment) and to the Act on Public Service (which regulates the sphere of public service). Accordingly, employment for the purpose of the Anti-discrimination Act means a complex set of legal relations resulting from labour, service, contractual and other relations relating to gainful activities.

Section 3(1) of the Anti-discrimination Act states that the obligation to observe the principle of equal treatment applies to 'everybody' in the field of (*inter alia*) employment relationships and related legal relationships. Thus it covers the entire sphere of employment, self-employment and occupational relationships in the private and public spheres, including customs officers, soldiers performing military service, police officers, members of the Slovak intelligence service, the prison and court guard, railway police officers and members of the fire and rescue service performing civil service.²⁵⁶

Article 1 of the general principles of the Labour Code stipulates the right of natural persons to free choice of their employment, to fair and satisfying working conditions, and to protection against arbitrary dismissal in accordance with the principle of equal treatment enshrined in the Anti-discrimination Act. Section 13 of the Labour Code stipulates the duty of an employer to treat employees in accordance with the principle of equal treatment constituted by the Anti-discrimination Act. The duty to observe the principle of equal treatment (with reference to the Anti-discrimination Act) in relation to civil servants is enshrined in Section 4 of the Civil Service Act.

Act 455/1991 on Licensed Trades (the Small Business Act), states in Section 5a that the rights provided for in the act are 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, this act only regulates the conditions for licensed trades for self-employed persons in relation to the state – i. e. for setting up and running their business. It does not regulate the relations between the

²⁵⁵ Neither the Anti-discrimination Act nor case-law stipulate the meaning of "similar legal relationships and related legal relationships". However, given the content of Section 6(2) and references to other pieces of legislation contained therein (by means of footnotes), it is arguable that "similar legal relationships and related legal relationships" comprise a broad range of relationships in the field of paid work (such as the public service, employment services – such as vocational training or counselling provided to jobseekers, or legal relationships connected to membership and functioning in employees' or employers' organisations, or in professional organisations (such as legal or medical professionals' bars).

²⁵⁶ The most relevant acts are Act No 311/2001 Coll. the Labour Code, the Act No 400/2009 Coll. Civil Service Act, and some special laws on performing public service in special fields (the judiciary, military service, Police Corps, Slovak Information Service, etc.).

freelancers and their purchasers, which are regulated either by the Civil Code²⁵⁷ or the Commercial Code.²⁵⁸ However, neither the Civil Code nor the Commercial Code contain an anti-discrimination clause with regard to entering into contracts, and, interpreted also in the light of Section 6(2) of the Anti-discrimination Act (the applicability of the Anti-discrimination Act only in connection with the rights of persons provided for under special laws – see above), it is debatable what rights self-employed persons (or businesses in general) have as against those of potential purchasers, especially in the period prior to the start of a contract relationship or after it has ceased. It is true that Section 5(2) of the Anti-discrimination Act stipulates the duty to observe the principle of equal treatment in access to and providing social security services and insurance and social advantages, healthcare, education and services, including housing (which is moreover again only in connection with rights of persons provided for under special laws), but the wording of the provision applies most likely to ‘contracting parties’, meant in the sense of service receivers, entitled to proper and non-discriminatory services by their providers.

There is no case law that would deal with the issues discussed above.

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))

In Slovakia, national legislation includes 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 for the five grounds in both private and public sectors as described in the directives.

Under Sections 6(1) and 6(2)(a)(b) of the Anti-discrimination Act, the principle of equal treatment is applicable (on all the grounds prohibited by the Anti-discrimination Act – see section 2.1 of this report) to the rights of persons under the provisions of acts regulating access to employment, occupation, other gainful activities or functions, including job specifications, selection criteria, recruitment conditions 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 relationships in the private and the public sector. At the same time, all laws regulating the public and the private sector employment refer to the Anti-discrimination Act and/or are based on it and/or supplement it. The applicable provisions (apart from the ones contained in the Anti-discrimination Act) are, for example, Article 6 (on the basic principles) and Section 41 of the Labour Code, Section 4(2) of the Civil Service Act, and Section 5a of the Act on Licensed Trades (Small Business Act).²⁵⁹

There is no case law specifically concerning the applicability of provisions relating to access to employment, self-employment or occupation.

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

In Slovakia, national legislation includes working conditions including pay and dismissals, for all five grounds and for both private and public employment.

Section 6(2)(b) of the Anti-discrimination Act expressly covers, for the whole area of employment relationships, similar relationships and related legal relationships, and on all

²⁵⁷ Act No 40/1964 Coll.

²⁵⁸ Act No 513/1991 Coll.

²⁵⁹ Act No 455/1991 Coll.

the grounds contained in the Anti-discrimination Act (see section 2.1 above), 'the performance of employment²⁶⁰ and working conditions, including remuneration, promotion and dismissal', in which the principle of equal treatment applies (Section 6(1) of the Anti-discrimination Act).

According to the third sentence of Article 8 of the Basic Principles of the Labour Code, and Section 158 of the Labour Code, the employer must create such working conditions for employees with disabilities as to enable them to apply and upgrade their work skills, taking account of their state of health.

As far as equal pay is concerned, Section 119a(1), first sentence of the Labour Code provides that 'wage conditions must be agreed without any form of sex discrimination'. This applies to 'all remuneration for work and benefits that are paid or will be paid in relation to employment according to the other provisions of this act or special regulations'.²⁶¹ According to Section 119a(2), first sentence, 'women and men have the right to equal pay for equal work or for work of equal value'. These provisions also apply to employees of the same sex if they carry out equal work or work of equal value.²⁶² Therefore it can be argued that these provisions apply equally to all other prohibited grounds of discrimination.

– Occupational pensions constituting part of pay

Occupational pensions constitute part of pay. This can be inferred from the provisions on equal pay for equal work or work of equal value of women and men that also apply to other non-discrimination grounds (see the previous paragraph) and those that indirectly define pay, for the purposes of guaranteeing equal pay for equal work and work of equal value, as 'all remuneration for work and benefits that are paid or will be paid in relation to employment according to the other provisions of this act or special regulations'.²⁶³

The Anti-discrimination Act does not cover the prohibition of discrimination with regard to occupational pensions explicitly, although it contains an explicit reference to remuneration (see the introductory part to section 3.2.3 above), and hence also to occupational pensions (see also the previous paragraph).

In respect of occupational pension schemes, it should be noted that regular entitlements to old-age, sickness, disability, industrial accident and occupational disease and unemployment benefits do not generally come under the system of occupational pension schemes in Slovakia. Instead, they are covered by the state social security system. Only 'supplementary pension insurance' could be identified as a legally regulated occupational pension. The purpose of supplementary pension saving is to enable a participant in the pension scheme to acquire a supplementary retirement income in old age and a supplementary retirement income after termination of a hazardous occupation (in accordance with the legal classifications)²⁶⁴ or after termination of work as a dance artist (without regard to the style and technique) or a musician playing a wind instrument.²⁶⁵ Within the framework of supplementary pension insurance, an employer pays, on the ground of a contract, a regular contribution for employees to a supplementary pension company.

²⁶⁰ The term 'employment' includes occupation, other gainful activity or function.

²⁶¹ Section 119a(1), second sentence, of the Labour Code.

²⁶² See Section 119a(4) of the Labour Code.

²⁶³ Section 119a(1), second sentence, of the Labour Code.

²⁶⁴ See Sections 31(4) and 31(5) of the Act No 355/2007 Coll. on the Protection, Support and Development of Public Health, as amended (*zákon č. 355/2007 Z. z. o ochrane, podpore a rozvoji verejného zdravia a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

²⁶⁵ Section 2(2) of Act No 650/2004 Coll. on Supplementary Pension Saving and on amending and supplementing certain laws (*zákon č. 650/2004 Z. z. o doplnkovom dôchodkovom sporení a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

Under Section 7 of the Act on Supplementary Pension Saving, discrimination in the performance of supplementary pension saving is prohibited, pursuant to the Anti-discrimination Act, unless the Act on Supplementary Pension Saving states otherwise.

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))

In Slovakia, national legislation applies to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult lifelong learning courses.

Section 6(2)(c) of the Anti-discrimination Act stipulates the duty to observe the principle of equal treatment on all the grounds prohibited within it (see section 2.1 above) and in connection with the rights for which provision is made in separate acts in the area of access to vocational training, further vocational training and participation in active labour market policy programmes, including access to guidance services regarding employment selection and change of employment.

By defining 'further education' in Section 2(3), the Act on Lifelong Learning²⁶⁶ indirectly defines what is to be understood under the term 'vocational training'. Further education is defined as:

'education in educational institutions of further education, which follows school education or other education following school education. Further education facilitates the acquisition of a partial or full qualification or the opportunity to complete, renew, expand or deepen the qualifications acquired through school education or to satisfy interests and acquire the capacity to participate in the life of society. The successful completion of further education does not confer a higher education degree'.

The Act on Lifelong Learning, although abolishing and building on Act 386/1997 on Further Education, which had contained a direct and explicit reference to the Anti-discrimination Act, does not contain any equality/anti-discrimination clause or any reference to the Anti-discrimination Act. In this respect, the adoption of the Act on Lifelong Learning is a backwards step.

The Act on Higher Education, regulating university education, stipulates that the rights provided under the act will be guaranteed in accordance with the principle of equal treatment.²⁶⁷

There is no case law that would be relevant with regard to the applicability of vocational training provisions.

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))

In Slovakia, national legislation includes membership of, and involvement in workers or employers' organisations as formulated in the directives for all five grounds and for both private and public employment.

²⁶⁶ Act No 568/2009 Coll. on Lifelong Learning and amending and supplementing certain laws, as amended (zákon č. 568/2009 Z. z. o celoživotnom vzdelávaní a o zmene a doplnení niektorých zákonov v znení neskorších predpisov).

²⁶⁷ Section 55(2) of the Act No 131/2002 Coll. on Higher Education and on changing and supplementing other acts, as amended (zákon č. 131/2002 Z. z. o vysokých školách a o zmene a doplnení niektorých zákonov v znení neskorších predpisov).

Sections 6(1) and 6(2)(d) of the Anti-discrimination Act prohibit discrimination on all the grounds covered by the Anti-discrimination Act (see section 2.1 above) in connection with rights provided for by separate acts in the spheres of membership of and activity in employees' organisations, employers' organisations and organisations bringing together people of certain occupations, including the benefits that these organisations provide to their members.

There is no case law regarding the issue.

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

In Slovakia, national legislation includes social protection, including social security and healthcare as formulated in the Racial Equality Directive.

Sections 5(1) and 5(2)(a)(b) of the Anti-discrimination Act prohibit discrimination on all the grounds contained in the Anti-discrimination Act (see section 2.1 above) in conjunction with special laws existing in the area of access to and provision of social assistance (now redefined as social services in the relevant legislation),²⁶⁸ social insurance, old-age pension insurance, supplementary pension insurance, state social support, social advantages and healthcare.

As there is a significant overlap between social advantages as defined by the Court of Justice and some benefits as established by the legislation on 'state social support', the state is also frequently a provider of benefits which, although legislatively defined as 'state social support', *de facto* represent 'social advantages' as specified by the Court of Justice (see also section 3.2.7 below).

In the field of 'state social support', a new Act on Aid in Material Need²⁶⁹ was adopted on 26 November 2013 (coming into effect on 1 January 2014), substituting the previous Act on Aid in Material Need.²⁷⁰ The newly adopted Act on Aid in Material Need (the 2013 act) regulates *inter alia* providing financial aid to those who are deemed to be in material need.²⁷¹ Material need is defined as a situation where the income of members of a household does not reach the level of the so-called 'minimum living threshold' (a sum stipulated by a special law;²⁷² in 2014, the sum for one adult was EUR 198.09 per month, the sum for each other adult assessed together with the first adult within a household, e.g. a husband or wife of that person, was EUR 138.19 per month, and the sum for a child was EUR 90.42 per month)²⁷³ and the members of the household are unable to or cannot secure or increase an income through work, exercise of property or property-related rights, or through claiming their entitlements.²⁷⁴ The allowance (financial aid in material need) is supposed to secure basic living conditions.²⁷⁵ Under the 2013 act, the basic sum of this

²⁶⁸ Act No 448/2008 Coll. on Social Services and on amending and supplementing Act No 455/1991 Coll. on Licensed Trades (Small Business Act), as amended (*zákon č. 448/2008 Z. z. o sociálnych službách a o zmene a doplnení zákona č. 455/1991 Z. z. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov*).

²⁶⁹ Act No 417/2013 Coll. on Aid in Material Need and on changing and supplementing other laws, as amended (*zákon č. 417/2013 Z. z. o pomoci v hmotnej núdzi a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

²⁷⁰ Act No 599/2003 Coll. on Aid in Material Need and on Changing and Supplementing Other Laws, as amended (*zákon č. 599/2003 Z. z. o pomoci v hmotnej núdzi a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

²⁷¹ See Section 1(1) of the Act No 417/2013 Coll. on Aid in Material Need.

²⁷² Act No 601/2003 Coll. on the Living Minimum and on changing and supplementing other laws, as amended (*zákon č. 601/2003 Z. z. o životnom minime a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

²⁷³ See Section 2 of the Act on the Living Minimum.

²⁷⁴ Section 2(1) of the Act No 417/2013 Coll. on Aid in Material Need.

²⁷⁵ Section 10(1) of the Act No 417/2013 Coll. on Aid in Material Need.

allowance for an adult living alone is EUR 61.60 per month, for a couple without children it is EUR 107.10 per month, for an individual with one to four children it is EUR 117.20 per month, for a couple with one to four children it is EUR 160.40 per month and so on (with the principle being the more people who are assessed together, the lower the average payment per person).²⁷⁶ It can clearly be seen that the allowance provides a very small amount of financial aid for very basic survival.

The difference to the previous Act on Aid in Material Need is that the newly adopted act of 2013 contains a provision (Section 10(3)) that reduces the payment of the material need allowance by a sum of EUR 61.60 per each adult person (living in a household which is in consideration for a payment of the allowance) who does not carry out some kind of 'work in the public interest' (for example, works organised by municipalities to maintain public premises), some kind of voluntary work (pursuant to a special law on voluntarism)²⁷⁷ or some kind of work that prevents or solves emergency situations, for at least 32 hours per month.

The provision of the 2013 act, conditioning the payment of the material need allowance by carrying out 'works in the public interest' for a minimum of 32 hours a month was presented as a way of motivating the Roma (the adoption of the act was presented by the Government representatives who proposed it as a part of the 'Roma Reform' that was introduced in 2013, so from the very beginning there was no doubt against whom the act was directed) to work and 'deserve' the payments that they receive from the state, and to prevent people from getting something from the state 'for free'. There is also no doubt that Roma represent a significant group of people who are in material need in Slovakia, due to structural discrimination in all fields including education, employment and housing – so it is also very clear on whom the act has impact.

The act was also criticised very heavily by civil society, with the main arguments being that the duty to work 32 hours a month minimum in order to obtain the very minimum allowance from the state for survival (often the only money people in material need have at their disposal) constitutes forced labour (also in the context of international human rights treaties), not to mention the fact that the allowance, although serving as a *de facto* 'pay' for work, will not be accompanied by the social benefits (such as social insurance, paid holiday, sick leave etc.), which normally accompany any paid work and represent standard labour law and social security law requirements. NGOs also noted that the adopted measure is economically inefficient since the estimated increased costs for coordination of the works in the public interest were extremely high (the estimated costs for the coordination were EUR 9 to 11 million a year)²⁷⁸ – which may also indicate that the adoption of the act and the respective provision was racially motivated. On 15 January 2014, the Public Defender of Rights (the Slovak ombudswoman) submitted a constitutional complaint against the act, alleging violations of the Constitution and various international instruments, invoking, among other rights, the right to equality and the right not to be subject to forced labour. The Constitutional Court has not decided the case yet. To the author's best knowledge, the Government is not carrying out any monitoring of the implementation and impacts of the disputed provisions.

²⁷⁶ See Section 10(2) of the Act No 599/2003 Coll. on Aid in Material Need.

²⁷⁷ Act No 406/2011 Coll. on Volunteerism and on changing and supplementing other laws (*zákon č. 406/2011 Z. z. o dobrovoľníctve a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

²⁷⁸ See for example Balážová, G., Gallová Kriglerová, E., Chudžíková, A., Lajčáková, J., Surová, S., Številová, Z. (2013), *Menšinová politika na Slovensku v roku 2013 : Výročná správa* (Minority Policies in Slovakia in 2013 : Annual Report), Centrum pre výskum etnicity a kultúry, 2013, pp. 65-78, available at <http://www.cvek.sk/uploaded/files/Mensinova%20politika%20Vyrocná%20správa%202013.pdf> (accessed 22 April 2015).

The basic law on the state social security scheme is the Social Insurance Act.²⁷⁹ An integral part of the state social security system is also formed by the old-age pension scheme. The Social Insurance Act states that policyholders have rights in the exercise of social insurance in compliance with the principle of equal treatment in social security established in the Anti-discrimination Act.

The same applies to police officers, professional soldiers and soldiers in preparatory service under the Act on Social Security for Police Officers and Soldiers.²⁸⁰

The Social Services Act²⁸¹ regulates legal relations in connection with the provision of social services.²⁸² The Social Services Act contains a principle of equal treatment clause and refers to the Anti-discrimination Act, as does the Act on Benefits for Compensation of Serious Disability,²⁸³ which regulates legal relationships connected with providing financial contributions aimed at compensating for the social consequences of 'serious disabilities'.

The Act on Old-Age Pension Saving contains a prohibition of discrimination clause formulated as a referral to the Anti-discrimination Act.²⁸⁴ Similarly, according to the Act on Supplementary Pension Saving, discrimination in the performance of supplementary pension saving is prohibited in compliance with the Anti-discrimination Act, unless the Act on Supplementary Pension Saving states otherwise.²⁸⁵

The right to healthcare guaranteed under the Act on Healthcare, like the right to social security, goes beyond the scope of Directive 2000/43 in terms of the grounds covered. The act contains a principle of equal treatment clause and refers to the Anti-discrimination Act (for grounds, see section 2.1 above).²⁸⁶

²⁷⁹ Act No 461/2003 Coll. on Social Insurance as amended (*zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov*).

²⁸⁰ Act No 328/2002 Coll. on Social Security for Police Officers and Soldiers and on amending and supplementing certain acts as amended (*zákon č. 328/2002 Z. z. o sociálnom zabezpečení policajtov a vojakov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

²⁸¹ Act No 448/2008 Coll. on Social Services and on amending and supplementing Act No 455/1991 Coll. on Licensed Trades (Small Business Act), as amended (*zákon č. 448/2008 Z. z. o sociálnych službách a o zmene a doplnení zákona č. 455/1991 Z. z. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov*).

²⁸² A social service is defined as 'expert activity, service activity or other activity or activities aimed at a) the prevention of the development of an unfavourable social situation, resolving an unfavourable social situation or mitigating the unfavourable social situation of a natural person, family or community; b) sustaining, renewing or developing the capacity of a natural person to conduct an independent life and supporting their integration into society; c) maintaining the conditions necessary to satisfy the basic needs of a natural person; d) resolving a critical social situation affecting a natural person and their family; e) the prevention of social exclusion of a natural person and their family'. See Section 2(1) of the Act No 448/2008 Coll. on Social Services.

²⁸³ Act No 447/2008 Coll. on Benefits for Compensation of Serious Disability, amending and supplementing certain laws, as amended (*zákon č. 447/2008 Z. z. o peňažných príspevkoch na kompenzáciu ťažkého zdravotného postihnutia a o zmene a doplnení niektorých zákonov, v znení neskorších predpisov*).

²⁸⁴ Section 9 of Act No 43/2004 Coll. on Old-Age Pension Saving and amending and supplementing certain laws, as amended (*zákon č. 43/2004 Z. z. o starobnom dôchodkovom sporení a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

²⁸⁵ Section 7(1) of the Act No 650/2004 Coll. on Supplementary Pension Saving. The purpose of supplementary pension saving is to enable a participant in the pension scheme to acquire a supplementary retirement income in old age and a supplementary retirement income after termination of a hazardous occupation (in accordance with the legal classifications), or after termination of work as a dance artist or a musician playing a wind instrument. Within the framework of supplementary pension insurance, an employer pays, on the ground of a contract, a regular contribution for employees to a supplementary pension company.

²⁸⁶ Section 11(2)-(6) of the Act No 576/2004 Coll. on Healthcare, Services Related to the Provision of Healthcare and on amending and supplementing certain acts, as amended (*zákon č. 576/2004 Z. z. o zdravotnej starostlivosti, službách súvisiacich s poskytovaním zdravotnej starostlivosti a o zmene a doplnení niektorých zákonov*).

Policyholders (in the field of health insurance) have rights in the exercise of public health insurance in accordance with the principle of equal treatment in healthcare regulated in the Anti-discrimination Act.²⁸⁷

There is no case law in the field of social protection, social security and healthcare. A case on discrimination of Roma women in state social support/social advantages in connection with birth benefits (see section 3.2.7 below) is pending, and so is a case on discrimination of Roma women in the provision of healthcare (segregation in maternity hospitals).

- Article 3.3 exception

The social insurance, old-age pension insurance and state social support schemes are guaranteed and administered by the state. The providers of social services are, to a large extent, public bodies (municipalities, self-governing regions or legal persons established by them). This means that national law does not rely on the exception in Article 3(3) of Directive 2000/78 and the principle of equal treatment is also guaranteed in the state social security and social protection schemes.

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

In Slovakia, national legislation in principle includes social advantages as formulated in the Racial Equality Directive but judicial interpretation is required regarding social advantages provided by pieces of legislation/regulations other than laws.

Section 5(2)(a) (to be read in conjunction with Section 5(1)) of the Anti-discrimination Act prohibits discrimination on all the grounds contained within it (see section 2.1 above) in the area of, *inter alia*, access to and provision of social advantages. However, the duty to observe the principle of equal treatment in the area of social advantages only applies 'in connection with special laws' in this field (see below for a more detailed explanation).

The Anti-discrimination Act does not contain any definition of social advantages. The interpretation of the concept will therefore depend on future practice and potential judicial interpretation.

Some of the categories within the concept of social advantages as defined by the CJEU are defined and regulated under the statutory system of the state social security scheme (constituting 'state social support') for which the principle of equal treatment as defined by the Anti-discrimination Act also applies (see section 3.2.6 above). This is the case, for example, for childbirth grants and funeral grants.

Within the context of state social support as defined by Slovak legislation and at the same time within the context of social advantages as defined by CJEU, Act 383/2013 on Childbirth Allowance and on Allowance for More Concurrently Born Children appears to be very problematic as it is in breach of Directive 2000/43. In particular, it contains provisions on providing childbirth allowance that have discriminatory effects on Roma women (but in principle, also on all women in general).

Section 3(4)(b) of the act conditions a payment of a state childbirth allowance upon not leaving the maternity hospital in a way that conflicts with a legal regulation on releasing a patient from a facility-based healthcare.²⁸⁸ The provision referred to is the Act on

²⁸⁷ 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 amending and supplementing certain laws, as amended (*zákon 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*).

²⁸⁸ This is the wording of Section 3(4)(b) as of 30 June 2014 (after an amendment of the act No 185/2014 Coll.). Before this amendment, Section 3(4)(b) of the Act on Childbirth Allowance stipulated that a woman

Healthcare, which stipulates that in situations when a release is not medically substantiated, healthcare providers are obliged to release a patient from a facility-based healthcare if the patient requests them to do so.²⁸⁹ However, the formulation of the relevant provisions, the lack of mechanisms guaranteeing that requests for release are handled by the hospital staff, and the common and normalised practice of detaining all women in maternity hospitals for 3 to 5 days upon childbirth, all create an impression that women must follow a special procedure when they wish to leave a maternity hospital, or that they have special duties to fulfil in order to leave a hospital. Such legal regulation creates situations of uncertainty and power imbalance that prevent women from deciding freely and voluntarily about the length of their stay in a maternity hospital after childbirth. Fact-finding activities, carried out through surveys in several hospitals in Eastern Slovakia, interviews with Roma women and people working with Roma communities and through the identification of localities where payments of the birth allowances were refused reveal that in the region examined, 100 % of women leaving hospital following the birth of a child are of Roma origin.²⁹⁰ In many cases the Roma women (who usually come from segregated communities) leave the hospital because of caring responsibilities for other children and discrimination and hostility in the hospital, and in most cases they come back to collect their child.²⁹¹

Although some of the Roma women affected by this measure have filed law suits and received their childbirth allowances, the courts deciding the cases, including the Supreme Court of the Slovak Republic, did not deal with the claimants' argumentation concerning indirect discrimination. The challenged provision is now subject to proceedings initiated by an *actio popularis* that was filed by the Centre for Civil and Human Rights (an NGO based in Košice; see section 2.1.2). The case is pending before the second instance court, after having been dismissed by the court of first instance.²⁹²

Other provisions of the same act can also be held to be indirectly discriminatory towards Roma women. For example, Section 3(4)(a) of the act states that entitlement to the childbirth allowance only exists if the mother has visited a gynaecologist once a month from the fourth month of her pregnancy until giving birth. For the reasons outlined above (discrimination against Roma women in healthcare facilities, caring responsibilities etc.), this provision is equally discriminatory and should be abolished.²⁹³

Similarly, the act contains a provision permitting the payment of the childbirth allowance of EUR 829.86 (there are two sums of this allowance and the allowance of EUR 829.86 is only paid upon the birth of the first three children born to a woman; the other sum of a much lower allowance, EUR 151.37, is paid upon the birth of a fourth and subsequent children born to a woman, or upon the birth of one of the first three children who has not lived to the age of 28 days) only if the newborn child lives to the age of at least 28 days.²⁹⁴

who leaves her child in the maternity hospital following his or her birth, without prior consent from the maternity hospital, has no right to childbirth allowance.

²⁸⁹ Section 9(6)(c) of the Act on Healthcare. Section 9(6)(c) of the Healthcare Act reads as follows: '[A healthcare provider shall release a person from a facility-based care] upon her own request, or upon the request of her legal representative if she, despite an adequate amount of information received, refuses the facility-based care, unless the facility-based care is ordered by a court or unless a facility-based care the legality of which is decided upon by a court is at stake.'

²⁹⁰ The surveys were carried out by the Centre for Civil and Human Rights and can be found at <http://poradna-prava.sk/?cat=3> (accessed 25 April 2015). A survey in the hospital was also carried out by the Slovak National Centre for Human Rights and summarised in their expert opinion on the issue.

²⁹¹ If women want to leave maternity hospital, they are often told that they may leave, but that the child has to remain in the hospital (which is, of course, against the law).

²⁹² Decision of the District Court Bratislava I (exact date unknown), file No 12C 231/2010. The argumentation of the court is unknown since the decision has not been published yet.

²⁹³ It is also discriminatory against all women in principle, as it interferes with their right to decide freely on various aspects of their reproductive health.

²⁹⁴ See Section 4(1) of the Act No 383/2013 Coll. on Childbirth Allowance and on Allowance on More Concurrently Born Children and on changing and supplementing other laws.

Although apparently neutral, this provision is also indirectly discriminatory, as unofficial data reveal that the infant death rate among Roma children is several times higher than the death rate among non-Roma children.²⁹⁵

In Slovakia, the lack of definition of social advantages does not raise problems. This may, however, also be a result of the fact that so far, there have not been any cases where non-discrimination in the field of social advantages would be invoked.

However, a problem with regard to social advantages is the statutory provision contained in Section 3(2) of the Anti-Discrimination Act, stipulating that the right to equal treatment only applies in connection with another substantive right provided for by *law*. Given the fact that many of the benefits that come within the scope of social advantages would be provided by generally binding legal enactments other than laws (for example, Government decrees, ministerial ordinances, generally binding ordinances of self-governing bodies or municipalities etc.), this legislative solution raises serious doubts as to whether the transposition of the directives is correct.

By reducing the scope of rights to be applied in accordance with the principle of equal treatment to those that are regulated by special 'laws', the public authorities can easily circumvent the directives by adopting measures of lower legal force than laws (although this particular issue has not yet been raised in the courts).

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

In Slovakia, national legislation includes education as formulated in the Racial Equality Directive.

Sections 5(1) and 5(2)(c) of the Anti-discrimination Act stipulate the duty to observe the principle of equal treatment and prohibit discrimination on all the grounds contained within the act, including in the area of education. The section refers (in its footnotes) to other acts that regulate legal relations in education, in particular to Act 131/2002 on Higher Education, Act 386/1997 on Further Education (abolished by Act 568/2009 on Lifelong Learning which contains no anti-discrimination clause), and Act 5/2004 on Employment Services, as amended. The list of such acts is not exhaustive.

What can be inferred from the non-exhaustive list of acts referred to in this provision, and also from the very general and broad notion of the word 'education' contained in the provision (though not defined in the Anti-discrimination Act), is that the duty to observe the principle of equal treatment applies to both school and out of school education (in the case of school education it includes all levels), including vocational training. In this context, however, it should be noted that, although most of the acts regulating education in Slovakia contain anti-discrimination clauses (such as the Schools Act and the Act on Higher Education), Act 568/2009 on Lifelong Learning does not contain an equality clause.

The Schools Act establishes 'equal access to education, taking into account the special educational needs of the individual and her/his responsibility for her/his education',²⁹⁶ as well as the 'prohibition of all forms of discrimination, and especially segregation',²⁹⁷ as

²⁹⁵ For more details on the indirectly discriminatory nature of the Act on Childbirth Allowances, see also Debrecéniová, J. (2010), *Štátne sociálne dávky "na podporu rodiny": Analýza vybraných zákonov prijatých v čase krízy* (State Social Benefits for the "Support of the Family": Analysis of Selected Laws Adopted in Times of Crisis), in *Rodové dôsledky krízy: Aspekty vybraných prípadov* (Gender Impacts of Crisis: Aspects of Selected Cases), ASPEKT, Bratislava (2010), pp 82-85. Also available online at: http://archiv.aspekt.sk/kniha_det.php?IDkniha=131&kat=nov (last accessed 14 March 2014).

²⁹⁶ Section 3(c) of the Act No 245/2008 Coll. on Education (Schools Act) and on amending and supplementing certain laws, as amended (*zákon č. 245/2008 Z. z. o výchove a vzdelávaní (školský zákon) a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

²⁹⁷ Section 3(d) of the Schools Act.

two of the principles on which education should be based. The act also defines 'school integration' as 'education of children and pupils with special educational needs in school classes and school facilities designed for children or pupils without special educational needs'.²⁹⁸

Homophobic, or any other content perpetuating prejudice and stereotypes about certain individuals or groups in connection to traits that represent prohibited grounds of discrimination, could constitute discrimination pursuant to the Anti-discrimination Act. However, since the law is not explicit on the issue, the actual presence of discrimination in each particular case would depend on the circumstances of the case and on the legal interpretation.

- Pupils with disabilities

In Slovakia, the general approach to education for pupils with disabilities does raise problems. In general, it can be said that the way in which the system of education is designed (not only in terms of legislation but also in terms of the everyday practice) perpetuates the exclusion of pupils with disabilities from mainstream education.

Sections 94-102 of the Schools Act contain provisions on children and pupils with a 'health disadvantage'. A child or pupil with a 'health disadvantage' is defined, in Section 2(k) of the act, as a child or pupil with a 'disability', who is 'ill or their health is impaired', who has 'developmental disorders', or a 'behavioural disorder'. Section 94 states that the education of children and pupils with health disadvantage should take place in schools for children with health disadvantages (called 'special schools') or in other schools (kindergarten, primary school, secondary schools, practical schools and training institutions), either in special classes or in classes or educational groups together with other children/pupils of the school (in which case the child/pupil can have an individual educational programme).

The act itself does not state on what criteria the choice between these three forms of schooling for children/pupils with health disadvantages should be made. Given the fact that many schools – in terms of premises, facilities and staff – are not adapted to the needs of children with health disadvantages, it is likely that many children are unnecessarily, and in breach of the principle of integration and non-segregation, put in special schools. However, that allegation can only be substantiated with anecdotal and empirical evidence, rather than with complex and reliable data.

Another matter of serious concern is diagnostics. A type of institution authorised to carry out diagnostics is a centre for special pedagogical counselling; such centres are often attached to special schools or are staffed by employees of special schools. This raises serious concerns about the possibility of a conflict of interests.²⁹⁹

- Trends and patterns regarding Roma pupils

In Slovakia, there are specific patterns existing in education regarding Roma pupils, such as segregation.

The legislative provisions listed in the section above on pupils with disabilities are also often relied upon when placing Roma pupils in 'special classes' or 'special schools', which often happens for the purpose of segregation.

²⁹⁸ Section 2(s) of the Schools Act. However, the act does not define in more detail what such integration would mean.

²⁹⁹ See Kubánová, M., Košťál, C., Beblavý, M. (2009), *Základné a stredné školstvo* (Primary and Secondary Schooling), in: Kollár, M., Mesežnikov, G., Bútor, M. (eds.), *Slovensko 2008: Súhrnná správa o stave spoločnosti* (Slovakia 2008: A Global Report on the State of Society), Bratislava, Inštitút pre verejné otázky, p. 539.

Section 13 of the Ministry of Education Ordinance 320/2008 on Primary School contains provisions on placing children in 'special classes'. Paragraph 5 of Section 13 states that pupils from 'socially disadvantaged environments' should also be educated in such classes and defines them as pupils who:

'(1) are not likely, after completing the 0th year of school, to successfully manage the educational content in the first year of school, (2) are not managing the educational content of the first year of school or, depending on the child, based on a psychological examination, are assessed as unlikely to successfully manage the educational content in the first year of school, (3) have been educated in primary schools for pupils with health disadvantages but disability has not been proved in their case.'

There is no doubt that this provision creates a broad scope for legalising biased assessments of the abilities, skills and potential of children from Roma communities and for perpetuating their social disadvantage. The provision also has the strong potential to further the existing discrimination and segregation of Roma children.³⁰⁰ There is also no doubt that the provision departs from the concept of parallel mainstream 'normal' and 'other' classes, and so is excluding and discriminatory.

The available evidence shows that it is mainly Roma children who are allocated to these classes³⁰¹ or for whom these special classes are deliberately designed to separate them from pupils representing the majority population. Despite the fact that the curriculum is officially the same as the curriculum in mainstream schools, special schools often opt to reduce it by the highest percentage allowed (30 %) to the lowest possible amount of the statutory curriculum. Further reinforcing the segregation potential of the legislative concept of 'special schools' is the ability to mix pupils from different years,³⁰² which makes it possible for schools to put Roma children from different years into one class. The law does not stipulate the range of the years that can be mixed. A special class may have between four and eight pupils.³⁰³

The segregation of Roma children in education is a very widespread problem, already documented in many reports by national and international NGOs,³⁰⁴ as well as by the reports of the Slovak National Centre for Human Rights (the equality body)³⁰⁵ and the

³⁰⁰ On the connection between coming from a socially disadvantaged environment and belonging to a marginalised Roma community, see for example Verejná ochrankyňa práv (Public Defender of Rights) (2014), *Správa verejnej ochrankyne práv : Vplyv testovania školskej spôsobilosti na základné práva dieťaťa z nepodnetného prostredia s kultúrnou, sociálnou, jazykovou bariérou, najmä z rómskej národnostnej menšiny* (Report of the Public Defender of Rights : The Impact of Testing of the School Eligibility on the Fundamental Rights of the Child from a Non-Challenging Environment with a Cultural, Social, Language Barrier, Mainly from the Roma National Minority), p. 13, available at <http://www.vop.gov.sk/files/Sprava%20VOP%20FINALNA%20VERZIA.pdf> (accessed 25 April 2015).

³⁰¹ See Verejná ochrankyňa práv (Public Defender of Rights) (2014), *Správa verejnej ochrankyne práv : Vplyv testovania školskej spôsobilosti na základné práva dieťaťa z nepodnetného prostredia s kultúrnou, sociálnou, jazykovou bariérou, najmä z rómskej národnostnej menšiny* (Report of the Public Defender of Rights : The Impact of Testing of the School Eligibility on the Fundamental Rights of the Child from a Non-Challenging Environment with a Cultural, Social, Language Barrier, Mainly from the Roma National Minority), p. 9, available at <http://www.vop.gov.sk/files/Sprava%20VOP%20FINALNA%20VERZIA.pdf> (accessed 25 April 2015).

³⁰² Section 13(3) of the Ministry of Education Ordinance No 320/2008 Coll. on Primary Schools.

³⁰³ Section 13(3) of the Ministry of Education Ordinance No 320/2008 Coll. on Primary Schools.

³⁰⁴ See for example European Commission against Racism and Intolerance (2014), *ECRI Report on Slovakia (fifth monitoring cycle)*, CRI(2014)37, points 125-132, available at <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Slovakia/SVK-CbC-V-2014-037-ENG.pdf> (accessed 25 April 2015).

³⁰⁵ See Slovenské národné stredisko pre ľudské práva (2014), *Správa o dodržiavaní ľudských práv vrátane zásady rovnakého zaobchádzania a práv dieťaťa v Slovenskej republike za rok 2013* (Report on the observance of human rights including the observance of the principle of equal treatment and the rights of the child in the Slovak Republic for the year 2013), p. 54, available at

Slovak ombudswoman.³⁰⁶ Children from Roma families are also often sent to special classes/special schools for children with intellectual disabilities (with reduced curricula and very limited opportunities for subsequent education).³⁰⁷ One of the reasons for this is bad diagnostics, which result from, for example: universal diagnostic tools not being adjusted to the specific social circumstances and needs of Roma children; the relative inability of Roma people to speak the official language of Slovakia; the fact that their social skills may not be adapted to the conventions of the majority population; the general cultural bias of the diagnostic tests and the lack of time that the person conducting the diagnostic tests has for each child³⁰⁸ etc.³⁰⁹ Due to various factors (such as fear of discrimination and stigmatisation and hence poor performance, distance from the mainstream school and so on), sometimes parents also support the education of their children in special schools. Given the legislative possibility (as of 2008) of placing children from 'socially disadvantaged environments' into 'special classes' (see above), the segregation of Roma children is probably deepening.

However, school segregation is not only caused by biased diagnostics or racial prejudice. Another factor leading to segregation is the system of subsidies for children in special schools or special classes, which are higher than the subsidies for children in mainstream schools.³¹⁰

School segregation exists not only through the placing of Roma children in special schools or classes. It very often happens within standard mainstream schools (for example, segregated classes and floors, segregation within classes and segregated dining, all of which are usually also of lower quality when compared to the education and education-related benefits provided to non-Roma children).

This type of segregation also happens because school authorities are afraid, due to the racial bias/hatred that is omnipresent in society, of losing non-Roma children and thereby

http://www.snsip.sk/CCMS/files/Správa_o_dodržiavaní_ludských_práv_vrátane_princípu_rovnakého_zaobchádzania_a_práva_dieťaťa_2013-__web.pdf (accessed 25 April 2015).

³⁰⁶ Kancelária verejného ochrancu práv (2013), *Správa verejnej ochrankyne práv o uplatňovaní práva na vzdelanie detí/žiakov príslušníkov rómskej národnostnej menšiny so špeciálnymi výchovno-vzdelávacími potrebami* (Report of the Public Defender of Rights on the Observance of the Right to Education of Pupils/Children, Representatives of Roma National Minority, with Special Educational Needs), available at <http://www.vop.gov.sk/files/Sprava%20VOP-Vzdelavanie%20Romov.pdf> (accessed 25 April 2015).

³⁰⁷ The lowest estimations for the percentages of Roma children in special schools and special classes are 59.4 % for special primary schools and 85.8 % for special classes within standard schools. See Friedman, E., Gallová Kriglerová, E., Kubánová, M., Slosiarik, M. (2009) *Škola ako geto: Systematické nadmerné zastúpenie Rómov v špeciálnom vzdelávaní na Slovensku* [School as ghetto: A systemic over-representation of Roma in special education in Slovakia], Roma Education Fund, p. 22.

³⁰⁸ On racially discriminatory diagnostics, see the report of the Slovak ombudswoman of 2014 - Verejná ochrankyňa práv (Public Defender of Rights) (2014), *Správa verejnej ochrankyne práv: Vplyv testovania školskej spôsobilosti na základné práva dieťaťa z nepodnetného prostredia s kultúrnou, sociálnou, jazykovou bariérou, najmä z rómskej národnostnej menšiny* (Report of the Public Defender of Rights: The Impact of Testing of the School Eligibility on the Fundamental Rights of the Child from a Non-Challenging Environment with a Cultural, Social, Language Barrier, Mainly from the Roma National Minority), p. 9, available at <http://www.vop.gov.sk/files/Sprava%20VOP%20FINALNA%20VERZIA.pdf> (accessed 25 April 2015). Anecdotal evidence shows that the person doing the diagnostic tests sometimes examines as many as 30 children per day.

³⁰⁹ The law does not stipulate any clear rules for re-diagnostics. The report of the Slovak ombudswoman of 2014 (Verejná ochrankyňa práv (Public Defender of Rights) (2014), *Správa verejnej ochrankyne práv: Vplyv testovania školskej spôsobilosti na základné práva dieťaťa z nepodnetného prostredia s kultúrnou, sociálnou, jazykovou bariérou, najmä z rómskej národnostnej menšiny* (Report of the Public Defender of Rights: The Impact of Testing of the School Eligibility on the Fundamental Rights of the Child from a Non-Challenging Environment with a Cultural, Social, Language Barrier, Mainly from the Roma National Minority), pp. 9 and 13, available at <http://www.vop.gov.sk/files/Sprava%20VOP%20FINALNA%20VERZIA.pdf> (accessed 25 April 2015)), also showed that in majority of the cases, in the diagnostic facilities that were surveyed for the purposes of drafting the report, the diagnostics and re-diagnostics are carried out by the same person (see p. 11 of the report).

³¹⁰ Every year, each school receives a certain amount of money per pupil from the public funds. This represents the main source of income for schools to enable their everyday functioning.

the subsidies from the state that are based on the numbers of children on school rolls. It is also not unusual to find purely Roma schools.³¹¹

The first, and so far the only, case on the segregation of Roma children in education was decided by the District Court and the Regional Court in Prešov in December 2011 (district court)³¹² and October 2012 (regional court). In this case, the Centre for Civil and Human Rights, an NGO, sued, in its own name and using the concept of *actio popularis*, the primary school in Šarišské Michaľany for the long-term and systematic application of segregation practices, in particular for having segregated Roma classes in each of Years 1-7 for several years. The segregated Roma classes and the non-Roma classes were even separated physically – for example, the classrooms were on different floors and so Roma and non-Roma children had minimal opportunity to encounter and communicate with each other, even during breaks. The segregated Roma classes did not have any special legal status – these were regular classes, comparable to the non-Roma classes in terms of curriculum, the number of pupils in a class and so on.

The school alleged that the separate classes were set up to allow teachers to adopt a ‘more individualised approach’ when teaching Roma children, as they came from ‘socially disadvantaged backgrounds’ (the school even argued that it was not using discriminatory practices but measures that had an ‘equalising character’ [*sic*]).³¹³ The school also claimed that, by separating the children, they contributed to the Roma children not having to feel ‘handicapped’, knowing that other children were doing better at school. It also stated that one of the reasons for separating the children was the fact that 50 non-Roma children had left the school when the classes were mixed and had moved to a school in another municipality that had only non-Roma children.

The first instance court stated that none of the arguments of the school could serve as an excuse for the discriminatory treatment of the Roma children and that this discriminatory treatment happened solely on the ground of the ethnicity of the children. In addition to declaring that the principle of equal treatment had been violated and that the discrimination against Roma children was grounded in their ethnicity, the court ordered the school to publish a full and anonymised version of its ruling in a special professional teaching periodical and to remedy the illegal situation by mixing the classes. In justification of its ruling, the court also emphasised that the school ‘failed to carry out its obligations in the process of education when it favoured illegal segregated education over the development of inclusive education’.

After an appeal by the defendant, the Regional Court in Prešov gave its decision on 30 October 2012 and substantially upheld the decision by the court of first instance *inter alia* in relation to the declaration that the principle of equal treatment had been violated on the ground of ethnicity and that illegal and illegitimate segregation took place, and that the school in question was obliged to rectify the illegal situation. The decision also addressed the wider societal context and offered its views and arguments on why segregation is unacceptable, on the meaning of human dignity in the context of (non-) segregation, on the importance and benefits of inclusive education, and on the importance of *actio popularis*.

³¹¹ For more information on the segregation of Roma children in education, see also Centre for Civil and Human Rights, People in Need Slovakia (2010): *Written comments concerning the third periodic report of the Slovak Republic under the International Covenant on Civil and Political Rights – For the considerations by the Human Rights Committee*, pp. 4-7. Available online at: www.poradna-prava.sk/dok/NGO%20Written%20comments%20HRC%20ICCPR.pdf?PHPSESSID=9f624ec9594d58c6f4e77789c01b5965 (accessed 25 April 2015). See also Rafael, V. (ed.); various authors: *(De)segregation of Roma pupils in Slovak educational system: Questions and answers*, Bratislava, Nadácia otvorenej spoločnosti 2011. The publication is available at <http://www.eduroma.sk/publications/en/desegregation.pdf> (accessed 25 April 2015).

³¹² The English translation of the decision of the court of first instance can be found at <http://poradna-prava.sk/wp-content/uploads/2012/01/PDF-568-kB.pdf> (accessed 25 April 2015).

³¹³ Referring to Section 8a of the Anti-discrimination Act, which stipulates the possibility of adopting ‘temporary equalising measures’ (positive action measures – see section 5 below for more details).

The segregation case decided in December 2011 attracted a lot of media attention, which not only publicised the case but also served as a forum for heated debate by many of the parties involved. However, things have not changed in practice and there are no systemic and systematic attempts on the part of the Slovak Government to eliminate the practice of segregation of Roma children in education. Quite the opposite: the Government has since introduced measures and allows practices that show clear signs of being new methods of segregation of Roma children in education and ways of perpetuating such segregation. One of them is the concept of 'container schools' – schools of a lighter building structure that are relatively easy and fast to build. These schools are often built in segregated Roma settlements (the current unofficial estimates state that there are already tens of such schools) where the capacities of the existing schools do not meet the educational needs of the child population and where public money is used for the school's construction.³¹⁴ In the author's view, the Government is supporting a practice that perpetuates further segregation of Roma children, instead of supporting solutions that would include the children in mainstream education (e.g. by subsidising school buses that would transport children from these settlements on a daily basis). Another recently-emerged practice is that of establishing external branches to vocational schools that are a part of the official secondary education system, many of which are placed very close to segregated Roma settlements (it is estimated that there tens of them in Slovakia already). Apart from the geographical segregation, the problem is that they offer courses/programmes with very low employability prospects (and some of them only last for two years), and are generally of very poor quality.³¹⁵

The only public figure who persistently and systemically challenges discrimination against Roma children and pupils in education is the Slovak ombudswoman. However, the Government has not responded to her findings and appeals accordingly.

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

In Slovakia, national legislation in principle includes access to and supply of goods and services as formulated in the Racial Equality Directive, but judicial interpretation is required regarding goods and services provided on the basis of legislation/regulations other than laws (in practice, this would be mainly the case of public services provided by municipalities and self-governing regions).

Sections 5(1) and 5(2)(d) of the Anti-discrimination Act prohibit discrimination on all the grounds contained in the Anti-discrimination Act (see section 2.1 above) in conjunction with special laws in the area of access to and provision of 'goods and services including housing which are provided to the public by legal entities and natural persons [who are] entrepreneurs'. The formulation 'in conjunction with special laws' is very problematic, since it may potentially exclude goods and services provided on the basis of legal acts of lower legal force than laws (e.g. governmental regulations or ordinances of ministries) or generally binding regulations of municipalities or self-governing regions (see section 3.2.7 above for more details).

- Distinction between goods and services available publicly or privately

³¹⁴ To the author's best knowledge, the problem of 'container schools' is not mapped yet. The information for this report has been provided by Vanda Durbáková from the Centre for Civil and Human Rights and by Jarmila Lajčáková from the Centre for the Research of Ethnicity and Culture.

³¹⁵ Some mapping of the practice of establishing external branches to vocational schools has been carried out by the Centre for the Research of Ethnicity and Culture but the outcomes are not yet public. Some information has been provided by Jarmila Lajčáková from the Centre for the Research of Ethnicity and Culture.

In Slovakia, national law distinguishes 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).

The wording of Sections 5(1) and 5(2)(d) of the Anti-discrimination Act (see the introductory text to this section, above) 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 at the public. The provisions of the Anti-discrimination Act do not apply to goods and services offered or provided on a private basis (e.g. providing or offering goods to members of a private association, family etc.).

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

In Slovakia, national legislation in principle includes housing as formulated in the Racial Equality Directive, but judicial interpretation is required regarding goods and services provided on the basis of legislation/regulations other than laws.

Sections 5(1) and 5(2)(d) of the Anti-discrimination Act prohibit discrimination on all the grounds contained in the Anti-discrimination Act (see section 2.1 above) in conjunction with special laws existing in the area of access to and provision of 'goods and services including housing which are provided to the public by legal entities and natural persons [who are] entrepreneurs'.

The act does not provide any definition of 'housing'.

What is problematic is the link to 'special laws', which must contain the right to housing/associated rights in order to be able to be invoked in cases of breaches of the equal treatment principles (in connection to housing). This may hinder the rights stemming from the directives being invoked in cases when the right to housing and related rights would be regulated under types of generally binding legal acts other than laws (such as governmental decrees, ministerial ordinances, generally binding ordinances of self-governing bodies or municipalities etc.; see also section 3.2.7).

- Trends and patterns regarding housing segregation for Roma

In Slovakia there are patterns of housing segregation and discrimination against the Roma.

The issue of Roma housing segregation has been increasing in scope and severity in recent years and comprises various aspects. Generally speaking, out of the 400 000 Roma living in Slovakia, only 46.5 % live scattered among the majority. The rest live concentrated either inside municipalities (12.9 %), at the edge of municipalities (12.9 %), or in segregated settlements (17 %). There are altogether 231 segregated 'concentrations',³¹⁶ with the average distance from the closest municipality being 900 m (and the biggest distance being 7 km). Of the people living in the concentrations, 11 per cent do not have access to drinking water. For 75 concentrations, there are only gravel or other country roads leading to the settlement.³¹⁷ The further away a concentration with Roma inhabitants is from a municipality, the poorer the housing conditions of its inhabitants.³¹⁸ The Slovak Constitution does not entrench the right to housing, and the Slovak Republic opted out on the provision on the right to housing in the Revised European Social Charter.

³¹⁶ 'Concentration' is the term used by the Atlas on Roma Communities in Slovakia 2013.

³¹⁷ All this information was taken from *Prvé výsledky ATLASU rómskych komún na Slovensku 2013* (The First Results of the Atlas on Roma Communities in Slovakia 2013) (2013) that can be found on the website of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities (the document is available at http://www.minv.sk/?atlas_2013, accessed 25 April 2015).

³¹⁸ See for example Filadelfiová, J.(2013), *Situačná analýza vybraných aspektov životnej úrovne domácností vylúčených rómskych osídlení* (Situational Analysis of Selected Aspects of the Living Standard in Excluded Roma Settlement Households), Bratislava, UNDP, p. 8.

Governments in Slovakia have been implementing housing development programmes by means of which low-cost municipal rental apartments and technical infrastructure have been funded, and these programmes have proved to have some positive results (including increased quality of life and school attendance). However, at the same time they have also contributed to a deepening segregation of Roma communities, because the new apartments were not built within municipalities but in distant localities, often with very poor infrastructure. The construction quality of the newly built housing has also frequently been very poor and the housing is expensive to maintain.

Another problem is that municipalities and towns often develop their local planning policies in an ethnically segregating manner.

Under Act 443/2010 on Subsidies for Housing Development and on Social Housing, the state provides, *inter alia*, subsidies for obtaining rental apartments for the purposes of so-called social housing.³¹⁹ The entities entitled to such subsidies are, *inter alia*, municipalities or higher regional units.³²⁰ When applying for subsidies under the act, there are two different types of social housing between which the municipalities can decide: a) regular standard housing, b) lower standard housing.³²¹

Although complex and exhaustive data does not exist on the issue, it can be said that it is beyond any doubt that, in practice, it is almost exclusively Roma people who get lower-standard social housing, and that it is very likely that it is mainly socially disadvantaged non-Roma people who benefit from regular standard social housing.

The evidence (presented for example by NGO representatives) confirming the allegation that the lower-standard social housing is provided, almost exclusively, to Roma people, is mostly anecdotal, but some research on the issue has been conducted, the findings of which confirms the anecdotal evidence.³²² The research undertaken confirmed that in the great majority of cases in which housing provided for inhabitants of Roma settlements and that were subject to monitoring, municipalities preferred to provide lower-standard housing (49 out of 52 cases).³²³

There are also many structural issues entrenched in the design of the schemes for both the regular and low-standard social housing that contribute to this situation. For example, municipalities can get a reimbursement of as much as 70 to 80 % of the costs of financing the lower-standard housing (as compared to only a 30 % possible reimbursement of regular standard housing), with the potential to make up the rest of the cost by in-kind contributions (i. e. through work by the Roma people receiving the lower-standard housing, as compared to regular standard social housing where such in-kind contribution cannot be made). When one considers that Roma settlements are parts of rather small villages (as compared to big towns or cities), it becomes clear that these small villages are unlikely to find the resources to fund regular social housing, which is much more financially demanding.

³¹⁹ See Section 1 and Section 3(a), in conjunction with Section 4 of the Act No 443/2010 Col. on Subsidies for Housing Development and on Social Housing (*zákon č. 443/2010 Z. z. o dotáciách na rozvoj bývania a o sociálnom bývaní v znení neskorších predpisov*).

³²⁰ See Section 7 of the Act No 443/2010 Col. on Subsidies for Housing Development and on Social Housing.

³²¹ These two types are defined in more detail in Section 2(1)(e) and (f) of the Act No 443/2010 Col. on Subsidies for Housing Development and on Social Housing.

³²² Hojsík, M. (2008), *Evaluácia programu obecných nájomných bytov v rómskych osídleniach* (Evaluation of the Programme of Municipal Rental Apartments in Roma Settlements), Bratislava, Nadácia Milana Šimečku, available at http://www.nadaciamilanasecku.sk/fileadmin/user_upload/dokumenty/Ine/Evaluacia_FINAL.pdf (accessed 25 April 2015).

³²³ Hojsík, M. (2008), *Evaluácia programu obecných nájomných bytov v rómskych osídleniach* (Evaluation of the Programme of Municipal Rental Apartments in Roma Settlements), Bratislava, Nadácia Milana Šimečku, pp. 3-4 and 21, available at http://www.nadaciamilanasecku.sk/fileadmin/user_upload/dokumenty/Ine/Evaluacia_FINAL.pdf (accessed 25 April 2015).

There are also other structural barriers that contribute to the fact that regular standard social housing is practically inaccessible to the Roma. The regular standard of social housing is often conditioned by a requirement for employment (of at least one family member) or of a minimum level of income. Roma people are much less likely to meet such requirements than the non-Roma population.

In connection with lower-standard social housing and its almost exclusive availability to Roma people only, it is also important to note that the overall funding for this type of housing provided by the Government has been dramatically reduced in the last few years. Also the requirements on the standards for such housing are reducing (e.g. a reduction in the minimum size of the apartments, a lowering of the requirements in relation to equipment and sanitation etc.). When considered together with the fact that it is almost exclusively the Roma who are provided with this type of social housing, it is clear that the regulation and practice is, at least, indirectly discriminatory.

One case of precedential importance is currently subject to judicial proceedings. The case concerns moving Roma families who previously lived in the centre of the town of Sabinov (Eastern Slovakia) in commercially attractive houses (mainly by virtue of their location) to a new location one kilometre from the town boundary. The new area chosen by the municipality was totally isolated from the town and had very poor infrastructure. At the beginning of 2008, the claimants' representative submitted a legal action claiming discrimination in provision of housing based on the intentional segregation of a group of people of Roma origin, making reference to the prohibition of discrimination in the provision of housing in the Anti-discrimination Act and to the International Convention on the Elimination of All Forms of Racial Discrimination.

In June 2009, the claimants partially won their cases before the District Court in Prešov.³²⁴ The court ruled that the town of Sabinov as well as the Ministry of Construction and Regional Development had breached the principle of equal treatment, and emphasised the segregation component, a breach of the duty to adopt measures to prevent discrimination, a need for a strict scrutiny test in case of a 'suspicious criterion' consisting of ethnicity, and the outdated concept of formal equality.³²⁵

However, following an appeal by the defendants, the claimants' case was fully dismissed by the Regional Court in Prešov in May 2010.³²⁶ The legal representative of the Roma claimants referred the case to the Supreme Court of the Slovak Republic, which (in February 2012) overturned the decision of the Regional Court and referred the case back to it for further proceedings.³²⁷ In October 2012, the court of first instance (the District Court in Prešov) issued a new decision (now relating only to the extent of the appeal and the complaint submitted to the Supreme Court) and confirmed its original decision, in which it basically reiterated all of its original argumentation.³²⁸

The defendants appealed again against the ruling by the court of first instance and a new decision was issued by the Regional Court in Prešov in March 2014.³²⁹ The Regional Court again dismissed the District Court decision, this time arguing that it did not follow from the testimonies of the complainants that they found themselves to be discriminated against, rather that it followed that they were not satisfied with the state of the compensatory

³²⁴ The plaintiffs urged the court to rule that the defendants breached the principle of equal treatment and to order the provision of better infrastructure in their new place of residence (this is further detailed in the lawsuit as well as in the ruling and encompasses, for example, the demand that the defendants provide a bus link between Sabinov town centre and the plaintiffs' new place of residence and that the defendants provide a shop selling basic goods in the plaintiffs' new place of residence). They also asked the defendants to pay €3,319.39 in damages to each plaintiff.

³²⁵ Decision of the District Court in Prešov of 15 June 2009, ref. No 25 C 197/2007 – 585.

³²⁶ Decision of the Regional Court in Prešov of 13 May 2010, ref. No 13 Co/44/2009 – 655.

³²⁷ Decision of the Supreme Court of the Slovak Republic of 22 February 2012, ref. No 5 Cdo 257/2010.

³²⁸ Decision of the District Court in Prešov of 22 October 2012, ref. No 25C 1/12 – 33.

³²⁹ Decision of the Regional Court in Prešov of 11 March 2014, ref. No 2Co/11/2013-134.

apartments that they were given and with the fact that they had to adjust them by themselves in order to make them fit for living. The District Court said that it sees a difference between the testimony of a layperson and a qualified statement of a legal representative (who was consistently alleging violations of the principle of equal treatment throughout the proceedings), but that the legal interpretation provided by the legal representative of the claimants (based on discrimination) did not correspond to the allegations of the claimants, who were merely not satisfied with what the new apartments looked like.

The case is now pending before the Supreme Court of the Slovak Republic, but it has only been referred to this court by some of the original claimants (some have already given up). See also section 12.2 of this report for more details.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

In Slovakia national legislation provides for an exception for genuine and determining occupational requirements.

The Anti-discrimination Act defines genuine and determining occupational requirements in Section 8(1), stipulating that

‘a treatment that is justified by the nature of occupational activities or by the circumstances under which such activities are carried out, if the ground constitutes a genuine and determining occupational requirement, shall not constitute discrimination, provided that the objective is legitimate and the requirement is proportionate’.

There is no explicit reference to which particular grounds this exception is applicable to, although it can be assumed that it will apply to all the grounds mentioned in the Anti-discrimination Act (see section 2.1 above). Nevertheless, there has not yet been any case law on this matter and it will be interesting to see whether the courts will impose a strict interpretation of the ‘grounds’ context that would follow from the wording of the act (‘on the ground of’) or will apply the wording of the provisions of the directives (‘related to any of the grounds ...’).

4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)

- Exception for employers with an ethos based on religion or belief

In Slovakia national law provides for an exception for employers with an ethos based on religion or belief.

Section 8(2) of the Anti-discrimination Act 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 religion or belief shall not constitute discrimination where they are related to employment by or to carrying out activities for such organisations and where, by reason of the nature of occupational activities or the context in which they are carried out, a person’s religion or belief constitute a fundamental legitimate³³⁰ and justified occupational requirement.’

The current version of the Anti-discrimination Act does not contain any provision that would explicitly entitle the above-defined organisations to require the individuals who are employed by them or carry out activities for them to act in good faith and with loyalty to the organisation’s ethos.

- Conflicts between rights of organisations with an ethos based on religion or belief and other rights to non-discrimination

In Slovakia there are no specific provisions that would explicitly deal with conflicts between rights of organisations with an ethos based on religion or belief and other rights to non-discrimination. However, the absence of any provisions enabling religious organisations to exercise exceptions that would impact on other rights to non-discrimination and the

³³⁰ A comma is missing between the words “fundamental” and “legitimate” in the act.

existing case law indicate that in (potential) conflicts, other rights to non-discrimination would take precedence.

As regards organisations with a special ethos connected with their religion or belief, the relevant legislation states that there will be no right to interfere with such an organisation's internal matters.³³¹

However, internal orders of religious organisations should not violate generally binding legal acts (including the Constitution and the Anti-discrimination Act). There is one known case relating to the conflict between the rights (and rules) of churches, religious or similar organisations and the rights of individuals who enter into real or potential relationships with such organisations. The case, decided by the Constitutional Court in 2001,³³² concerned a priest of the Roman Catholic Church, who had made a claim related to his employment rights (right to remuneration)³³³ before the ordinary courts against his church, which was also his employer. The ordinary courts (district and regional courts in Nitra) dismissed the case, stating that they could not deal with it and apply Slovak labour legislation, due to the fact that ecclesiastical law has priority in this case.

The Constitutional Court refused this argumentation, confirming that all citizens have the right to access courts that make rulings pursuant to the laws of Slovakia (and not to, for example, religious rules),³³⁴ and holding that the district and regional courts in Nitra violated the applicant's right to seek the protection of his rights before an independent and impartial court without discrimination (in accordance with Article 46(1) of the Constitution).

- Religious institutions affecting employment in state funded entities

In Slovakia religious institutions are permitted to select people (on the basis of their religion) to hire or to dismiss from a job when that job is in a state entity, or in an entity financed by the state

In addition to a teaching qualification, teachers of religion in state schools must obtain authorisation from the church or a religious society, issued by the relevant church/religious authorities. This follows the Agreement between the Slovak Republic and the Holy See on Catholic Upbringing and Education.³³⁵ Subsequently, an agreement between the Slovak Republic and Registered Churches and Religious Societies on Religious Upbringing and Education was signed with identical provisions regarding religious education in state schools.³³⁶ Due to the strict rules for the registration of churches and religious societies in Slovakia (see section 2.1.1 above), only Christian and Jewish churches and organisations are currently registered. Students at state secondary schools have the right to choose between religious education and ethics. The authorisation of teachers of religious education is exercised mostly by the two biggest churches – the Roman Catholic Church and the Evangelical Church.

There is no case law on the issue.

³³¹ Act No 308/1991 Coll. on Freedom of Religious Belief and Status of Churches or Religious Societies, Section 5(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'.

³³² Decision of the Constitutional Court of the Slovak Republic of 31 January 2001, No III. ÚS 64/00-65.

³³³ However, the decision of the Constitutional Court does not make it clear whether the original labour dispute was discrimination-related.

³³⁴ The Constitutional Court stated that "...[i]f a spiritual activity is carried out in the framework of a legal relationship, this kind of employment relationship, similar or civil relationship is ruled by the respective laws of the Slovak Republic and the internal rules of churches and religious societies can be applied only within its framework".

³³⁵ Published in the Collection of Laws under No 394/2004 Coll.

³³⁶ Published in the Collection of Laws under No 395/2004 Coll.

4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78)

In Slovakia, national legislation provides for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78).

Section 4(1)(b) of the Anti-discrimination Act stipulates that the provisions of the Anti-discrimination Act do not apply to

‘differential treatment based on disability or age that follows from provisions of special legal acts regulating the service of armed forces, armed security services, armed corps, the National Security Office, the Slovak Information Service and the Fire and Rescue Service.’

The exception does not apply to employees who carry out activities for the above institutions within the framework of employment relationships regulated by the Labour Code (e.g. auxiliary staff).

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

In Slovakia, national law includes exceptions relating to difference of treatment based on nationality.

Differential treatment based on a person’s nationality (meaning ‘citizenship’ under Slovak legislation) is permitted under the Anti-discrimination Act, insofar as it results from the legal requirements for the entry and residence of foreigners in Slovakia, including the treatment of these foreigners, which is provided for under separate legal regulations.³³⁷ This is not applicable to citizens of the European Union, citizens of any state that is party to the European Economic Area Agreement, Swiss citizens and stateless persons and their family members.³³⁸

Separate legal conditions regarding foreigners apply mostly to the fulfilment of special requirements for granting permission for business activity, employment or study in Slovakia. Restrictions also apply to access to certain occupational positions and social assistance services. However, in other areas, discrimination on the ground of nationality (‘citizenship’ under Slovak legislation) is prohibited under the legal regime of the Anti-discrimination Act. This follows from the open-ended list of prohibited grounds of discrimination contained in the act, which implicitly includes nationality (‘citizenship’) among the prohibited grounds of discrimination in most areas covered by the directives (see section 2.1 above).

In Slovakia, nationality (as in citizenship) is not explicitly mentioned as a protected ground in national anti-discrimination law.

b) Relationship between nationality and ‘race or ethnic origin’

The Slovak language and Slovak legislation draw a distinction between citizenship, nationality (*národnosť*) and ethnicity. Nationality (*národnosť*), according to the available

³³⁷ Act No 404/2011 Coll. on the Residence of Foreigners and on amending and supplementing certain laws, as amended (*zákon č. 404/2011 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*), Act No 480/2002 Coll. on Asylum and on amending and supplementing certain laws, as amended (*zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*). Both of these acts regulate legal status, conditions for granting permission for business activities, employment, study and stay of foreigners and asylum seekers.

³³⁸ Section 4(1)(a) of the Anti-discrimination Act.

commentaries, means an individual's membership of a particular nation as a historically established community of people characterised, first of all, by a common historical development, specific culture, common language, relation to a particular territory etc. An ethnic group (ethnicity) is in general understood as a community of people with special features, such as a common historical background, culture, and language, but without a specific state territory (such as the Kurds and the Roma).

In practice, a member of the Hungarian minority, being a Slovak national, would fall within the ground 'national origin', whereas Roma people are considered to be an ethnic group.

There is no case law that deals with distinctions or overlaps between citizenship, nationality, and 'race or ethnic origin'.

4.5 Work-related family benefits (Recital 22 Directive 2000/78)

a) Benefits for married employees

In Slovakia it would constitute unlawful discrimination in national law if an employer only provides benefits to those employees who are married.

The Anti-discrimination Act does not explicitly lay down any rules as far as work-related benefits for spouses or life partners are concerned. However, it can be argued that work-related benefits in respect of spouses or life partners fall under the employment-related list of areas for which the duty to observe the principle of equal treatment applies, as the list of these areas in Section 6(2)(b) of the act is non-exhaustive. Given the fact that the Anti-discrimination Act explicitly prohibits discrimination on the ground of family status and marital status, it can be argued that if an employer provided benefits limited to those employees who are married, this would constitute unlawful discrimination.

In addition, the Labour Code stipulates the duty of the employer to act in conformity with the principle of equal treatment and refers to the Anti-discrimination Act (which contains the above-mentioned grounds).³³⁹ Therefore, any discriminatory rules or measures in the provision of work-related family benefits are prohibited.

On the other hand, the Labour Code contains a few specific provisions that are discriminatory (either directly or indirectly or both) in relation to family/marital/personal status. Under Section 141(2)(d) of the Labour Code, an employee is entitled to paid leave of an overall duration of three days on the death of their husband or wife. In the case of the death of a cohabiting different-sex partner, there is no entitlement to any leave.³⁴⁰

There is no case law on potentially discriminatory provision of family benefits with regard to marital and/or family status.

b) Benefits for employees with opposite-sex partners

In Slovakia it would constitute unlawful discrimination in national law if an employer only provides benefits to those employees with different-sex partners (sexual orientation is a prohibited ground of discrimination for all fields covered by the act).

In contrast to this, the Labour Code contains a few specific provisions that are discriminatory (either directly or indirectly or both) with regard to sexual orientation.

Under Section 141(2)(d) of the Labour Code, an employee is entitled to paid leave of an overall duration of three days on the death of their husband or wife (there is no mention

³³⁹ Section 13 of the Labour Code.

³⁴⁰ In Slovakia, there is no legislation on marriage, civil union or other types of cohabitation of same-sex partners.

of a same-sex marriage nor of any other officially registered partnership). In the case of the death of a cohabiting same-sex partner there is no entitlement to any leave. Similarly, the Labour Code grants time off from work when a child is born to an employee – for the time necessary to transport the child's mother to hospital and back (but not for the time needed to attend the birth).³⁴¹ In practice, this covers only male employees whose partners (whether marital or not) go to maternity hospitals, since lesbian couples do not have the right to joint parenthood (or the right to register their partnership). This therefore undoubtedly discriminates against non-married lesbian couples.

There is no case law on the issue.

4.6 Health and safety (Article 7(2) Directive 2000/78)

a) Exceptions in relation to disability and health/safety

In Slovakia there are exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78).

A general exception in relation to disability applies to the service of armed forces, armed security services, armed corps, the National Security Office, the Slovak Information Service and the Fire and Rescue Service.³⁴² Under Section 8(5) of the Anti-discrimination Act, objectively justified differential treatment grounded in specific health requirements in relation to access to a job or to performing certain activities in a particular job, do not constitute discrimination on the ground of disability, provided that this is required by the character of the job or job activity.

Under Section 41(2) of the Labour Code,

‘if health capacity to work or mental capacity to work or other precondition pursuant to a special law is required for the performance of work, the employer may only conclude an employment contract with a natural person who has the health or mental capacity to perform such work, or with a natural person meeting other preconditions pursuant to a special law.’

Another exception on the ground of disability also applies in the area of the provision of insurance services (see also section 4.7.1 below).

There is no case law yet on the issue of health and safety exceptions related to disability.

There are no exceptions for grounds other than disability with regard to health and safety.

4.7 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)

4.7.1 Direct discrimination

In Slovakia national law provides an exception for direct discrimination on age.

The exception for age is provided both within the framework of genuine and determining occupational requirements (Section 8(1) of the Anti-discrimination Act – see section 4.1 above) and under Section 8(3) of the Anti-discrimination Act, which allows for differential treatment on the ground of age provided objective justification exists and provided other conditions are met (see below for further details).

³⁴¹ See Section 141(2)(b) of the Labour Code.

³⁴² Section 4(1)(b) of the Anti-discrimination Act.

- Justification of direct discrimination on the ground of age

In Slovakia it is possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age. The test as stipulated by the legislation (Section 8(3) of the Anti-discrimination Act – see below for more details) almost follows the wording of Article 6 of Directive 2000/78 and hence is compliant with the test in Article 6, Directive 2000/78 (and probably also with the CJEU case law – although there is still very limited case law that would interpret the Slovak legislative provisions).

a) Permitted differences of treatment based on age

In Slovakia national law permits differences of treatment based on age for any activities within the material scope of Directive 2000/78.

The exception for age is provided both within the framework of genuine and determining occupational requirements (Section 8(1) of the Anti-discrimination Act – see section 4.1) and under Section 8(3) of the Anti-discrimination Act. Section 8(3) of the Anti-discrimination Act reads as follows:

‘Differential treatment on the ground of age shall not be deemed to constitute discrimination if it is objectively justified by a legitimate aim and if it is necessary and appropriate for the achievement of that aim and if this is provided for by a specific legal regulation. Differences of treatment on grounds of age shall not be deemed to constitute discrimination if they consist of:

- fixing a minimum or maximum age as a recruitment criterion;
- setting special conditions for access to employment or vocational training, and special conditions for 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 work integration or protection of such persons;
- fixing minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment.’

From the structure and content of the above-quoted provision, it is not quite clear whether each of the exceptions specified in the three points must, in a particular case, meet the general test of justification provided by the introductory sentence to Section 8(3) of the Anti-discrimination Act, or whether the introductory sentence simply provides a general context for the exceptions specified in the three points (and perhaps further in other pieces of legislation).

Depending on the character of the relevant legislation, and also depending on the (limited) judicial practice that has developed on the issue over the course of time (the courts have only ruled on one case on this matter, see below), it is more likely that the second approach (where the introductory sentence simply provides a general context for the exceptions specified in the three points) will apply under the current wording of Section 8(3) of the Anti-discrimination Act. For example, according to Section 5(1)(a) of Act 385/2000 on Judges and Lay Judges, only a citizen who has reached at least 30 years of age can be appointed as a judge. The provision is of a cogent nature and as such seems to offer no room for justification in the light of the introductory sentence of Section 8(3) of the Anti-discrimination Act (which, per se, does not necessarily mean that the transposition of the 2000/78 Directive is incorrect in this point).

An example confirming the interpretation outlined above is a judgment of the District Court Banská Bystrica of 20 November 2007³⁴³ (upheld by a judgment of the Regional Court Banská Bystrica of 27 March 2008),³⁴⁴ where the claimant sued a potential employer for discrimination on the ground of age. The claimant was a 38-year-old unemployed man who saw a violation of the prohibition of discrimination in the publication of a job advertisement by the defendant in which the defendant sought to fill a vacancy for a technician. The condition for the technician job was that the applicant must be a 'disadvantaged job seeker under the age of 25'. This was in accordance with the defendant's contract with an office of labour, social affairs and family (concluded under the Act on Employment Services) under which the defendant had committed to create four jobs for 'disadvantaged applicants' (i.e. for applicants under the age of 25 who have completed their training for an occupation through a daily form of study less than two years ago and have not yet acquired their first regularly paid job) and the labour office committed to grant non-returnable financial support to create these jobs. The claimant alleged that the age condition contained in the job advertisement was the only reason that had deterred him from applying for the job.

The court arrived at the decision that the defendant had not breached the Anti-discrimination Act. For the court, the fact that the defendant acted in accordance with a contract with a labour office (and hence also legislation providing for exceptions based on age) was in itself sufficient reason to state that 'the defendant has therefore pursued a legitimate aim and acted in accordance with special regulations' (i.e. the court did not question the nature of the legislatively provided exception as such).

It is also worth noting that, for example, Section 77(6) of Act 131/2002 on Higher Education stipulates that employment of university teachers terminates at the end of the academic year in which they reach 70 years of age,³⁴⁵ although extension of the employment relationship is possible for one year (even repeatedly, but with no details on the criteria for doing so). It is very likely that the provision is in violation of CJEU case law on exceptions relating to age (see sections 4.7.4(c) and (f) below for more details). In addition, the provision also has the potential to be indirectly discriminatory on the ground of sex/gender, as the apparently neutral provision may have a greater impact on women, mainly due to their generally lower positions in academic hierarchies (because they tend to have more breaks in their careers than men during their working lives, due to caring responsibilities). Thus, forcing them to terminate their employment at a university at the age of 70 may reduce their overall chances to assert themselves through academic performance when compared to men. The unclear and basically arbitrary conditions for extending the contracts of university teachers over the age of 70 may, in fact, even strengthen the sex/gender discriminatory potential of the provision (and can also have other discriminatory impacts in relation to any other ground of discrimination, as they allow arbitrary decision-making about which employees have their contracts extended).

There are other similar cases in the Slovak legal system where an employment relationship must be terminated on reaching the age of 65 (see section 4.7.3). Social partners, however, are not authorised by law to agree the age at which an employment contract must or can be terminated (so the decision of the CJEU in *Prigge* is not applicable to Slovakia).

³⁴³ No 8C/119/2006 – 107.

³⁴⁴ No 12 Co/6/08. The Court probably made a mistake in the official judgment as it states the date of issue of the judgment of the regional court as 27 March 2007. However, this would not have been possible as the district court issued its decision on 20 November 2007 and regional court decisions always follow district court ones.

³⁴⁵ This age limit used to be 65 years prior to the adoption of an amendment to the Act on Higher Education of 27 April 2010, in effect from 1 October 2010. The reason for the amendment presented by its proponent (a coalition MP at the time that the act was adopted) was a 'lack of professionals guaranteeing study programmes who had ceased their function due to reaching the age of 65, which does not only significantly endanger future students but also students who are already enrolled in study programmes and areas of study'. Almost no arguments related to discrimination appeared in the public debate of the amendment.

b) Occupational pension schemes' fixed ages for admission or entitlements

In Slovakia, national law allows occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by Article 6(2).

With regard to occupational social security schemes, differences of treatment in such schemes on grounds of age will not be considered as discrimination where they consist of fixing age limits for entitlement to old age pensions and disability pensions, including the fixing of different age limits in such schemes for employees or groups of employees, and the use of different calculation methods for these pensions based on age criteria, provided that this does not result in discrimination on the ground of sex.³⁴⁶ Also, under Section 8(6) of the Anti-discrimination Act, differences of treatment on grounds of age or disability in the provision of insurance services will 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. Different treatment on the ground of age is permitted in areas regulating the service of members of the armed forces, armed security services, armed corps, the National Security Office, the Slovak Information Service and the Fire and Rescue Service.³⁴⁷

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

In Slovakia there are special conditions set by law for older and younger workers in order to promote their vocational integration, and for persons with caring responsibilities to ensure their protection.

According to Sections 171-173 of the Labour Code, an employer is obliged to create favourable conditions for the overall development of the physical and mental capabilities of young employees (the Labour Code uses the term 'juvenile employees'), including by adapting their working conditions. A young employee is, according to Section 40(3) of the Labour Code, defined as an employee under the age of 18. Any notice given to a young employee, or termination of employment with immediate effect on the employer's initiative, must be brought to the attention of the young employee's legal guardian. Employers may only assign young employees to jobs that are appropriate to their physical and mental development and do not jeopardise their morality. In addition, they must provide them with enhanced care at work.³⁴⁸

Sections 174-175 of the Labour Code stipulate the prohibition of night work and standby duty for young employees. Young employees over the age of 16 may exceptionally perform night work not exceeding one hour if it is necessary for their vocational training. The employer must not apply a system of wages and benefits that could endanger the health and safety of young employees, due to increased work performance. A young employee must not be assigned to work that is inadequate, dangerous or harmful to their health, due to their age-related, specific anatomical, physiological and psychological features. Lists of the kinds of work and workplaces forbidden for young employees are set out by a government regulation.³⁴⁹

³⁴⁶ Section 8(4) of the Anti-discrimination Act.

³⁴⁷ See Section 4(1)(b) of the Anti-discrimination Act.

³⁴⁸ Sections 172 and 173 of the Labour Code.

³⁴⁹ 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 (*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*).

Specific protective measures contained in the Labour Code apply to the prohibition of the immediate dismissal of an employee on maternity or parental leave, a solitary employee³⁵⁰ responsible for caring for a child under the age of three or an employee who personally cares for a relative or other close person with a severe disability (Section 68(3)).

For an employee with a disability, a pregnant woman, a woman or man permanently caring for a child under three or a solitary employee who permanently cares for a child under 15, working time may only be arranged unevenly upon agreement with them (Section 87(3); note the absence of this benefit in relation to employees who personally care for relatives or other close persons with a severe disability).

The employer is obliged to excuse the absence from work of an employee for periods of maternity leave and parental leave, periods for attending to a sick family member and periods for caring for a child under the age of ten 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(1)). When designating employees to work shifts, the employer is obliged to take into account the needs of pregnant women and of women and men caring permanently for children.

If a pregnant woman, or a man or a woman caring permanently for a child under the age of 15 requests a reduction in working hours or other arrangement to the fixed weekly working hours, the employer is obliged to accommodate their request, if this is not prevented for substantive operational reasons (Section 164(2)). This provision also applies to an employee who personally cares permanently for a relative or other close person who is mostly or completely helpless and who is not provided with care in social care facilities or institutional care in healthcare facilities (Section 165).

The Act on Employment Services expressly defines employment services as well as the implementation of active measures within the labour market. Among others, the act provides specific support to the category of 'disadvantaged job seekers'. This category comprises, *inter alia*, solitary citizens living with one or more persons who are reliant on them or caring for at least one child still attending school, people over the age of 50 and people under 26 who have completed their training for an occupation through a daily form of study less than two years ago and have not yet acquired their first regularly paid job.³⁵¹

In accordance with this act, the Government may provide a job seeker under the age of 26 who has completed secondary school or university studies, with a 'practical training allowance' aimed at widening the opportunities for this person to find a job within the labour market. The practical training is carried out in the workplace of a particular employer and corresponds to the level of education attained for a period of no less than three months and no more than six months. During the practical training the young trainee receives a state-funded monthly allowance of the subsistence amount for one adult person set by a special regulation (EUR 198.09 as of July 2013).³⁵²

The act also introduced a 'subsidy for the employment of a disadvantaged job seeker'.³⁵³ An employer who creates a new workplace and employs a 'disadvantaged job seeker' is entitled to a subsidy of up to 30 % (depending on the region) of the monthly cost of labour of one employee, calculated on the basis of the average wage of an employee in the national economy.

³⁵⁰ Under the Labour Code, a solitary employee is understood as an 'employee who lives alone and is a single, widowed or divorced man or a single, widowed or divorced woman' (Section 40(1)) or a 'solitary man or a woman for other substantive reasons' (Section 40(2)).

³⁵¹ See Section 8 of the Act.

³⁵² See Section 51 of the Act.

³⁵³ Section 50 of the Act.

4.7.3 Minimum and maximum age requirements

General rules for the justification of direct discrimination in employment on the ground of minimum or maximum age requirements are set in Section 8(3)(a) of the Anti-discrimination Act (see section 4.7.1 above).

There are several laws stipulating minimum or maximum ages in employment relationships. None of the laws have been subject to specific public discussion or judicial review as to whether they are compatible with Directive 2000/78.

The Constitution of the Slovak Republic regulates the requirements applicable to the holders of high public office, including their age. This applies to the President of the State, for whom a minimum age of 40 has been set, to judges, judges of the Constitutional Court, the ombudsperson and members of parliament (the National Council of the Slovak Republic).³⁵⁴

Other laws regulate, for example, the minimum age limit for a work assistant for a person with a disability (18 years),³⁵⁵ the minimum age of a prosecutor (25 years),³⁵⁶ the general prosecutor (40 years)³⁵⁷ and judges (30 years – see also section 4.7.1 above).³⁵⁸ The President may, upon a recommendation of the Judicial Council, withdraw a judge who has reached the age of 65.³⁵⁹ Seventy is the maximum age limit for a university teacher to be in an employment relationship with a university (although extensions are allowed – see section 4.7.1 above). The Labour Code stipulates a minimum age of 15 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 for work before the applicant has completed compulsory school education.³⁶⁰ Civil servants must be at least 18 years old. The law also stipulates a minimum age for obtaining a permit to run a business (18 years).³⁶¹

Although the law does not say anything about age requirements for training connected to some of the professions described above, it follows logically that if training is designed for people in these professions only, then *de facto* age limits apply with regard to training as well.

In accordance with the Act on Employment Services, the Government may provide a job seeker under the age of 26 who has completed secondary school or university studies with a 'practical training allowance', aimed at widening the opportunities for this person to find a job within the labour market. The practical training is carried out in the workplace of a particular employer and corresponds to the level of education attained for a period of no less than three months and no more than six months. During the practical training the young trainee receives a state-funded monthly allowance of the subsistence amount for one adult person set by a special regulation (EUR 198.09 as of July 2013).³⁶²

³⁵⁴ See Articles 74, 103, 134, 145 and 151a of the Constitution of the Slovak Republic.

³⁵⁵ Section 59(3) of the Act on Employment Services.

³⁵⁶ Section 6 of the Act No 154/2001 Coll. on Prosecutors and Prosecutor Candidates, as amended (*zákon č. 154/2001 Z. z. o prokurátoroch a právnych čakateloch prokuratúry v znení neskorších predpisov*).

³⁵⁷ Section 7(3) of the Act No. 153/2001 on Prosecution, as amended (*zákon č. 153/2001 Z. z. o prokuratúre v znení neskorších predpisov*).

³⁵⁸ Section 11 of the Act No 385/2000 Coll. on Judges and Lay Judges and on Amending and Supplementing Certain Acts, as amended (*zákon č. 385/2000 Z. z. o sudcoch a prísediach a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

³⁵⁹ Article 147(2)(b) of the Constitution of the Slovak Republic.

³⁶⁰ Section 11 of the Labour Code.

³⁶¹ Section 6 of Act on Licensed Trades (Small Business Act).

³⁶² See Section 51 of the Act on Employment Services.

4.7.4 Retirement

a) State pension age

In Slovakia there is a state pension age, at which individuals are entitled (but not obliged) to collect their state pensions. If an individual wishes to work longer, she or he can collect a pension and still work (however, this does not fully apply to early pensions).

The age of entitlement to a state pension is fixed by law. Under the Social Insurance Act,³⁶³ the pensionable age is fixed at the age 62 years for both men and women. However, this provision is not fully implemented yet, due to changes in the retirement security scheme that were introduced in 2004 by transitional provisions in the Social Insurance Act that set the retirement ages progressively (and differently for men and women), starting at 60 years for men and 53 to 57 years for women (depending on the number of children the woman has had).³⁶⁴

Pensionable age and collection of a pension does not prevent someone from working if they wish to continue their employment or start a new one. Thus a person entitled to a state pension can work and collect their old age pension from the social security scheme and a wage from their employer.

In special circumstances an individual can start to collect their pension early.³⁶⁵ As of January 2013, the simultaneous collection of an early pension and a wage or salary (including payments for services carried out by people who are self-employed) that is subject to compulsory pension insurance, is no longer possible, with some minor exceptions (for example a simultaneous collection of an early pension and of a salary is possible if the sum of the monthly income of the person concerned received from her employment or public service does not exceed 67 % of the average monthly wage in the national economy in a year preceding, by two years, the year in which the person concerned started the employment or public service in question).³⁶⁶

There is no case law on any of these issues yet.

b) Occupational pension schemes

In Slovakia there is a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements. An individual can collect an occupational (‘supplementary’) pension and still work, unless she or he collects an early occupational pension, which excludes the option to work (apart from some minor exceptions – see section 4.7.4(a) above).

Occupational pension schemes and their corresponding entitlements do not represent the main and compulsory source of pensionable income (this role is fulfilled by the state social security scheme) but are a supplementary source of income based on a voluntary agreement between employers and employees. For this reason, an individual can collect a pension and still work.

³⁶³ Act No 461/2003 Coll. on Social Insurance, as amended (*zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov*).

³⁶⁴ Section 65 of the Social Insurance Act.

³⁶⁵ Section 67 of the Social Insurance Act. The general conditions are that an individual was insured for at least 15 years, that she or he is supposed to reach the regular statutory pensionable age in no more than 2 years, and that the sum of the early pension she or he would acquire is no less than 1.2 times the ‘living minimum’ per one adult person as stipulated by a special law.

³⁶⁶ See Section 67(4) of the Social Insurance Act, in conjunction with Section 4(1)(d).

The functioning of the occupational social security schemes in Slovakia is regulated by Act 650/2004 on Supplementary Pension Saving³⁶⁷ (see section 3.2.3 above for more details on the act).

Under Section 16(1) of the Act on Supplementary Pension Saving, a participant in this supplementary pension saving scheme who requests to receive payments from a supplementary pension can receive this supplementary pension in the event that they become entitled to receive old age pension under Act 461/2003 on Social Insurance (see section 4.7.4(a) above), in the event that they become entitled to receive an early pension according to Section 67 of the Act on Social Insurance (see section 4.7.4(a) above), or when they reach 62 years of age. An individual who collects an early pension, and hence is entitled to a supplementary pension, cannot work and at the same time collect a supplementary pension (apart from some minor exceptions), because supplementary pension entitlement is conditioned upon early pension entitlement, and an early pension entitlement is conditioned upon the person concerned not working.

c) State imposed mandatory retirement ages

In Slovakia there is no state-imposed mandatory retirement age(s). However, with respect to some professions in the field of public service, some *de facto* exceptions apply.

Until 2009, civil servants had to retire at the age of 65.³⁶⁸ With the adoption of Act 400/2009 on Civil Service, this condition was abolished.

A *de facto* state-imposed mandatory age for retirement is stipulated by Section 77(6) of Act 131/2002 on Higher Education, which stipulates that employment of university teachers terminates at the end of the academic year in which they reach the age of 70. Although this provision allows the employment relationship of university teachers aged over 70 to be extended for one year (even repeatedly, but with no details on the criteria for doing so), a university teacher whose contract is not extended has practically no option other than to retire (see section 4.7.3 above for more details).

A state-imposed mandatory retirement age can, in certain circumstances, also apply to judges. Although there is no mandatory retirement age for judges, the President can, upon a proposal from the Judicial Council, remove a judge from office if they have reached the age of 65. It is unclear from the law whether the Judicial Council is obliged to propose to the President the removal from office of every judge who reaches the age of 65. There are no criteria in the Constitution or in law for the President to follow when deciding whether to remove from office a judge who has reached the age of 65.³⁶⁹

A similar situation emerges with prosecutors. The Prosecutor General can, in accordance with Section 15(3)(b) of Act 154/2001 on Prosecutors and Legal Trainees of the Prosecutor's Office, remove a prosecutor from office if they have reached the age of 65. The law does not stipulate any further conditions for the Prosecutor General to decide whether or not to remove the prosecutor concerned from office.³⁷⁰

There are otherwise no state-imposed mandatory retirement ages.

There is no case law on the issue.

³⁶⁷ Act No 650/2004 Coll. on Supplementary Pension Saving and on amending and supplementing certain laws, as amended (*zákon č. 650/2004 Z. z. o doplnkovom dôchodkovom sporení a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*), see Section 2(2).

³⁶⁸ Sections 14 and 43 (both abolished) of Act No 312/2001 Coll. on the Civil Service and amending and supplementing certain acts, as amended.

³⁶⁹ See Article 147(2)(b) of the Constitution of the Slovak Republic, Section 18(2)(b) and Section 18(3) of the Act on Judges and Lay-Judges.

³⁷⁰ See Sections 14-17 of the Act on Prosecutors and Legal Trainees of the Prosecutor's Office for more detailed information.

d) Retirement ages imposed by employers

In Slovakia national law does not permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract, collective bargaining or unilaterally.

e) Employment rights applicable to all workers irrespective of age

The law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment. These rights are not lost on attaining pensionable age or another age.

An employer may not therefore terminate a contract after an employee attains pensionable age on the ground of age alone. This means that anyone can continue in employment so long as they enjoy sufficient capacity (except for the age limitations mentioned above and in section 4.7.3, the limitations connected to early pensions – see section 4.7.4(a) and, of course, except for cases such as incompetence or misconduct, which are generally legally accepted grounds for job termination by an employer). Thus, the state pensionable ('retirement') age stipulated by Slovak legislation simply refers to pension entitlement that 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 of fixing different retirement ages for men and women are not considered to be discriminatory.³⁷¹

f) Compliance of national law with CJEU case law

In Slovakia national legislation is in line with the CJEU case law on age regarding compulsory retirement, apart from the cases listed in section 4.7.4(c) above.

In the case of all the occupations listed in section 4.7.4(c), (university teachers, judges, prosecutors), the law might be following a legitimate aim (quality of performance of public service, generational balance etc.). However, it does not require that the person affected by the compulsory dismissal be entitled to an old-age pension, which is in conflict with the case law listed in the question (e.g. *Palacios de la Villa*). In addition, the conditions for non-renewal of a labour contract (in the case of university teachers) or for removing a judge or prosecutor from office, are arbitrary and non-transparent, which certainly does not meet the requirement for reasonableness of the measures in question and the condition for proportionality of the means used.

4.7.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In Slovakia, national law does not permit age or seniority to be taken into account in selecting workers for redundancy.

b) Age taken into account for redundancy compensation

In Slovakia, national law provides compensation for redundancy. If so this is not directly affected by the age of the worker.

In principle, the redundancy payment does not depend on the age of the employee concerned. However, as the calculations of the redundancy payment depend on the length

³⁷¹ Section 8(7)(a) of the Anti-discrimination Act.

of employment with a particular employer, the age of the worker can indirectly influence the sum of the redundancy payment (the longer the employment relationship, the higher the redundancy payment).³⁷²

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)

In Slovakia national law does not include exceptions that seek to rely on Article 2(5) of the Employment Equality Directive.

4.9 Any other exceptions

In Slovakia, other exceptions to the prohibition of discrimination provided in national law are the following:

According to Section 8(4) of the Anti-discrimination Act:

‘ differential treatment in occupational pension systems based on age shall not be deemed to constitute discrimination if it consists in the fixing of different age limits for entitlement to old age pension and disability pension in such systems, if it consists in the fixing of different age limits in such schemes for [different]³⁷³ employees or groups of employees, and if it consists in using different ways of calculation of these pensions that are based on the criterion of age, provided that these calculations are not simultaneously discriminatory on the ground of sex.’

According to Section 8(5) of the Anti-discrimination Act:

‘ objectively justified differential treatment based on specific health requirements in relation to application for a job or performing certain activities in a particular job shall not be deemed to constitute discrimination on the ground of disability, provided that this treatment is required by the nature of the job or of the job activity.’

According to Section 8(6) of the Anti-discrimination Act:

‘ differential treatment based on age or disability in the provision of insurance services shall not be deemed to constitute discrimination if the differential treatment follows from a different level of risk verifiable by statistical or similar data and the terms of the insurance services are proportionate to this risk.’

Section 8a of the Anti-discrimination Act is an enabling provision for the use of ‘ temporary equalising measures’ (positive action measures) – see Section 5 of this report for more details.

Section 166 of the Labour Code obliges an employer to extend an employee’s parental leave, upon their request, to an overall duration of up to six years if they care for a child with a long-term unfavourable state of health (as compared to parental leave of a maximum duration of three years provided to employees caring for a child without a long-term unfavourable state of health).

People with disabilities enjoy special protection against dismissal: a person with a disability can only be given notice after prior endorsement from the labour office responsible.³⁷⁴

³⁷² See Section 76 of the Labour Code.

³⁷³ The provision of Section 8(4) of the Anti-discrimination Act is very unclear as to what categories of ‘ employees’ and ‘ groups of employees’ it has in mind when stipulating this exception.

³⁷⁴ Section 66 of the Labour Code. However, the endorsement requirement does not apply in the case of employees with disabilities who have attained pensionable age.

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

a) Scope for positive action measures

In Slovakia positive action in respect of racial or ethnic origin, disability and age is provided for in national law. Positive action in respect of religion or belief and sexual orientation is not provided for in national law.

The ability to adopt positive action measures (known as 'temporary equalising measures') is provided for by Section 8a of the Anti-discrimination Act.³⁷⁵ The act stipulates that the

'adoption of temporary equalising measures by public administration bodies or other legal entities that are aimed at removing disadvantages following from the ground of racial or ethnic origin, affiliation with a national minority or an ethnic group, gender or sex, age or disability, the aim of which is to guarantee equality of opportunities in practice, is not deemed to be discrimination.'³⁷⁶

The Anti-discrimination Act lists the possible temporary equalising measures in a non-exhaustive list to contain measures:

- a) aimed at removing social or economic disadvantage that disproportionately affects representatives of disadvantaged groups;
- b) consisting of supporting the interests of representatives of the disadvantaged groups in employment, education, culture, healthcare and services;
- c) aimed at generating equality in access to employment, education, healthcare and housing, mainly through targeted training programmes for representatives of the disadvantaged groups or through the dissemination of information about these programmes or through opportunities to apply for jobs or places in the education system'.³⁷⁷

The temporary equalising measures can only be adopted if there is 'provable inequality', if their aim is reducing or removing this inequality and if they are appropriate and necessary to achieve the set aim.³⁷⁸ The temporary equalising measures can only be adopted in the fields falling under the material scope of the Anti-discrimination Act³⁷⁹ (employment and occupation, social security and social advantages, healthcare, education and access to and provision of goods and services including housing).³⁸⁰ They can only be in force while the inequality that has led to their adoption exists. Otherwise the bodies that have adopted such measures are obliged to stop them.³⁸¹

Bodies that adopt the measures are obliged to monitor and evaluate them continuously and to publish information about them with a view to reappraising their further duration, and must provide the relevant information to the Slovak National Centre for Human Rights (the equality body).³⁸²

Positive action measures were subject to Constitutional Court review in 2004-2005, upon adoption of the Anti-discrimination Act in 2004, which contained a positive action provision (Section 8(8) at that time), which read:

³⁷⁵ This provision gained its current shape after an amendment of the Anti-discrimination Act by Act No 32/2013 Coll. of 5 February 2013, effective from 1 April 2013.

³⁷⁶ Section 8a(1) of the Anti-discrimination Act, first sentence.

³⁷⁷ Section 8a(1) of the Anti-discrimination Act, second sentence.

³⁷⁸ Section 8a(2) of the Anti-discrimination Act.

³⁷⁹ Section 8a(3) of the Anti-discrimination Act, first sentence.

³⁸⁰ Sections 3(1), 6 and 5 of the Anti-discrimination Act.

³⁸¹ Section 8a(3) of the Anti-discrimination Act, second sentence.

³⁸² Section 8a(4) of the Anti-discrimination Act.

‘With a view to ensuring full equality in practice and compliance with the principle of equal treatment, specific equalising measures to prevent disadvantages linked to racial or ethnic origin may be adopted.’³⁸³

The Constitutional Court decided in 2005 that the former Section 8(8) of the Anti-discrimination Act was not in compliance with the Constitution.³⁸⁴ It argued that the disputed provision constituted more favourable treatment (positive discrimination) of persons linked to racial or ethnic origin. It also argued that it did not set out criteria for taking the specific equalising measures, and that it contained no rules that would limit the measures in terms of duration, which meant that they could become a basis for discrimination (so-called ‘reverse discrimination’) against other groups without there being a constitutional basis for it. Therefore the Constitutional Court deemed these provisions to have contravened the principle of the rule of law.

The Constitutional Court did not reject the application of the specific equalising 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 Article 38 (paragraphs 1 and 2) of the Constitution under which women, minors and persons with disabilities may enjoy more extensive health protection at work and special working conditions. In accordance with Article 38 of the Constitution, minors and people with disabilities also have the right to special assistance in training.

It seems from the current wording of Section 8a of the Anti-discrimination Act, enabling the adoption of the temporary equalising measures, that the Constitutional Court decision was simply ‘overruled’ by legislators with regard to racial or ethnic origin, affiliation with a national minority or an ethnic group, and age being the eligible grounds for positive action (since they are not covered by Article 38 of the Constitution), and in principle also with all other grounds contained in the provision, since Article 38 of the Constitution only covers health protection at work and working conditions (and the material scope of the positive action as regulated by the Anti-discrimination Act currently covers all fields that fall under the scope of Anti-discrimination Act). However, no-one contests the current wording of Section 8a of the Anti-discrimination Act and the Constitutional Court decision used to be a subject of constant criticism for its inconsistency and illegitimacy.

In autumn 2013, the Centre for the Research of Ethnicity and Culture (an NGO based in Slovakia) initiated co-operation with the Ministry of Justice with regard to the need to provide some guidance for adopting temporary equalising measures. The ministry formed a working group composed of various representatives of governmental bodies, the Slovak National Centre for Human Rights and NGOs. The work of this group resulted in written guidelines for the implementation of temporary equalising measures with regard to ethnicity, nationality (*národnosť*), sex or gender (the guidelines are not official yet and publication is due in June 2015).³⁸⁵

b) Main positive action measures in place on national level

There are various measures that can be perceived as positive action, although not all of them are perceived as such by those who introduced and/or implement them.

On a broad policy level (often also backed by corresponding legislation), there are or have been a few measures that could, in principle, be categorised as positive action (mainly with

³⁸³ Section 8(8) of the Anti-discrimination Act No 365/2004 Coll., as adopted on 20 May 2004.

³⁸⁴ Decision of the Constitutional Court of 18 October 2005, PL. ÚS 8/04, <http://www.concourt.sk/>, accessed 16 April 2015.

³⁸⁵ The information about the guidelines was provided by Jarmila Lajčáková from the Ethnicity and Culture Research Centre, the author of the guidelines.

regard to ethnicity), although they are formulated rather neutrally (i.e. they do not refer specifically to ethnicity/Roma communities) and are based largely on the concept of 'social disadvantage'. An example of this approach in education are the so-called zero-grade classes, which primary schools are allowed to run for children 'from socially disadvantaged backgrounds in whose case it can be assumed that their development will equalise by placing them in zero-grade classes'³⁸⁶ and for children who 'on reaching the age of six do not have the capacity for school attendance and come from socially disadvantaged backgrounds'.³⁸⁷ Although formulated seemingly neutrally, these measures appear to have been aimed particularly at Roma children, and it is almost exclusively Roma children who are placed in such classes.

The overall practical efficiency of these measures is very questionable, not only because many of the children who would be eligible for education in the zero-grade classes are, due to discriminatory diagnostics and discriminatory legislation, placed in special/specialised schools (see section 3.2.8 above), but also because of the fact that the existing school system is unable to include Roma children properly later on and mainstream their equality. In addition, these measures are criticised as a tool of further segregation (it is almost exclusively Roma children who are placed in the zero-grade classes), labelling and stigmatisation of Roma children: Roma children are the 'problem' and need to be 'civilised' and made 'normal' in order to be eligible for further education with non-Roma children and there is no reflection on the non-inclusive and culturally dominant majoritarian system of education.³⁸⁸

As a broad policy measure in the field of health, the programme of health mediators based in marginalised Roma communities was re-introduced in 2013 (after some breaks in the previous programmes of this kind, existing in some form and extent since 2000). The programme that started in 2013, entitled 'Healthy Communities', is a joint initiative of NGOs associated in the platform for the support of health of disadvantaged groups that is coordinated by Association for Education and Culture (ACEC) and is funded by the Ministry of Finance and by the operational programme on 'Employment and Social Inclusion' of the structural funds. The programme, aimed at improving the access of marginalised Roma communities to healthcare, employs 190 health mediators of Roma origin in 165 Roma communities (the mediators come from these communities) to assist people from marginalised Roma communities with everyday health-related situations (such as assisting them with making a doctor's appointment, providing information relating to health and on personal hygiene, care for children, the importance of vaccination, calling an ambulance, etc.) but who also act as intermediaries between the marginalised Roma communities and healthcare professionals and facilities. The interim outcomes of the project seem to be very promising and the health mediators enjoy a high degree of respect not only in their communities, but also among healthcare providers.³⁸⁹

At an institutional level and as a preferential treatment narrowly tailored, a rather innovative initiative entitled 'You also have a chance!' has taken place at the University of Economics in Bratislava since autumn 2013.³⁹⁰ Together with the Centre for the Research

³⁸⁶ Section 60(4) of the Schools Act.

³⁸⁷ Section 19(4) of the Schools Act.

³⁸⁸ This was also one of the main findings of a qualitative research study carried out by the Ethnicity and Culture Research Centre (*Centrum pre výskum etnicity a kultúry* – www.cvek.sk, accessed 24 April 2015) in late 2011 and early 2012. The findings of the research were published in Gallová Kriglerová, E., Gažovičová, T. (eds.) (2012): *Škola pre všetkých? Inkluzivnosť opatrení vo vzťahu k rómskym deťom* (School for Everybody? The Inclusiveness of Measures Relating to Roma Children), Bratislava, Centrum pre výskum etnicity a kultúry (the publication is also available online at: www.cvek.sk/uploaded/files/skola_pre_vsetkych_web.pdf (accessed 24 April 2015)).

³⁸⁹ Some information about the project can be found at <http://www.zdravekomunity.sk/o-nas> (last accessed 25 April 2015), and some has been provided by Jarmila Lajčáková from the Ethnicity and Culture Research Centre.

³⁹⁰ Some information about the initiative can be found at <http://www.euba.sk/uchadzaci-o-studium/preview-file/informacia-na-web-18254.pdf> (accessed 24 April 2015). Some information was also provided in an interview given by Jarmila Lajčáková from the Ethnicity and Culture Research Centre.

of Ethnicity and Culture (an NGO based in Slovakia), the university is carrying out a set of temporary equalising measures that should increase opportunities for Roma applicants to get enrolled and successfully complete university studies. These measures comprise outreach programmes to promote the university among Roma high school pupils, providing free access to courses preparing them for entrance exams, and providing individual assistance and support to each of the Roma applicants (and in some cases their parents). The conditions of entrance exams will remain the same for all applicants, i.e. no quotas will be applied, although Roma applicants are exempted from paying entrance exams fees. The preparatory courses are being attended by four Roma pupils at the moment, with the first entrance exams taking place in June 2015. The initiative will also help successful Roma applicants in applying for all available scholarships, assign a special mentor and a coordinator, a student buddy, and mainstream Roma-related issues in several courses.

Employment legislation provides for special protection for people with disabilities. There is a special quota system established for employers who employ at least 20 employees. Under Sections 63-65 of the Act on Employment Services, any employer who employs at least 20 employees³⁹¹ is obliged to ensure that at least 3.2 % of its workforce is made up of people with disabilities, provided that the local labour office has job seekers with disabilities on its register. Instead of employing a person with a disability, an employer can also decide to buy goods or services from a sheltered workshop or a sheltered workplace or a self-employed person with a disability. If an employer fails to meet both of these obligations, they are obliged to pay a levy to the labour office.

There are no specific measures related to discrimination on the ground of sexual orientation and religion and belief.

³⁹¹ Excluding some categories of employees such as members of the police, prison guards, firefighters etc.

6 REMEDIES AND ENFORCEMENT

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

- a) Available procedures for enforcing the principle of equal treatment

In Slovakia, the following procedures exist for enforcing the principle of equal treatment: judicial, administrative, alternative dispute resolution (in the form of mediation), and internal complaint procedures (mainly in workplaces).

There are no different procedures for employment in the private and the public sectors.

- Civil judicial procedures

Under the Anti-discrimination Act, a natural person and/or legal entity who consider(s) themselves wronged in relation to their rights and interests protected by law because the principle of equal treatment has not been applied to them, may pursue their claim through judicial proceeding before the civil court of the first instance (there are no special labour courts in Slovakia). Persons discriminated against have the right to sue the perpetrator – be it a natural person or a legal entity, a public or private body – and request a number of remedies, including (the list is not exhaustive) that they be made to refrain from such conduct and, where possible, rectify the illegal situation or provide adequate satisfaction. If the adequate satisfaction is insufficient – generally if the violation of the principle of equal treatment has considerably impaired the dignity, social status or social achievement of the victim – they may also seek non-pecuniary damages in cash. The amount of the non-pecuniary damages is determined by the court, which must take into account the seriousness of the non-pecuniary damage and all underlying circumstances. Material damages resulting from such treatment may also be claimed.³⁹² There is no difference in the procedure, whether a public or private entity is being sued. The procedure has legally binding rules and the outcome is also legally binding.

Even though invalidity of job termination can, in principle, also be claimed within the framework of the proceedings provided for by Section 9 of the Anti-discrimination Act (see above, the list of existing damages is non-exhaustive), the available information about judicial practice in this matter seems to indicate that judges may divide cases that involve a claim of invalid job termination into separate proceedings, which makes the exercise of rights and hence remedies less efficient, more complicated and sometimes also confusing and more expensive (for example, with regard to the need for legal representation and the type of representation needed).³⁹³

- Administrative procedures

Since all public authorities are obliged to follow the principle of equal treatment, either pursuant to the Anti-discrimination Act (if the scope of their activities falls under the material scope of the act), or pursuant to the Constitution (or both), they are all subject to administrative complaint proceedings. There is a special act on administrative complaint proceedings that deals with complaints against unlawful conduct by public authorities

³⁹² Section 9 of the Anti-discrimination Act.

³⁹³ The proceedings on invalidity of employment termination are not regulated by the Anti-discrimination Act as special anti-discrimination proceedings but by the Labour Code as specific labour-related proceedings. Thus, it is unclear whether courts would, for example, accept representation by NGOs or apply the shift in the burden of proof in such proceedings.

(discrimination falls under such conduct).³⁹⁴ Some public bodies have special complaint mechanisms, which are regulated by laws. Generally speaking, the outcomes of these procedures are binding, but they are not legally bindings for courts (they can make judgments on the issues in question by themselves but are obliged to 'draw upon' the decisions of the relevant bodies).³⁹⁵

In some instances when public bodies/institutions are obliged to observe the principle of equal treatment (such as a school, the State Social Insurance Company), decisions taken by these institutions (e.g. on (non)admission to a school, on (non)granting of a social insurance benefit) are subject to special administrative rules, and the decisions themselves are subject to appeal, either by administrative bodies, or by courts. If the appeal procedures are carried out by administrative bodies, the appellate decisions are usually subject to judicial review. All decisions are, generally speaking, binding.

In some fields (e.g. employment, provision of goods and services), the performance of entities operating in these fields (employers, service providers, etc.) are subject to supervision through inspections. The inspections follow a type of administrative procedure. However, no shift of the burden of proof applies to inspection legislation (see section 6.3 of this report for more information) and so investigations by labour inspectorates, for example, into breaches of the principle of equal treatment have, in most cases, ultimately found no breaches of this principle. In cases where breaches of the principle were identified, the labour inspectorates did not impose fines but ordered the entities responsible for the breach to remove the shortcomings identified.³⁹⁶ It is also becoming increasingly apparent that the inspectorates do not have sufficient or appropriate methodology for the identification of breaches of the principle of equal treatment and/or for investigating them and that the existing law on labour inspection contains other barriers to the efficient exercise of the responsibilities of labour inspectorates in discrimination-related inspections.³⁹⁷ The decisions of inspectorates are, generally speaking, binding and are subject to judicial review.

- Internal complaint mechanisms

Section 13(5) of the Labour Code sets out the right of employees to submit a complaint to their employer against the infringement of the principle of equal treatment. The employer is obliged to respond to such a complaint without undue delay, provide redress, abstain from such conduct and eliminate the consequences thereof. The importance of this provision is in setting the obligation of a private employer to deal with complaints of discrimination in employment relationships. The procedure is binding for the employer (if he or she receives such a complaint) but not for outside entities, including state bodies. The effect of this particular remedy is questionable; it is not much used in practice, and when it is used, it is often not to the benefit but to the detriment of the person discriminated against.

³⁹⁴ Act No 9/2010 Coll. on Complaints (*zákon č. 9/2010 Z. z. o sťažnostiach*). Complaints against a public body are usually dealt with by a higher public authority. The complaint should be processed within a time limit of 60 days.

³⁹⁵ See Section 135 of the Act No 99/1963 Civil Procedure Act.

³⁹⁶ See for example Debrecéniová, J., Pufflerová, Š. (2011), *Inšpektoráty práce a ich pôsobenie pri plnení záväzkov SR týkajúcich sa presadzovania dodržiavania zásady rovnakého zaobchádzania v pracovnoprávných a štátnozamestnaneckých vzťahoch* (Labour Inspectorates and their Roles in Fulfilling Obligations of the Slovak Republic Concerning the Promoting of the Observance of the Principle of Equal Treatment in Private and Public Employment relations), Bratislava, Občan, demokracia a zodpovednosť, pp. 1-2, available at: <http://www.oad.sk/node/587> (last accessed 26 April 2015).

³⁹⁷ See Debrecéniová, J., Pufflerová, Š. (2011), *Inšpektoráty práce a ich pôsobenie pri plnení záväzkov SR týkajúcich sa presadzovania dodržiavania zásady rovnakého zaobchádzania v pracovnoprávných a štátnozamestnaneckých vzťahoch* (Labour Inspectorates and their Roles in Fulfilling Obligations of the Slovak Republic Concerning the Promoting of the Observance of the Principle of Equal Treatment in Private and Public Employment relations), Bratislava, Občan, demokracia a zodpovednosť, pp. 1-2, available at: <http://www.oad.sk/node/587> (last accessed 26 April 2015). pp. 8-9.

- Mediation

The Anti-discrimination Act makes explicit reference to the right of people suffering breaches of the principle of equal treatment to mediation.³⁹⁸ The process of mediation is regulated by the Act on Mediation,³⁹⁹ which does not cover discrimination-specific mediation. Although the possibility of mediation undoubtedly extends (at least theoretically) the scope of remedial options for victims of discrimination, it is highly questionable whether the concept is suitable for some types of discrimination or cases of discriminatory behaviour (mainly harassment and sexual harassment, but also any kind of intentional discrimination) and whether it might not, in some cases, perpetuate the inequality. The mediation agreement is binding for the parties to the mediation.⁴⁰⁰ If the agreement is written in the form of notary minutes or approved by a court, it is also legally enforceable.⁴⁰¹

- Criminal proceedings

Some of the gravest violations of the principle of equal treatment also constitute crimes. Criminal convictions and subsequent criminal proceedings can only be initiated by the state. The judgments of criminal courts are legally binding.

b) Barriers and other deterrents faced by litigants seeking redress

Claiming invalidity of an employment termination can only be done within a period of two months from the due date of the termination of the employment relationship.⁴⁰² This is certainly a barrier to seeking effective remedies in cases of discriminatory dismissals.

There is also case law indicating that claiming financial compensation for non-pecuniary damage can be subject to a three-year lapse period⁴⁰³ (although the law does not address this issue explicitly).

Another potential barrier to initiating anti-discrimination judicial proceedings may be the court fees, especially when seeking non-pecuniary damages in cash. This fee derives from the amount requested (3 %; and is always paid in addition to the judicial fees for the other claims made) and, in the author's view, is a barrier to seeking amounts that would really be effective, proportionate and dissuasive.

Socially disadvantaged applicants can be exempted from payment of court fees on the decision of the judge. However, the criteria for exempting a claimant from judicial fees are not fixed; the relevant provision states that a 'full or partial exemption can be granted if the situation of the party to the proceeding justifies it and if the invocation or the defence of the rights in question is not arbitrary or manifestly unsuccessful'.⁴⁰⁴

In practice, the physical accessibility of courts is not guaranteed for people with disabilities, particularly in old court buildings. Newly constructed or reconstructed court buildings, as well as all other public buildings, must be accessible for people with disabilities. Information provided in Braille script is mandatory only for the service panels in lifts.

³⁹⁸ Section 9(5) of the Anti-discrimination Act.

³⁹⁹ Act No 420/2004 Coll. on Mediation and supplementing certain acts (*zákon č. 420/2004 Z. z. o mediácii a o doplnení niektorých zákonov*).

⁴⁰⁰ See Section 15(1) of the Act on Mediation.

⁴⁰¹ See Section 15(2) of the Act on Mediation.

⁴⁰² Meaning two months after the (invalidly terminated) employment relationship would have ended (as a consequence of the invalid termination). See Section 77 of the Labour Code.

⁴⁰³ See the judgment of the Supreme Court of the Slovak Republic of 1 November 2008, file No 2 Cdo 278/2007.

⁴⁰⁴ See Section 138 of the Civil Procedure Act.

There is also a lack of qualified legal assistance in the field of anti-discrimination (as well as a lack of accessible legal aid in general, in terms of financial accessibility). Access to free legal representation for those whose income is very low is provided by the state,⁴⁰⁵ although this legal representation can only be provided in civil judicial proceedings (including proceedings in the field of employment and including judicial review of administrative decisions) and not in administrative proceedings/proceedings before inspectorates, or criminal proceedings.⁴⁰⁶ The threshold for entitlement to free legal aid or for legal aid with a symbolic financial contribution from the person affected is relatively low,⁴⁰⁷ but there is still a relatively significant group of people who would not be able to pay for legal services (i.e. they do not fall under the threshold and hence are not entitled to the free/symbolically paid legal aid, but are still unable to pay it by themselves).⁴⁰⁸

In cases of breaches of the principle of equal treatment, the Slovak National Centre for Human Rights should arrange legal assistance for victims of discrimination (no matter what their income) but the Slovak National Centre for Human Rights does not fulfil this task very efficiently. Out of approximately 1000 complaints of discrimination received by the Centre annually,⁴⁰⁹ it provided legal representation before courts only in a very small number of cases.⁴¹⁰

There is no obligatory legal representation in proceedings concerning discrimination (apart from proceedings before the Supreme Court and the Constitutional Court).

In 2012, the Centre for Civil and Human Rights, an NGO active in the field of non-discrimination, published a study of access barriers to efficient legal protection against

⁴⁰⁵ Act No 327/2005 Coll. on Providing Legal Aid to Persons in Material Need, as amended (*zákon č. 327/2005 Z. z. o poskytovaní právnej pomoci osobám v materiálnej núdzi, v znení neskorších predpisov*).

⁴⁰⁶ See Section 3(1) of the Act on Providing Legal Aid to Persons in Material Need.

⁴⁰⁷ See Sections 6 and 6a of the Act on Providing Legal Aid to Persons in Material Need.

⁴⁰⁸ In addition, family members living in one household are, for the purposes of determining the level of their income, considered jointly unless they are opposing parties to a proceeding (see Section 4(2) of the Act). This may exclude certain groups of persons from applying for the free legal aid/legal aid with a symbolic financial contribution (e. g. women subject to intimate partner violence, pupils/students living in one household with higher income parents who might not be supporting their children in pursuing legal proceedings in cases of discrimination, etc.).

⁴⁰⁹ Response from the Centre of 31 March 2011 to a request for information of 18 February 2011, of 19 March 2012 to a request for information of 5 March 2012, of 11 March 2013 to a request of 1 March 2013, of 24 March 2014 to a request of 15 March 2014, and of 13 April 2015 to a request of 1 April 2015 (all requests for information were filed by the author).

⁴¹⁰ In 2009, the Centre filed three lawsuits. In 2010, it did not file any new lawsuit but continued with four pending cases. In 2011, the Centre represented six clients in court who were claiming unequal treatment in employment. By the end of 2011, it had been (partly) successful in one of the cases at the first-instance level (see case No. 10C 110/09, submitted to the District Court in Humenné). In 2012, the Centre represented victims of discrimination in court in six cases. Out of these, two cases concerned discrimination on the grounds of gender combined with parental status (see case No 10C 110/09 submitted to the District Court in Humenné, case No 10C 137/09 submitted to the District Court in Humenné), one case concerned discrimination on the grounds of ethnicity (see case No. 11C 137/2011 submitted to the District Court in Spišská Nová Ves), one case concerned discrimination on the ground of political opinion (see Case No. 9C 263/2011 submitted to the District Court in Banská Bystrica), and two cases concerned discrimination on the ground of "other status" (see case No 13C 8/2011 submitted to the District Court in Čadca, case No 5C 105/2011 submitted to the District Court in Ružomberok). In 2013, the Centre continued legal representation in only one of the earlier initiated cases (case No. 10C 137/09 submitted to the District Court in Humenné) and filed one new lawsuit where it represented a person discriminated against on the ground of "other status", in particular being a "full-time student" at a university. In 2014, the Centre represented claimants in discrimination-related proceedings in four cases (case No. 8C/102/2014 submitted to the District Court in Michalovce, case No 10C/219/2013 submitted to the District Court Bratislava III, case No. 12C/150/2014 submitted to the District Court Bratislava III, case No. 7Cpr/2/2014 submitted to the District Court in Prešov), out of which one was finalised and decided in favour of the claimant (see the case decided by the District Court in Michalovce, ref. No. 8C/102/2014). In all cases that the Centre dealt with in 2014 the ground for discrimination was "other status". The information on these cases was provided by the Centre in responses to the requests for information filed by the author in 2011-2015.

discrimination.⁴¹¹ Part of the study presented a nationwide survey on the barriers encountered by people who subjectively feel that they have been discriminated against but do not seek legal aid or use legal means to defend themselves against discrimination. The survey showed that just a tiny percentage (4.7 %) of respondents who felt that they have been discriminated against have sought legal assistance or sought to lodge a claim against discrimination by legal means. Over 92 % have not taken any steps to defend themselves.

The reasons why those discriminated against decided not to challenge discrimination by legal means and not to seek legal assistance were relatively evenly distributed across the population of Slovakia. They included lack of trust in the institutions that might successfully resolve discrimination (13.1 % of responses), lack of evidence (11.8 % of responses), the fact that people who felt discriminated against did not consider it important to resolve their case (11.6 %), lack of information as to where and to whom to turn for legal assistance (over 10 %). The Centre for Civil and Human Rights concluded:

`[t]he nationwide research results indicated an overall scepticism and even resignation with regard to any solution, as well as the conviction that discrimination in Slovakia is so normal and widespread that it makes no sense to oppose it and that it is not possible to obtain justice in Slovakia.´⁴¹²

c) Number of discrimination cases brought to justice

In Slovakia there are no available statistics on the number of cases related to discrimination brought to justice. There are some data on finalised cases collected by the Ministry of Justice but the data is very inaccurate and insufficient (for reasons explained in more detail in section 6.1(d) below).

In response to a request for information filed by the author of this report with the Ministry of Justice on 31 March 2015 on the numbers of cases of discrimination decided by Slovak courts and any corresponding statistics, the ministry only presented data (on 13 April 2015) about 18 (final) judicial decisions delivered by district and regional courts between 2009-2014 (the statistics also covered years 2005-2008 but there were no final decisions relating to discrimination registered by the ministry for statistical purposes). The information provided by the ministry included the name of the court, the file number and the sum awarded (although it is unclear what kind of damages were compensated for by the sums awarded). The statistics did not contain some decisions of ordinary courts, information about which is known from other sources (the official database of effective judicial decisions of general courts, cases reported by the Slovak National Centre for Human Rights and cases reported by NGOs).

The statistics provided by the Ministry of Justice do not contain information on discrimination-related proceedings and decisions by the Supreme Court and the Constitutional Court (see also section 6.1(d) below).

It is obvious that the statistics collected by the Ministry of Justice provide only partial information on (final) cases of discrimination that have been decided by ordinary courts in Slovakia. Part of the study by the Centre for Civil and Human Rights described in the previous section presented the results of the organisation's monitoring of judicial decisions in the field of (non)discrimination (the monitoring covered both final and non-final decisions delivered by district and regional courts in Slovakia between 1 July 2004⁴¹³ and 31 January

⁴¹¹ Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, Košice: Poradňa pre občianske a ľudské práva, pp. 78-79. The publication is also available at <http://poradna-prava.sk/wp-content/uploads/2012/11/Publikáciu-si-môžete-stiahnuť-tu-105-MB.pdf>, accessed 22 April 2015.

⁴¹² See pp. 27-49 and p. 129 of the study.

⁴¹³ The date of the Anti-discrimination Act coming into force.

2012, pursuant to the Anti-discrimination Act).⁴¹⁴ The Centre for Civil and Human Rights found that about 120 proceedings relating to discrimination had been concluded in the period covered.⁴¹⁵ This includes proceedings in all levels of courts, which means that the number of actual cases brought to the courts is lower. The monitoring also found that this type of proceedings was not conducted at all by 18 courts in Slovakia (29 % of all courts). This number is desperately low, especially given that the Anti-discrimination Act has been in existence since 2004 (and some anti-discrimination provisions were contained in Slovak legislation even earlier), and also that discrimination is a very widespread phenomenon in Slovakia.

There is no more recent data on the number of proceedings or decisions in the field of discrimination.

d) Registration of discrimination cases by national courts

In Slovakia discrimination cases are not properly registered by national courts.

The registration of discrimination cases by courts and the subsequent data collection for statistical purposes, as well as making the data accessible to the public is very problematic. The deficiencies in the system result in totally inaccurate data about discrimination cases, which is also very difficult to access.

Upon submission of a case to a court, the court is obliged to register it. One of the items to be registered is the 'subject' of the proceedings, which is not defined in any way by the ordinance of the Ministry of Justice that sets rules for registration of a case file and other matters connected to the administration of judicial proceedings and files by district and regional courts⁴¹⁶ (the ordinance does not cover the Supreme Court and the Constitutional Court where many discrimination cases end). This means that not only do the courts not record cases of discrimination properly in the registers, but also that the registration does not include any further criteria relevant from the perspective of discrimination (such as the ground of discrimination, the field, the remedies sought etc.). The failure of courts to record properly discrimination cases, which was another one of the findings that the Centre for Civil and Human Rights described in the publication mentioned above, means that cases of discrimination may, for example, be registered as employment cases or cases on payment of pecuniary compensation for non-pecuniary damage, without it being clear that the case also concerns discrimination. Furthermore, in some instances, courts simply copy the names/types of lawsuits as appearing on the applicants' submissions, without examining the real content of the case and hence without considering whether it in fact concerns discrimination or not.⁴¹⁷

Although courts are obliged to publish all of their final decisions (after the necessary anonymisation) online, experience shows that this is not the practice. Many of the decisions

⁴¹⁴ See pp. 69-104 and pp. 131-133 of the study.

⁴¹⁵ The number may not be very accurate, as not all the courts approached with a request for information on the proceedings provided this information, and the Ministry of Justice does not collect the corresponding statistics properly.

⁴¹⁶ Section 148(4) of the Decree of the Ordinance of the Ministry of Justice of the Slovak Republic No 543/2005 Coll. on the Administrative and Office Code for District Courts, Regional Courts, the Special Court and military courts, as amended (*vyhláška Ministerstva spravodlivosti SR č. 543/2005 Z. z. o Spravovacom a kancelárskom poriadku pre okresné súdy, krajské súdy, Špeciálny súd a vojenské súdy*). The so-called Special Court and military courts are all criminal courts not relevant for this report.

⁴¹⁷ See Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, Košice: Poradňa pre občianske a ľudské práva, pp. 57-63. The publication is also available at <http://poradna-prava.sk/wp-content/uploads/2012/11/Publikáciu-si-môžete-stiahnuť-tu-105-MB.pdf>, accessed 22 April 2015.

relating to discrimination that are known to the author of this report are not available online.⁴¹⁸

Researching decisions is somewhat easier in case of the Constitutional Court as it publishes each of its decisions online and it is also possible to search by individual articles of the Constitution. The Supreme Court also publishes its decisions on its websites.

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

a) Standing to act on behalf of victims of discrimination (representing them)

In Slovakia associations, organisations and trade unions are entitled to act on behalf of victims of discrimination.

According to Section 10(1)(a) of the Anti-discrimination Act, the claimant in (civil) proceedings pursuant to the act (but in principle, also the defendant given that the provision talks about 'parties to the proceedings concerning the violation of the principle of equal treatment') can be represented by a legal entity that has the authority to do so (i.e. the authority to represent a party in proceedings concerning the principle of equal treatment) in accordance with a separate law. Under the Act on Establishing the Slovak National Centre for Human Rights (see section 7 of this report), the Slovak National Centre for Human Rights (the equality body) is entitled by law to represent the claimant in proceedings concerning the violation of the principle of equal treatment. There is no other law that would authorise a public body to represent claimants/parties in proceedings concerning the violation of the principle of equal treatment.

According to Section 10(1)(b) of the Anti-discrimination Act the parties can also be represented by a legal entity 'whose activities are aimed at or consist in the protection against discrimination' (in practice, this usually means NGOs, but in theory, it could also be trade unions and the law does not stipulate any more detail about such organisations). If the legal entity takes up the representation, it authorises one of its members or employees to act on its behalf.⁴¹⁹

In all civil proceedings related to employment relations, a party to these proceedings who is a member of a trade union organisation can be represented by that organisation.⁴²⁰

If associations represent victims in civil proceedings, they can only do so before ordinary courts (i.e. courts of first and second instance). Legal representation is not possible before the Supreme Court or the Constitutional Court, or even before ordinary courts in proceedings concerning the judicial review of decisions by administrative bodies. In addition, there are some types of administrative proceedings where NGOs cannot legally represent a victim of discrimination.

The fact that NGOs cannot represent victims of discrimination at all stages of judicial proceedings (i.e. before the Supreme Court and the Constitutional Court) creates a lot of problems, both for the NGOs and their clients, and ultimately makes such representation inadequate and inefficient. First, it makes the whole proceedings much more expensive. The need to involve a lawyer who must familiarise themselves with the case at quite a late stage increases the costs of legal representation enormously, whether or not this is actually paid for by the claimant. Secondly, it leads to NGOs losing control over cases (which could

⁴¹⁸ See also Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, Košice: Poradňa pre občianske a ľudské práva, p. 53. The publication is also available at <http://poradna-prava.sk/wp-content/uploads/2012/11/Publikáciu-si-môžete-stiahnuť-tu-105-MB.pdf> (accessed 22 April 2015).

⁴¹⁹ Section 10(2) of the Anti-discrimination Act.

⁴²⁰ Section 26(2) of the Civil Procedure Act.

be very harmful, particularly in strategic litigation cases, but in all cases, could potentially harm the client) and, in principle, it forces them to give the credit for litigating the case and obtaining a satisfactory result to a lawyer who has not necessarily made a significant contribution to the result.

As the Slovak National Centre for Human Rights is authorised to represent parties to proceedings in matters of breaches of the principle equal treatment under the same conditions as associations, the same also applies to the equality body.

In administrative proceedings, parties to the proceedings, their legal representatives and their guardians can be represented by a lawyer or by 'another representative of their choice'.⁴²¹ This means that people affected by discrimination can in principle select any natural or legal person to represent them, including NGOs or the Slovak National Centre for Human Rights. However, if an administrative decision against which there is no ordinary legal remedy is examined by a civil court in civil proceedings,⁴²² the claimant must be represented by a lawyer, unless they, or their legal representative, are legally qualified.⁴²³

As far as criminal law is concerned, the victim in criminal proceedings can be represented by a proxy. Any person whose capacity to act legally is not limited can become a proxy, including an authorised representative of an organisation which helps those affected by crimes.⁴²⁴ 'An organisation with the remit of helping those affected by crimes' is, pursuant to Section 10(23) of the Criminal Procedure Act, an NGO that provides free legal assistance to those affected by crimes.

Regarding a complaint dealt with by a public body, although there is no specific provision as to the legal standing of associations, the law does not prohibit other natural persons or legal entities from acting (submitting a complaint) on behalf of a complainant.

NGOs and trade unions do not have a legal duty to act. The Act on Establishing the Slovak National Centre for Human Rights provides that the Centre 'secures legal aid for victims of discrimination and intolerance'.⁴²⁵ Although this provision clearly does not mean that the equality body is obliged to legally represent every person allegedly discriminated against who approaches it (and the act does not specify how the legal aid is to be secured, nor what is meant by legal aid for the purposes of the act), in the view of the author of this report, the body is obliged to secure some form of legal aid for every person who requests it.

b) Standing to act in support of victims of discrimination

In Slovakia associations, organisations and trade unions are entitled to act in support of victims of discrimination.

According to Section 93(2) of the Civil Procedure Act, 'a legal person whose subject of activities is the protection of rights pursuant to a special law, can join the proceedings, besides the claimant and the defendant, as an accessory party'. This provision makes a non-exhaustive reference to several laws including the Anti-discrimination Act, under which the Slovak National Centre for Human Rights and NGOs (and possibly also trade unions)

⁴²¹ Section 17(1) of the Administrative Code.

⁴²² Pursuant to Sections 244-250k of the Civil Procedure Act. There are no special administrative courts in Slovakia.

⁴²³ Section 250a of the Civil Procedure Act. According to this provision, there are also some other exceptions to the obligation of legal representation, such as judicial review of administrative decisions and of procedures concerning e. g. health insurance, social security, including social insurance in case of sickness, old age pensions, state social benefits, or healthcare.

⁴²⁴ Section 53 of the Criminal Procedure Code.

⁴²⁵ Section 1(2)(e) of the Act No 308/1993 Coll. on Establishing the Slovak National Centre for Human Rights (*zákon č. 308/1993 Z. z. o zriadení Slovenského národného strediska pre ľudské práva*).

are implicitly the organisations providing legal aid in cases of discrimination. In any case, trade unions also fall under the scope of Section 93(2) of the Civil Procedure Act.

In civil proceedings, when associations act as accessory parties pursuant to Section 93(2) of the Civil Procedure Act, they have rights and duties equal to those of the parties themselves,⁴²⁶ acting on their own behalf only. However, if their actions contradict the actions of the party to the proceedings whom they support in the proceedings, the court 'will judge these actions after consideration of all the circumstances'.⁴²⁷

If entities wish to join judicial proceedings 'in support of victims', pursuant to Section 93(2) of the Civil Procedure Act, the consent of the victim is not required (although the entity may join the proceedings on the initiative of one of the parties to the proceedings, in addition to joining it on its own initiative, which presupposes the implicit consent of the victim).⁴²⁸

The option for legal persons to act in support of claimants in proceedings concerning discrimination as accessory parties is used very little in practice. To the author's knowledge, neither trade unions nor the Slovak National Centre for Human Rights have taken up the opportunity yet.

Theoretically, other forms of support are also possible (e.g. a written legal opinion from an NGO or other entity in the form of an amicus brief). Expert opinions issued by the Slovak National Centre for Human Rights⁴²⁹ at the request of a claimant are sometimes submitted to the courts (by the claimants, if they decide to submit the opinions requested from the centre).

The Slovak National Centre for Human Rights, NGOs and trade unions do not have a legal duty to act in support of victims of discrimination in any type of legal proceedings.

c) *Actio popularis*

In Slovakia, national law allows associations, organisations and trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (***actio popularis***).

Section 9a of the Anti-discrimination Act stipulates that, if a breach of the principle of equal treatment could violate rights or interests protected by law or freedoms of a greater or non-specified number of persons, or if the public interest could be otherwise seriously endangered by such a violation, the right to invoke the protection of the right to equal treatment is also vested in the Slovak National Centre for Human Rights or a legal entity that is 'concerned with or active in protection against discrimination' (usually NGOs, but in principle also trade unions).

These entities can request that the court determines that the principle of equal treatment has been breached, that the entity breaching the principle of equal treatment refrains from such conduct and, where possible, rectifies the illegal situation. The list of these actions is non-exhaustive.

Although this provision is quite progressive, only one NGO – the Centre for Civil and Human Rights – has filed an *actio popularis* so far. The Slovak National Centre for Human Rights has so far not initiated any *actio popularis* proceedings.

⁴²⁶ Section 93(4) of the Civil Procedure Act, first and second sentences.

⁴²⁷ Section 93(4) of the Civil Procedure Act, third sentence.

⁴²⁸ See Section 93(3) of the Civil Procedure Act.

⁴²⁹ Under Section 1(2)(f) of the Act on the Slovak National Centre for Human Rights, the centre is granted the competence to prepare expert opinions concerning compliance with the principle of equal treatment upon a request or its own initiative.

For *actio popularis* proceedings the same concept of the shift in burden of proof applies as in all other proceedings in cases of breaches of the principle of equal treatment initiated on the basis of the Anti-Discrimination Act.

d) Class action

In Slovakia national law allows associations, organisations and trade unions to act in the interest of more than one individual victim (**class action**) for claims arising from the same event.

There are no restrictions as to the number of petitioners who can be represented (although the Anti-discrimination Act is not explicit on the matter). Class actions are also possible in Slovak civil judicial proceedings, meaning that a group of citizens can lodge an action based on the same facts, where each victim must stand as a claimant. If an NGO takes up the representation of a person affected by discrimination (or several people affected by discrimination in the case of a class action), it must assign one of its members and/or employees to act on behalf of the person(s) represented. If an NGO or the Slovak National Centre for Human Rights takes up legal representation in civil proceedings under the Anti-discrimination Act, all conditions applicable for the legal representation of individuals mentioned above (i.e. on the type of conditions that the legal entity must fulfil, the types of remedies that it can request on behalf of the claimant, the conditions regarding the burden of proof etc.) are equally applicable.

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

In Slovakia, national law requires a shift of the burden of proof from the complainant to the respondent. This is, however, applicable to civil proceedings only.

According to Section 11(2) of the Anti-discrimination Act, if the claimant

‘communicates to the court facts which give rise to a reasonable assumption that a 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 filed on the basis of the Anti-discrimination Act and ‘in proceedings in matters connected to a breach of the principle of equal treatment’ (part of the official title of the relevant section of the act dealing with procedural issues). However, it is not quite clear (mainly due to the complicated access to court rulings in cases of violations of the principle of equal treatment) how the courts deal with other proceedings initiated on the basis of legislative instruments other than the Anti-discrimination Act (for example, the Labour Code, in proceedings on invalidity of job termination – see also section 6.1 of this report).

As a breach of the principle of equal treatment is defined very broadly (to include, for example, victimisation, instruction to discriminate, incitement to discriminate, breach of the duty to adopt measures to prevent discrimination etc.), the concept of shifting the burden of proof should apply to all the components of the equal treatment principle and to all prohibited forms of discrimination.

The Constitutional Court has provided this interpretation of the shift in the burden of proof:

‘[b]urden of proof does not only and exclusively burden the defendant but it also burdens the claimant. The claimant must, by priority, bear the burden of proof concerning the facts from which it can be inferred that direct or indirect discrimination, or, let us say, [a breach of] the principle of equal treatment, has been committed. The claimant must allege and at the same time submit proofs (bear the burden of proof) from which it can be reasonably concluded that the principle of equal treatment has been breached. At the same time, they must allege that their race or

ethnic affiliation (origin) is the inducement for the discriminatory action. It is only thereafter that the burden of proof is shifted on to the defendant, who has the right to prove their allegations that they have not breached the principle of equal treatment.⁴³⁰

The Regional Court in Košice held that

`[t]he principle of shifting the burden of proof means that the claimant does not have to prove the alleged discrimination (breach of the principle of equal treatment) with certainty – a certain degree of probability is sufficient (obvious or apparent discrimination at first sight – *prima facie case of discrimination*) (...). Then the burden of proof shifts on to the defendant who must prove that they did not breach the principle of equal treatment.⁴³¹

In a case decided by the Constitutional Court in 2013, the Constitutional Court adhered to an assessment of a second instance court from an earlier stage of the proceedings that `the defendant proved that it is more likely that the discrimination hasn't taken place than it is likely that the discrimination has taken place, and so he discharged his burden of proof'.⁴³² In this decision, the Constitutional Court seems to be indicating that once the burden of proof is shifted on to the respondent (upon the applicant establishing facts from which it may be presumed that there has been discrimination), the respondent is not obliged to prove beyond any doubt that there has been no breach of the principle of equal treatment (as the directives presumably require) but that it is sufficient to provide evidence establishing some probability of non-discrimination, provided that the probability of non-discrimination is higher than the probability of discrimination. It seems that in the case presented, the Slovak Constitutional Court lowers the requirements and standards of proof on the side of the defendant once the burden of proof has been shifted to them, which may not be compatible with the requirements of EU law on the burden of proof in discrimination cases and is reminiscent of a more traditional approach to burden of proof in civil law.

The Act on Labour Inspection⁴³³ does not contain any explicit and clear provisions on the burden of proof in relation to identifying breaches of the principle of equal treatment. It only contains a list of the rights of labour inspectors when carrying out a labour inspection, such as the right to enter the premises of the natural or legal person subject to the inspection, the right to request information and explanations from persons present on the employer's premises, and the right to request documentation etc.⁴³⁴ There is also a very vague provision stating that `a labour inspectorate is independent when carrying out a labour inspection'.⁴³⁵ Statutory rules for establishing evidence are only available for the stages when labour inspectorates are imposing fines for breaches of the principle of equal treatment (the Administrative Code applies here),⁴³⁶ but it is in any case unclear what rules of procedure the labour inspectorates should apply when identifying and proving breaches of the principle of equal treatment. This has undoubtedly contributed to the very low number of cases where labour inspectorates have identified breaches of the principle of equal treatment, making the implementation of this principle in the field of employment rather ineffective.

⁴³⁰ Finding of the Constitutional Court No IV. ÚS 16/09 of 30 April 2009, available at: www.concourt.sk/rozhod.do?urlpage=dokument&id_spisu=300198 (accessed 20 April 2015).

⁴³¹ Ruling of 18 March 2010, reference No 1Co/334/2008-238.

⁴³² Finding of the Constitutional Court of 10 July 2013 in a case of *V. S. v Primary School of Ivan Branislav Zoch in Revúca*, ref. No II. ÚS 383/2013-16.

⁴³³ Act No 125/2006 Coll. on Labour Inspection and changing and supplementing Act No 82/2005 Coll. on Illegal Work and Illegal Employment and changing and supplementing certain laws, as amended (*zákon č. 125/2006 Z. z. o inšpekcii práce a o zmene a doplnení zákona č. 82/2005 Z. z. o nelegálnej práci a nelegálnom zamestnávaní a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

⁴³⁴ See Section 12(1) of the Act on Labour Inspection for more details.

⁴³⁵ See Section 7(10) of the Act on Labour Inspection.

⁴³⁶ See Section 19 of the Act on Labour Inspection, in conjunction with Section 7(3)(i) and Section 21(3) of the Act on Labour Inspection.

The Criminal Procedure Act allows for no exceptions to the traditional concept of burden of proof in criminal proceedings.

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

In Slovakia there are legal measures of protection against victimisation.

Article 12(4) of the Constitution generally prohibits any victimisation resulting from the exercise of basic rights guaranteed under the Constitution.

Under Section 2a(1) of the Anti-discrimination Act, victimisation is considered to be a form of discrimination. The Anti-discrimination Act also contains an explicit definition of victimisation according to which victimisation means any action or omission that is unfavourable to the person concerned and is directly connected to a) seeking legal protection against discrimination for oneself or on behalf of another person, or to b) providing a witness testimony, an explanation or is connected to other involvement of a person in a proceeding concerning the violation of the principle of equal treatment, or to c) a complaint invoking a breach of the principle of equal treatment.⁴³⁷ Thus, it is not only a complainant directly affected by discrimination but anybody else who acts as a witness or a general complainant who is protected against adverse treatment.

In addition to this provision, several other laws regulate 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 their identity not be disclosed.⁴³⁸ The other law is the Labour Code, Section 13(3) of which states that no person shall be persecuted or otherwise adversely treated in the workplace as a reaction to a complaint, action, petition to start criminal proceedings, or other report on criminality or other anti-social activity against another employee or the employer. Similar provisions are enshrined in other acts, for example the Act on the State Service of Customs Officers, Act on the State Service of Members of the Police Force, Act on the Fire and Rescue Service, Act on Employment Services, Act on Higher Education, the Schools Act and the Act on Healthcare. The only procedural guarantee against victimisation is included in the Anti-discrimination Act. To the best knowledge of the author of this report, no judgment has yet been issued in this regard.

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

a) Applicable sanctions in cases of discrimination – in law and in practice

As mentioned above, victims of discrimination have the right to sue the perpetrator – be it a natural person or a legal entity, a public or private body – and request a number of remedies, including (the list is not exhaustive) that they be made to refrain from such conduct and, where possible, rectify the illegal situation or provide adequate satisfaction. If the adequate satisfaction is insufficient, generally in cases where the violation of the principle of equal treatment has considerably impaired the dignity, social status or social achievement of the victim, a claimant may also seek financial compensation for non-pecuniary damage. The amount of this financial compensation is determined by the court, which must take into account the seriousness of the non-pecuniary damage and all underlying circumstances. Material damages resulting from such treatment may also be

⁴³⁷ Section 2a(8) of the Anti-discrimination Act.

⁴³⁸ Sections 7 and 8 of the Act No 9/2010 Coll. on Complaints.

claimed.⁴³⁹ There is no difference in the procedure, whether a public or private entity is being sued.

If the principle of equal treatment is breached during the application process for a job, the injured party is entitled to 'appropriate pecuniary compensation'.⁴⁴⁰ In the area of employment, it is in principle also possible to claim invalidity of job termination, although it is unclear how effective this is with regard to the requirements of the directives, especially from the procedural point of view (see section 6.1 above).

In the area of both public and private employment, labour inspectorates (based in every region of the country) as the bodies that oversee the observance of employment legislation (including appointment, dismissal, pay and working conditions) have the authority to impose a fine of up to EUR 100 000⁴⁴¹ (and in some cases up to EUR 200 000)⁴⁴² on the entities that fall under their jurisdiction and that have breached their duties under the provisions of the employment legislation. The manager whose conduct has breached their statutory duties in the field of employment and their obligations under collective agreements may be fined up to four times their average monthly salary.⁴⁴³

In education, the competent body is the State School Inspectorate. If the subject under inspection fails to remove the deficiencies disclosed by the inspection, it can be fined between EUR 330 and EUR 3 300.⁴⁴⁴

In the area of access to goods and services, the monitoring authorities (offices of the Slovak Trade Inspectorate) may punish discriminatory conduct with a fine of up to EUR 16 600. Where there are multiple violations of a legal obligation within one year, the inspectorate may impose a fine up to EUR 33 000.

b) Ceiling and amount of compensation

The amount of financial compensation for non-pecuniary damage is not limited and depends primarily on the seriousness of the damage caused and the circumstances under which it occurred.

The amount of compensation for pecuniary damage is not limited – the claimant must prove the real material damage that they have suffered and the causal link between the damage suffered and the unlawful act of the defendant. The only exception seems to be claims of wage compensation in cases of illegal dismissals (this is, however, a general remedy applicable under the Labour Code and it is not clear yet whether and how courts are integrating it into the framework of the non-exhaustive remedies laid out in the Anti-discrimination Act – see also section 6.1 of this report). According to Section 79(2) of the Labour Code,

'[i]f the overall time for which an employee should receive wage compensation is greater than 12 months, a court may, at the request of the employer, reduce the employer's obligation to pay wage compensation for the period in excess of 12 months by a proportionate amount or may decide not to award the employee any wage compensation for the period in excess of 12 months. Wage compensation shall be awarded for a period of no more than 36 months.'

⁴³⁹ Section 9 of the Anti-discrimination Act.

⁴⁴⁰ See Section 41(9) of the Labour Code.

⁴⁴¹ See Section 19(1)(a) of the Act on Labour Inspection.

⁴⁴² See Section 19(2)(b)(1) in conjunction with Section 19(3)(c) of the Act on Labour Inspection.

⁴⁴³ See Section 19(1)(c) of the Act on Labour Inspection.

⁴⁴⁴ See Section 37 of Act No 596/2003 Coll. on State Administration of the School System and School Self-Governance.

There is no official or other information available on the average amount of compensation awarded to victims.

Although the Ministry of Justice does collect some statistics, the data that is provided⁴⁴⁵ does not contain reliable data on the cases decided by Slovak courts in the field of (non-) discrimination (see also sections 6.1(c) and 6.1(d) of this report). However, a recent study, published in 2012 by an NGO, the Centre for Civil and Human Rights,⁴⁴⁶ offers some information on the amounts of compensation for non-pecuniary damage that have been granted by courts in cases of discrimination to date. The study presents the finding that, of 22 cases where courts found violations of the principle of equal treatment and where claimants also sought financial compensation for their non-pecuniary damage, this compensation was only granted in 12 cases.⁴⁴⁷ The number of cases in which compensation for non-pecuniary damage was awarded at all is already indicative of the unwillingness of Slovak courts to grant this type of compensation. Indeed, as the authors of the study note, after analysing all the decisions available, courts often consider the fact that the declaration of a violation of the principle of equal treatment has been made to represent sufficient satisfaction for the person discriminated against.⁴⁴⁸

In cases where financial compensation for non-pecuniary damage was granted, this was usually in the field of employment or access to it (eight cases). Two remaining cases in which financial compensation for non-pecuniary damage was granted were in the fields of access to services and housing. In six cases, the amounts awarded were most frequently around EUR 1 000 or slightly over (up to EUR 1 327.75). In one case (relating to ethnicity) the compensation was EUR 165.96 for each claimant (the case concerned several claimants), in another case it was EUR 3 983.75, in another it was EUR 3 3198.39 and in the remaining case it was EUR 66 387.83. In the latter case the ground for discrimination was not given in the proceedings, so it is unclear how the case relates to the Anti-discrimination Act and the EU directives in general. In addition, the decision was apparently not yet final.⁴⁴⁹ There are no more recent data on the amounts of compensation awarded.

c) Assessment of the sanctions

It is already clear that the courts are fairly reluctant to award financial compensation at all for non-pecuniary damage in cases of discrimination and when such compensation is granted, the amounts tend to be symbolic (only slightly exceeding the average monthly salary in Slovakia). These amounts of compensation are hardly effective, proportionate and dissuasive (and even unofficial sources from the business sector confirm that fear of serious sanctions in discrimination-related claims has not so far become a part of their risk-assessment in management).

One of the reasons for this inadequate implementation of the requirements of the directives may be the wording of the corresponding provision of the Anti-discrimination Act (Section 9(3)) which requires a finding of a 'considerable impairment of the dignity, social status or social achievement of the person injured' in order for financial compensation for non-pecuniary damage to be awarded.⁴⁵⁰

⁴⁴⁵ A response from the Ministry of 13 April 2015 to a request for information filed by the author of this report.

⁴⁴⁶ Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, Košice: Poradňa pre občianske a ľudské práva. The publication is also available at <http://poradna-prava.sk/wp-content/uploads/2012/11/Publikáciu-si-môžete-stiahnuť-tu-105-MB.pdf>, accessed 22 April 2015.

⁴⁴⁷ See p. 98 of the study. Not all of these cases were final at the time of publication.

⁴⁴⁸ See p. 98 of the study.

⁴⁴⁹ See pp. 97-98 of the study.

⁴⁵⁰ See Section 6.1(a) for the full wording of the relevant provision.

Although this set of conditions is not exhaustive and courts are supposed to take into account 'the seriousness of the non-pecuniary damage and all underlying circumstances', the most frequent practice is that persons affected by discrimination have to prove how their dignity has been 'considerably impaired', instead of the perpetrators' behaviour being judged as inherently humiliating and impairing a person's dignity.⁴⁵¹ Thus, instead of bringing the perpetrators to justice, the individuals affected by discrimination often have to go through their trauma again, including during the judicial proceedings, and remain disillusioned after the judicial decision is announced. A change in legislation reflecting the need for a paradigm shift (judging the behaviour and treatment of the perpetrator instead of burdening and re-traumatising the victim) would be more than welcome.

As regards financial compensation for non-pecuniary damage, there is another problematic issue, namely the judicial fees. According to Slovak legislation, the claimant is supposed to pay 3 % of any sum claimed as financial compensation for non-pecuniary damage. This means that the higher the amount claimed as compensation for non-pecuniary damage, the higher the judicial fee – which hinders claimants from even requesting amounts that would be effective, proportionate and dissuasive. The judicial fees are paid in advance and in every instance, and they are doubled before the Supreme Court.⁴⁵²

Given the fact that labour inspectorates are currently finding almost no breaches of the principle of equal treatment (and if they do find a breach, they almost never fine the violator), the answer to the question about the effectiveness, proportionality and dissuasiveness of their sanctions is obvious. The same can be said of school inspectorates.

⁴⁵¹ An exception to this practice is a decision by the District Court in Spišská Nová Ves of 25 April 2014 (ref. No 1C/118/2010-175) where the District Court argued that the defendant's action was directed against the dignity of the complainants and that they were 'gravely humiliated' by this action, and went on to say that '[a]ny discrimination is undoubtedly objectively degrading for every person affected by it' and that it represents action that is 'particularly dangerous and socially inadmissible'. However, the decision is not final yet, and the court only awarded the claimants (a married couple) EUR 300 each. Besides, district courts are the lowest chains of the judicial hierarchy in Slovakia and a more authoritative interpretation of dignity being automatically affected by discrimination is lacking.

⁴⁵² If, however, the first instance court awards some but not all of the requested compensation, the fee before the second instance court (and later possibly before the Supreme Court) is only calculated from the difference between the amount originally claimed and the amount actually awarded.

7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)

- a) Body/bodies designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

In July 2004 the Slovak National Centre for Human Rights became the specialised body for the promotion of equal treatment for all grounds of discrimination covered by the Anti-discrimination Act. With the adoption of the Anti-discrimination Act (in 2004), Act 308/1993 on Establishing the Slovak National Centre for Human Rights (the Centre) was significantly amended.⁴⁵³

- b) Status of the designated body/bodies – general independence

According to the Act on Establishing the Slovak National Centre for Human Rights (‘Act on the Centre’), the centre is an independent, non-judicial body, subsidised by the state.⁴⁵⁴ The governing body of the centre is the executive director, who manages and exercises control over the Centre and who is the statutory representative of the centre,⁴⁵⁵ and the board, which consists of nine independent members.⁴⁵⁶ The executive director is elected and dismissed by the board upon nomination by the board members. The staff are appointed and dismissed by the executive director.

The formal guarantee of the independence of the centre is stipulated by Article 2(1) of the Act on the Centre, which states that ‘the Centre is an independent legal person’. As far as the formal independence of the centre is concerned, Article 3 of the Treaty on the Establishment of the Slovak National Centre for Human Rights between the Government of the Slovak Republic and United Nations of 9 March 1994 is also relevant. According to this article, the Slovak Republic is obliged to provide the centre with adequate accommodation and to guarantee the centre financial means that 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 the 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 should be noted that the purpose of the treaty was not to establish an equality body but rather a more general human rights institution.

One of the main problems with regard to the independence or potential dependence of the centre is the way that it is financed. As it is the Government that proposes the act on the state budget on an annual basis (and, in particular, the Ministry of Finance which submits the bill on the state budget every year and thus proposes the annual budgets of the centre)

⁴⁵³ Act No 308/1993 Coll. on Establishing the Slovak National Centre for Human Rights, as amended (*zákon č. 308/1993 Coll. o zriadení Slovenského národného strediska pre ľudské práva v znení neskorších predpisov*).

⁴⁵⁴ 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 9 March 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 by the Voluntary Fund, subsidised by the Government of the Netherlands and by contribution from the Slovak Government. A commitment to the further maintenance of the centre was undertaken by the Slovak Government.

⁴⁵⁵ See Section 3b(1) and (2) of the Act on the Centre.

⁴⁵⁶ One member is appointed by the President of the Slovak Republic, one member by the Chair of the National Parliament, one member by the Ombudsperson, one member by the Prime Minister of the Government of the Slovak Republic in response to a proposal from 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 (see Section 3a(1) of the Act on the Centre). The membership in the board is of voluntary nature and the board members are only entitled to reimbursements of their cash expenses (see Section 3a(3) of the Act on the Centre). Hence the board membership is not a regular “job” and it is legally compatible with the simultaneous exercise of other professional activities.

and the Parliament that approves the act (predominantly made up of the same political parties that represent the Government), and there are no constitutional or statutory guarantees on minimum budgetary thresholds for the centre or mechanisms that would prevent the possibility of arbitrary (non)allocation of funds to it (which are practically in the full and exclusive control of the Government), this mechanism casts doubts on whether the centre can, in principle, be independent from the political powers in office under the legislation and the current mechanisms of approving the centre's annual budgets.

The Act on the Centre does not deal with the question of to whom the centre is accountable (it only stipulates that the executive director of the centre is accountable to the board and sets out the areas of this accountability, such as the activities of the centre, proper management and bookkeeping, fulfilling the decisions of the board etc.)⁴⁵⁷ Given the fact that the centre is a public institution set up by law, it can be argued that it is accountable to the public (although there is no particular mechanism contained in the Act on the Centre that would set up mechanisms for implementing this accountability and/or controlling it).

c) Grounds covered by the designated body/bodies

The centre is supposed to deal with all grounds that are covered by national law: sex, religion or belief, race, affiliation with nationality (*národnosť*) 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, or the reason of reporting criminality or other anti-social activity, all contained in Section 2(1) of the Anti-discrimination Act, and some other grounds contained in other acts (unfavourable state of health, genetic features, duties to family, membership of or involvement in a political party or a political movement, a trade union or other association, etc.).

d) Competences of the designated body/bodies – and their independent exercise

The centre has competence to provide independent assistance to victims of discrimination, conduct independent surveys and publish independent reports, and issue independent recommendations on discrimination issues.

According to Section 1 of the Act on the Centre, the centre fulfils tasks in the field of fundamental rights and freedoms including rights of the child. To these ends, the centre does the following:

- monitors and evaluates the observance of human rights and the observance of the principle of equal treatment, in accordance with the Anti-discrimination Act;
- gathers information on racism, xenophobia and anti-Semitism in Slovakia and provides this information on request;
- conducts research and surveys for the purpose of providing data in the field of human rights, gathers and, on request, provides information in this field;
- prepares educational activities and takes part in information campaigns with the aim of increasing tolerance in society;
- secures legal aid for victims of discrimination and intolerance;⁴⁵⁸
- issues, on request of natural persons or legal entities or on its own initiative, expert opinions in matters of observance of the principle of equal treatment in accordance with the Anti-discrimination Act;⁴⁵⁹
- carries out independent inquiries concerning discrimination;

⁴⁵⁷ See Section 3b(4) of the Act on Establishing the Slovak National Centre for Human Rights for more details.

⁴⁵⁸ The Act on the Centre does not specify how legal aid is to be secured, nor what is meant by legal aid for the purposes of the act.

⁴⁵⁹ The expert opinions or recommendation issued by the centre are not binding on parties or private and public bodies.

- drafts and publishes reports and recommendations on issues connected to discrimination;
- provides library services;
- provides services in the field of human rights.⁴⁶⁰

The centre is entitled to represent a party to proceedings in matters connected to violations of the principle of equal treatment (Section 2(3)). In accordance with Section 2(3) of the Act on the Centre, the centre is obliged (by 30 April each year) to draft and publish a report on the observance of human rights, including the principle of equal treatment, in the Slovak Republic in the previous year.

The Act on the Centre does not specify what is meant by ‘securing legal aid for the victims of discrimination’. Following a logical interpretation of the respective provision, it can be argued that it covers a broad range of options including providing legal consultations, representing claimants (but also defendants) in court proceedings and also cooperating with lawyers or NGOs providing legal aid in the field of equal treatment. In any case, there is no clear statement about providing financial assistance with the costs of litigation and the centre does not provide any kind of financial assistance to alleged victims of discrimination. This is very problematic because, if the Centre provides legal representation to a person in court and the case is lost, the individual concerned may be obliged to pay the judicial costs of the defendant (costs of legal representation plus actual costs incurred), something that has, in fact, already happened. This puts victims of discrimination at great risk and also questions the public interest element of having an equality body, in particular its role as an instigator of systemic changes through e.g. strategic litigation.

When it comes to the independent performance of the centre’s tasks, and its overall functioning and effectiveness, the author feels confident in saying that the centre is not exercising its tasks efficiently and independently and is not acting in accordance with its mandate pursuant to the Act on the Centre and to the EU and international obligations. This has also been confirmed by the current Government (in power from April 2012) as well as the previous one.

On 1 June 2011, the Government approved the *Analytical report on the functioning and status of the Slovak National Centre for Human Rights in the context of institutional protection of human rights in the Slovak Republic*.⁴⁶¹ This report was the first of its kind ever produced by the Slovak Government and, more generally, the first (and so far apparently the only) attempt that has ever been made to monitor and evaluate the functioning of the centre in a relatively complex manner.

The report presented various findings that followed a relatively complex (albeit non-exhaustive) data gathering process and analysis of the state of affairs at the centre which involved *inter alia* an analysis of the centre’s annual reports and other documentation, the available research on the perception of the centre by the public, the centre’s bylaws, its historic and personnel development, its budgetary documentation, results of inspections of its financial management carried out by external bodies and a survey of the employees of the Centre, relevant NGOs and members of the board. The most relevant findings were *inter alia* the following:

- the centre’s lack of powers/unclear powers and consequently weak position as a human rights institution (this includes, for example, the absence of any competence to initiate laws/changes to laws or to be compulsorily heard as a body commenting on laws, lack of power to decide cases of breaches of the principle of equal treatment or other human rights cases, lack of sanctions for bodies that ignore the centre’s attempts to carry out its statutory duties and rights, such as the right to conduct

⁴⁶⁰ Section 2(2) of the Act on the Centre. The Act does not define the meaning of these services.

⁴⁶¹ The report can be found at www.rokovania.sk/File.aspx/ViewDocumentHtml/Mater-Dokum-133077?prefixFile=m (accessed 26 April 2015).

independent inquiries concerning discrimination, unclear definition and content of the duty to secure legal aid for victims of discrimination and intolerance, unresolved issues regarding bearing the costs of judicial proceedings other than the costs of legal representation by the centre);

- the centre's lack of professional and personal capacities;
- inefficient management of public resources allocated to the centre;
- inappropriate structure creating the governing and controlling bodies of the centre and their inactivity;
- the centre's lack of preventive approaches in the field of equal treatment (and in the field of human rights in general), as well as lack of strategic planning and conceptual approaches;
- the centre's lack of independence and lack of mechanisms to protect it against abuse by particular interests including political ones;
- lack of visibility of the centre's activities and their limited impact on resolving the problems in the field of human rights and equal treatment;
- the very low number of cases of discrimination which have been brought to court by the centre and have been resolved by the centre in general;
- the abolition of the centre's Department of Monitoring and Research and its substitution with a Department of Research and Rights of the Child (leaving monitoring out completely).

Based on the findings of the report, the Government decided to carry out further analyses of the potential financial and legal impacts of carrying out fundamental and systemic changes in the setting up and functioning of the centre, and to carry out the systemic institutional change that would be backed up by systemic changes in the law on the centre. Due to an early election in 2012, the Government did not carry out the tasks, but these were undertaken by the new Government, which is still in power. Although the new Government set itself the task of preparing an amendment to the Act on the Centre, and was supposed to submit the bill amending the Act on the Centre by October 2012 – and even drafted a bill later on – no bill was ever officially introduced.⁴⁶²

There is also another serious concern in connection with the centre and its independence. The President of the board of the Centre (one of its governing bodies – see above) and one other board member (the Vice-President) are MPs for the same political party, which currently has a majority in the Parliament (with no need for a coalition partner).

On a long-term and continual basis, the centre is subject to criticism by NGOs, international human rights bodies and others who are active in the field of human rights.⁴⁶³

⁴⁶² In an answer to the request for information submitted by the author of this report to the Ministry of Justice (which is responsible for submitting the bill) in March 2015 that was asking about the stage of the legislative works on the bill, the Ministry replied that the working version of the bill was drafted, that it is still subject to discussions of the ministries concerned, but that in the context of the National Strategy for the Protection and Promotion of Human Rights in the Slovak Republic (adopted in February 2015), 'the legislative works will start anew and the amendment (or a new act) will be carried by the term foreseen by the governmental resolution [No 71/2015 of 18 February 2015 by which it adopted the Strategy]'. The government resolution 71/2015 entrusts the Minister of Justice with the task of submitting a new complex law on the centre by 30 June 2016.

⁴⁶³ See, for example, Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, Košice: Poradňa pre občianske a ľudské práva, pp. 110-112. The publication is also available at <http://poradna-prava.sk/wp-content/uploads/2012/11/Publikáciu-si-môžete-stiahnuť-tu-105-MB.pdf>, accessed 22 April 2015; see also Centre for Civil and Human Rights – People in Need Slovak Republic (2013), *Written comments concerning the Ninth and Tenth Periodic Reports of the Slovak Republic under the International Convention on the Elimination of All Forms of Racial Discrimination*, pp. 2, 13, 16 (also available at: <http://poradna-prava.sk/wp-content/uploads/2013/03/PDF-236-KB1.pdf>, accessed 26 April 2015); see also Roma Institute – Centre for the Research of Ethnicity and Culture (CVEK), Quo Vadis, Cultural Association of Roma in Slovakia (2013), *Implementation of the Strategy of the Slovak Republic for Roma Integration to 2020 and of the Revised Decade of Roma Inclusion in Slovakia for 2011-2015*, pp. 17-19. See also the Concluding Observations of the Committee on the Elimination of Racial Discrimination from 2010 (available at: <http://daccess-dds->

e) Legal standing of the designated body/bodies

In Slovakia the designated body has legal standing to bring discrimination complaints (on behalf or not of identified victim(s)) and to intervene in legal cases concerning discrimination as an accessory party.

In accordance with Section 1(3) of the Act on the Centre, the centre has the authority to represent parties in proceedings concerning violation of the principle of equal treatment. In these cases the people represented by the centre do not pay for the legal representation it provides. However, the centre can only represent parties in proceedings in 'ordinary courts' (i.e. courts of first and second instance), and legal representation is not possible before the Supreme Court or the Constitutional Court, or even in ordinary courts in proceedings concerning judicial review of decisions by administrative bodies. This basically means that the centre's power to represent victims of discrimination in court is insufficient and ineffective. In addition, there are some types of administrative proceedings where the centre cannot legally represent a victim of discrimination.

The discrimination complaints to the centre amount to about a thousand a year,⁴⁶⁴ and of those the centre provided legal representation to persons discriminated against in only a very few cases. In 2009, the centre filed three lawsuits with the courts. In 2010, the centre did not file any new lawsuits but continued with four pending cases. In 2011, the centre represented six clients in court who were claiming unequal treatment in employment. By the end of 2011, it had been (partly) successful in just one of the cases (and only at the first-instance court).⁴⁶⁵ In 2012, the centre represented victims of discrimination in court in only six cases⁴⁶⁶ (these concerned gender combined with parental status in two cases,⁴⁶⁷ ethnicity in one,⁴⁶⁸ political opinion in one⁴⁶⁹ and 'other status' in the remaining two cases).⁴⁷⁰ In 2013, the centre continued legal representation in only one of the cases initiated previously⁴⁷¹ and filed only one new lawsuit where it represented a person discriminated against (and this case does not fall under the scope of the directives anyway since it deals with 'other status', specifically with the status of being a 'daily student' at a university).⁴⁷²

Of these cases, only one was won partially (the one in 2011 referred to above;⁴⁷³ this time the partial victory was before the second instance court, which upheld part of the decision by the court of first instance). One case was lost and the centre submitted an appeal,⁴⁷⁴ in

ny.un.org/doc/UNDOC/GEN/G10/413/66/PDF/G1041366.pdf?OpenElement, accessed 26 April 2015) and the Concluding observations of the Committee on Economic, Social and Cultural Rights from 2012 (available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/433/84/PDF/G1243384.pdf?OpenElement>, accessed 26 April 2015). See also the transcript of the 7th meeting of the Council for Human Rights and National Minorities of 17 October 2012, available at: www.radavladyp.gov.sk/data/att/10161_subor.pdf (last accessed 26 March 2015).

⁴⁶⁴ Response from the centre of 31 March 2011 to a request for information of 18 February 2011, of 19 March 2012 to a request for information of 5 March 2012, of 11 March 2013 to a request of 1 March 2013, of 24 March 2014 to a request of 15 March 2014, and of 13 April 2015 to a request of 1 April 2015.

⁴⁶⁵ Response from the centre of 19 March 2012 to a request for information of 5 March 2012. Case No 10C 110/09, submitted to the District Court in Humenné.

⁴⁶⁶ Response from the centre of 11 March 2013 to a request for information of 1 March 2013.

⁴⁶⁷ Case No 10C 110/09 submitted to the District Court in Humenné, case No 10C 137/09 submitted to the District Court in Humenné.

⁴⁶⁸ Case No 11C 137/2011 submitted to the District Court in Spišská Nová Ves.

⁴⁶⁹ Case No 9C 263/2011 submitted to the District Court in Banská Bystrica.

⁴⁷⁰ Case No 13C 8/2011 submitted to the District Court in Čadca and case No 5C 105/2011 submitted to the District Court in Ružomberok.

⁴⁷¹ Case No 10C 137/09 submitted to the District Court in Humenné.

⁴⁷² Response from the centre of 24 March 2014 to a request for information of 15 March 2014.

⁴⁷³ Case No 10C 110/09, originally submitted to the District Court in Humenné.

⁴⁷⁴ Case No 10C 137/09 originally submitted to the District Court in Humenné.

two instances the claimants withdrew their lawsuits,⁴⁷⁵ and in the remaining two instances the claimants withdrew the powers granted to the Centre to represent them before the court)^{476, 477} In 2014, the Centre represented claimants in discrimination-related proceedings in only four cases,⁴⁷⁸ out of which one was finalised (and decided in favour of the claimant)^{479, 480} The ground in all of the cases that the Centre dealt with in 2014 was 'other status' (i.e. none fell under the personal scope of the directives).

As of 15 October 2008, the Slovak National Centre for Human Rights is authorised by law to join judicial proceedings related to breaches of the principle of equal treatment, either on the side of the claimant or on the side of the defendant.⁴⁸¹ By the end of 2014, the centre had not used this statutory right.⁴⁸²

In addition, in cases in which breaches of the principle of equal treatment could violate rights, interests protected by the law or freedoms of a larger or non-specified number of people, or if the public interest could be seriously endangered in some other manner by such a violation, the centre can invoke the protection of the right to equal treatment in its own name⁴⁸³ (see section 6.2 above for more details). By the end of 2014, the centre had not filed an *actio popularis* in its own name.⁴⁸⁴

According to information provided by the centre itself, it does not carry out any strategic litigation.⁴⁸⁵

Although it may seem from the outside and from the official information provided by the centre that it is carrying out its statutory tasks and the tasks entrusted to it by the directives, the centre is in fact fulfilling these tasks more on paper than in reality, and more on a quantitative than a qualitative basis. This can clearly be seen, for example, in the very high number of cases dealt with by the centre on an annual basis, many of which are irrelevant in contrast to the very low number of cases where the centre actually represents the claimants in the courts and the even lower number of cases where the centre has achieved a positive result.

f) Quasi-judicial competences

In Slovakia the body is not a quasi-judicial institution.

The centre is neither a judicial nor a quasi-judicial institution and does not have the power to impose sanctions of any kind.

g) Registration by the body/bodies of complaints and decisions

⁴⁷⁵ Case No 5C 105/2011 submitted to the District Court in Ružomberok and case No 13C 8/2011 submitted to the District Court in Čadca.

⁴⁷⁶ Case No 11C 137/2011 submitted to the District Court in Spišská Nová Ves and case No 9C 263/2011 submitted to the District Court in Banská Bystrica.

⁴⁷⁷ Response from the centre of 11 March 2013 to a request for information of 1 March 2013.

⁴⁷⁸ Case No 8C/102/2014 submitted to the District Court in Michalovce, Case No 10C/219/2013 submitted to the District Court Bratislava III, Case No 12C/150/2014 submitted to the District Court Bratislava III, case No 7Cpr/2/2014 submitted to the District Court in Prešov.

⁴⁷⁹ The case decided by the District Court in Michalovce, ref. No 8C/102/2014. The case is final.

⁴⁸⁰ Response from the centre of 13 April 2015 to a request for information of 1 April 2015.

⁴⁸¹ Section 93(2) of the Civil Procedure Act.

⁴⁸² Response from the centre of 31 March 2011 to a request for information of 18 February 2011, of 19 March 2012 to a request for information of 5 March 2012, of 11 March 2013 to a request of 1 March 2013, of 24 March 2014 to a request of 15 March 2014, and of 13 April 2015 to a request of 1 April 2015.

⁴⁸³ Section 9a of the Anti-discrimination Act.

⁴⁸⁴ Response from the centre of 31 March 2011 to a request for information of 18 February 2011, of 19 March 2012 to a request for information of 5 March 2012, of 11 March 2013 to a request of 1 March 2013, of 24 March 2014 to a request of 15 March 2014, and of 13 April 2015 to a request of 1 April 2015.

⁴⁸⁵ Response from the centre of 13 April 2015 to a request for information of 1 April 2015.

In Slovakia the body registers the number of complaints and decisions (by ground, field, type of discrimination, etc.). These data are available to the public.

h) Roma and Travellers

The body does not treat Roma as a priority issue.

8 IMPLEMENTATION ISSUES

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

- Dissemination of information about legal protection against discrimination

Some information about legal protection against discrimination (including in English) is contained on the website of the Slovak National Centre for Human Rights (the equality body, www.snslp.sk).

In 2014, the Ministry of Foreign and European Affairs, responsible for coordination and the fulfilment of tasks in the field of human rights,⁴⁸⁶ distributed grants to 47 institutions (mainly NGOs) of an overall amount of EUR 844 907 to support projects under two grant headings – promotion, support and protection of human rights and freedoms, and prevention of all forms of discrimination, racism, xenophobia, anti-Semitism and other forms of intolerance.⁴⁸⁷ As the ministry explained in its response to a request for information filed by the author of this report, it does not have a database at its disposal that would distinguish the projects according to their focus or specific fields.⁴⁸⁸ Although it is hard to tell from the names of the projects supported, it can be reasonably assumed that some deal with the dissemination of information about legal protection against discrimination (on various grounds).

- Measures to encourage dialogue with NGOs

In 2010, the Council of the Government of the Slovak Republic for Human Rights, National Minorities and Gender Equality was set up as a permanent advisory body to the Government of the Slovak Republic.⁴⁸⁹ According to its statute, the Council is a permanent expert, advisory, coordinating and consultative body to the Government in the field of human rights, including the rights of national minorities and ethnic groups and in the field of pursuing the principle of equal treatment and the principle of gender equality.⁴⁹⁰ The Council has 40 members⁴⁹¹ and unites representatives of the Government, regional and local bodies, public human rights institutions, NGOs, academic institutions and vice-chairpersons of the Council's committees. The Council has seven committees which cover issues of national minorities and ethnic groups, people with disabilities, gender equality, children and youth, research and education in the field of human rights and development, the prevention, and elimination of racism, xenophobia, anti-Semitism and other forms of intolerance, and the rights of lesbians, gays, bisexual, transgender and intersex persons.⁴⁹²

The Council and its mechanisms are undeniably some kind of forum for expert discussion, networking and exchange of opinions between the Government, NGOs and academia,

⁴⁸⁶ See Section 14(3) of the Act No 575/2001 Coll. on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration as Amended, and on amending and supplementing certain laws, as amended (*zákon č. 575/2001 Z. z. o organizácii činnosti vlády a organizácii ústrednej štátnej správy v znení neskorších predpisov*).

⁴⁸⁷ Information about the grant schemes is available at http://www.foreign.gov.sk/sk/ministerstvo/dotacie_ze_statneho_rozpocetu-dotacie_zamerane_na_podporu_a_ochranu_ludskych_prav_a_slobod (accessed 27 April 2015). The list of organisations supported and the sums awarded is available at [http://www.foreign.gov.sk/App/wcm/media.nsf/vw_ByID/ID_972CFC15B782CA0BC1257D200046299D_SK/\\$File/Zoznam%20schvalenych%20ziadosti.pdf](http://www.foreign.gov.sk/App/wcm/media.nsf/vw_ByID/ID_972CFC15B782CA0BC1257D200046299D_SK/$File/Zoznam%20schvalenych%20ziadosti.pdf) (accessed 27 April 2015).

⁴⁸⁸ A response by the Ministry of 7 April 2015 to the request for information of 31 March 2015.

⁴⁸⁹ See Section 2(3) of the Act on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration. The website of the Council of the Government: www.radavladyp.gov.sk/ (accessed 27 April 2015).

⁴⁹⁰ Article 2 of the statute. The statute is available at <http://www.radavladyp.gov.sk/dokumenty-rady/> (accessed on 27 April 2015).

⁴⁹¹ The names of the members are available at <http://www.radavladyp.gov.sk/zlozenie-rady-vlady-slovenskej-republiky-pre-ludske-prava-narodnostne-mensiny-a-rodovu-rovnost/> (accessed 27 April 2015).

⁴⁹² See Article 6, paragraphs 1 and 2 of the statute.

representatives of local and regional bodies, human rights institutions and other stakeholders involved in the protection of human rights including non-discrimination. On the other hand, its structure is rather complicated and 'all-encompassing', which is a barrier *per se* for its efficient functioning. It does not have clear and flexible mechanisms for assessing legislation that is under preparation concerning human rights (including the right to non-discrimination) and giving opinions by the Council thereon (including a clear and efficient mechanism for entering the legislative process), and so there have been many instances when the Council did not address human rights and equality issues of critical importance. Similarly, there is no mechanism for monitoring the compliance of the Government and its ministries with the recommendations of the Council and its committees. Furthermore, it can be said that the Government does not take the recommendations of the Council very seriously and that it is often a forum for formal discussion only.

- Measures to promote dialogue between social partners

It is not clear whether the Government carries out any activities to promote dialogue between social partners, to give effect to the principle of equal treatment within workplace practices, codes of practice, and workforce monitoring. Upon an official request for information on measures that the Slovak Republic carried out in 2014 in relation to social partners with the aim of implementing the principle of equal treatment pursuant to EU directives, filed by the author of this report, the Ministry of Labour, Social Affairs and Family issued an official decision whereby it refused to provide such information, the justification being that the ministry 'does not have such information at its disposal'.⁴⁹³

- Measures addressing the situation of Roma and Travellers

In 2011, the Government adopted the 'Revised National Action Plan for the Decade of Roma Inclusion 2005-2015 for 2011-2015' (the action plan).⁴⁹⁴ The action plan, based on Slovakia's obligations under the Decade of Roma Inclusion,⁴⁹⁵ represented a set of 153 measures to be implemented mainly by state bodies but also by municipalities and NGOs in the fields of education, employment, health and housing. Although the implementation of some of the measures had the potential to bring some positive results in terms of improving the lives of some Roma people, there were many systemic shortcomings which cast serious doubts on the overall potential of the action plan to bring about significant shifts in terms of Roma inclusion.⁴⁹⁶

In late 2011 and early 2012, the action plan became, after some revisions (and hence with a new name 'Revised National Action Plan'), a part of the 'Strategy of the Slovak Republic for Roma Integration to 2020', adopted on 11 January 2012 (the strategy).⁴⁹⁷ The strategy declares itself to be a 'conceptual framework defining the orientation of public policies in the field of the social inclusion of Roma communities, irrespective of the extent of their

⁴⁹³ Decision of the Ministry of Labour, Social Affairs and Family of the Slovak Republic of 14 April 2015, ref. No IN/74/2015-M_OKSV.

⁴⁹⁴ Revidovaný akčný plán Dekády začleňovania rómskej populácie 2005-2015 na roky 2011-2015, adopted by governmental resolution No 522/2011. The document is available at www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=19992 (accessed 27 April 2015).

⁴⁹⁵ The Decade of Roma Inclusion is an international initiative of governments, international governmental and non-governmental organisations, including Roma NGOs, with the aim of improving the inclusion of the Roma population. It represents a political obligation for governments to implement measures to advance the social inclusion of Roma people in the fields of education, employment, housing and health, and with the requirement to address three issues: poverty, discrimination and gender inequality.

⁴⁹⁶ For criticism, see for example Lajčáková, J. (2011), *Revidovaný národný akčný plán k Dekáde rómskej inklúzie: Ďalšia bezzubá stratégia?*, in: *Menšinová politika na Slovensku*, Bratislava, Centrum pre výskum etnicity a kultúry, 03/2011, pp. 1-3. Also available at www.cvek.sk/uploaded/files/2011_10_mensinova_english_web.pdf (accessed 26 April 2015).

⁴⁹⁷ The document was adopted by Government Resolution No 1/2012 and can be accessed at www.rokovania.sk/Rokovanie.aspx/GetUznesenia?idRokovanie=622 (accessed 26 April 2015).

marginalisation'.⁴⁹⁸ The document contains a theoretical framework section, and a policy section in which it describes the main problems and global goals to be achieved by the strategy in the fields of education, employment, health, housing, financial inclusion, non-discrimination and in relation to approaches towards the majority population. The strategy also contains a section on implementation in which it deals with key partners, plans of activities, the funding and budgetary implications of the strategy, legislative implications, the monitoring and evaluation framework and indicators of success. The strategy is an 'open document' to be supplemented by, for example, action plans (in fields that fall outside the Decade of Roma Inclusion action plan mentioned in the previous paragraphs), new goals etc.⁴⁹⁹ The document explicitly targets Roma as a national minority, Roma communities and marginalised Roma communities.⁵⁰⁰

Although the strategy is probably the most complex policy document adopted in the field of Roma inclusion so far – it is based on values and principles and provides a rich context for the issues – it also contains a number of shortcomings that reduce its chance of being a successful tool for Roma inclusion. The shortcomings, as seen by civil society actors monitoring the implementation of the strategy, included:

- vague funding of the particular measures contained in the strategy;
- deficiencies in the coordination between multiple levels of the management of the strategy (especially between ministries and regional and local authorities);
- a high reliance by the Slovak Republic on the European structural funds from the next programme period of 2014-2020 with a minimum use of resources from the Slovak state budget;
- insufficient participation of Roma and non-Roma NGOs in implementing, monitoring and assessing the strategy.⁵⁰¹

In 2001, the Office of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities was established. The Plenipotentiary was directly subordinate to the Prime Minister and her/his tasks were to 'propose, coordinate and control activities aiming at solving problems of the Roma minority and, following approval from the Government, to carry out systemic solutions to achieve equal status in society for citizens belonging to the Roma minority'.⁵⁰² In June 2012, the Plenipotentiary, albeit still remaining an advisory body of the Government and officially accountable to it, became de facto subordinate to the Minister of Interior with whom the Plenipotentiary is supposed to 'coordinate her/his activities'.⁵⁰³ At the same time, the Office of the Plenipotentiary also moved to the Ministry of Interior.⁵⁰⁴ The subsuming of the office into the Ministry of Interior, apart from being unprincipled and non-systemic (the situation of Roma communities requires systemic solutions in all areas of life including employment, housing, infrastructure, education, health etc. where the Ministry of Interior has no powers), also has a very negative and dangerous flavour, as part of the Ministry of Interior's remit is to deal with 'security', criminal proceedings and with the repressive side of the exercise of state power in general.

⁴⁹⁸ *Stratégia Slovenskej republiky pre integráciu Rómov do roku 2020 (Strategy of the Slovak Republic for Roma Integration to 2020)*, p. 58. The document is also available at: <http://www.minv.sk/?romske-komunity-uvod&subor=160449> (accessed 26 April 2015), p. 2.

⁴⁹⁹ See p. 2 of the strategy.

⁵⁰⁰ See p. 2 of the strategy.

⁵⁰¹ Roma Institute, n.o., Milan Šimečka Foundation, Quo Vadis, o. z. (2013), *Updated Civil Society Monitoring Report on the implementation of the National Roma Integration Strategy and Decade Action Plan in 2012 and 2013 in Slovakia*, Decade Roma Inclusion Secretariat Foundation, p. 9. Available at <http://www.romadecade.org/civilsocietymonitoring>, accessed 27 April 2015.

⁵⁰² See www.minv.sk/?vznik_uradu (accessed 27 April 2015). The original statutes are not available.

⁵⁰³ See Article 2(3) of the Statutes of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities, approved by a resolution of the Government of the Slovak Republic No 308 of 27 June 2012, available at: www.minv.sk/?statut_rk (accessed 27 April 2015).

⁵⁰⁴ See Article 3(4) of the Statutes. The link to the website of the current Plenipotentiary is www.minv.sk/?romske-komunity-uvod (accessed 27 April 2015).

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

a) Mechanisms

The Anti-discrimination Act set out in its transitory provisions a general clause which states that employers and relevant trade union bodies that conclude collective agreements are obliged to bring the provisions of collective agreements into compliance with the principle of equal treatment by 1 January 2005. Employers have the same obligation to adopt the provisions into their internal rules. This means that after January 2005 no collective agreements and internal rules of employment contrary to the Anti-discrimination Act may be legally applied. This provision of the Anti-discrimination Act does not mention statutes or internal rules of other professions or independent occupations, but this does not mean that the duty to follow the principle of equal treatment does not apply to these. It is guaranteed that any normative act, registered by a state agency (internal regulations of associations, of independent professions, workers' and employers' organisations and of profit-making organisations, etc.) must not be contrary to the principle of equality (and more generally, not contrary to the existing laws of higher legal force). If a bylaw underlying a registration procedure is in breach of this principle, the registration body must reject it.

b) Rules contrary to the principle of equality

There are still some laws in force that are discriminatory, for example, Act 383/2013 on Childbirth Allowance and on Allowance on More Concurrently Born Children (see section 3.2.7 of this report), or Section 141 of the Labour Code, which grants some labour-related benefits that are discriminatory on the grounds of family and marital status and on the ground of sexual orientation (see section 4.5 of this report). In addition, Act 417/2013 on Aid in Material Need, adopted in late 2013 and supplementing the previous Act on Material Need, contains a provision (Section 10(3)) that is indirectly discriminatory on the ground of ethnicity (against the Roma) and constitutes forced labour (see section 3.2.6 above for more detail).

There is no specific mechanism to control or abolish discriminatory provisions of existing internal rules. The only reliable way to challenge such a provision of the internal rules of a self-governing body would be a discrimination case brought to the court by an aggrieved individual or group of individuals.

9 COORDINATION AT NATIONAL LEVEL

In accordance with the Act on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration,⁵⁰⁵ the Ministry of Labour, Social Affairs and Family is the central state administration body for 'gender equality and equal opportunities and for the coordination of state policies in this field'.⁵⁰⁶ Some duties are also vested in the Minister of Foreign and European Affairs who is supposed to coordinate the fulfilment of duties in the field of human rights.⁵⁰⁷

By the end of the reporting period, there was no anti-racism or anti-discrimination National Action Plan. However, a nationwide strategy on the protection and support of human rights in the Slovak Republic was in preparation and that should serve as a basis for adopting action plans in various human rights fields including anti-racism and anti-discrimination.⁵⁰⁸

⁵⁰⁵ Act No 575/2001 Coll.

⁵⁰⁶ See Section 15(1)(h) of the Act on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration.

⁵⁰⁷ See Section 14(3) of the Act on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration.

⁵⁰⁸ The National Strategy for the Protection and Promotion of Human Rights in the Slovak Republic was adopted by the Government on 18 February 2015. The text of the strategy is available at <http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?IdMaterial=24253> (accessed 26 April 2015).

10 CURRENT BEST PRACTICES

As a positive action measure relating to ethnicity, a rather innovative initiative entitled 'You also have a chance!' has been running at the University of Economics in Bratislava since autumn 2013.⁵⁰⁹ Together with the Centre for the Research of Ethnicity and Culture (an NGO based in Slovakia), the university is carrying out a set of temporary equalising measures that should increase the opportunities for Roma applicants to get enrolled and successfully complete university studies (see section 5(b) of this report for more details).

A promising programme of health mediators based in marginalised Roma communities, entitled 'Healthy Communities', was re-introduced in 2013. The programme is aimed at improving the access of marginalised Roma communities to healthcare and employs 190 health mediators of Roma origin in 165 Roma communities (the mediators come from the communities) who assist people from marginalised Roma communities with everyday health-related situations (see section 5(b) of this report for more details). In autumn 2013, the Centre for the Research of Ethnicity and Culture (an NGO based in Slovakia) initiated cooperation with the Ministry of Justice with regard to the need to provide some guidance for adopting temporary equalising measures. The ministry formed a working group composed of various representatives of governmental bodies, the Slovak National Centre for Human Rights, and NGOs. The work of this group resulted in written guidelines for the implementation of temporary equalising measures with regard to ethnicity, nationality (*národnosť*), and sex or gender (the guidelines are not official yet and publication is due to take place in June 2015).⁵¹⁰

⁵⁰⁹ Some information about the initiative can be found at <http://www.euba.sk/uchadzaci-o-studium/preview-file/informacianaweb-18254.pdf> (accessed 24 April 2015). Some information has also been provided by Jarmila Lajčáková from Centre for the Research of Ethnicity and Culture.

⁵¹⁰ The information about the guidelines was provided by Jarmila Lajčáková from the Ethnicity and Culture Research Centre, the author of the guidelines.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives (if any)

These are the main instances of incorrect/insufficient/otherwise problematic transposition:

- The protection against discrimination guaranteed under the Anti-discrimination Act is only provided in connection with 'rights of persons provided for under special laws' regulating the fields falling under the material scope of the directives. See mainly sections 2.4(b) and 3.2.7 above for further details.
- The definition of harassment raises a few questions regarding full compliance with the directives. See section 2.4 for more details.
- The definition of disability in labour and social security legislation is very restrictive compared to the definition developed by the Court of Justice of the EU in *Skouboe Werge and Ring*. See section 2.1.1 for more details.
- If contract work falls outside legal relations covered by the Labour Code, it is probably not covered by anti-discrimination provisions. See section 3.2.1 for details.
- Act 417/2013 on Aid in Material Need contains a provision (Section 10 (3)) that reduces the payment of the allowance in material need for each adult person who does not carry out some kind of 'work in the public interest' or similar works in amount of at least 32 hours per month. The provision is indirectly discriminatory on the ground of ethnicity (against the Roma). See section 3.2.6 for more detail.
- Act 383/2013 on Childbirth Allowance and on Allowance on More Concurrently Born Children clearly appears to be indirectly discriminatory towards Roma women. See section 3.2.7 for more details.
- The Labour Code still contains a few specific provisions that are discriminatory in relation to sexual orientation. These concern paid leave in special personal circumstances. See section 4.5 for more details.
- Claiming invalidity of an employment termination can only be done within a period of two months from the due date of the termination of the employment relationship. This is certainly a barrier to seeking effective remedies in cases of discriminatory dismissals. See section 6.1(b).
- The concept of the shift in the burden of proof only applies to judicial proceedings (and not to administrative proceedings carried out, for example, by labour inspectorates or offices of the Slovak Trade Inspectorate). This makes it almost impossible for administrative bodies that are formally authorised to identify and sanction breaches of the principle of equal treatment to carry out their responsibilities in the field of equality efficiently. See section 6.3 for more details.
- Invalidity of job termination is not explicitly contained among the claims that can be invoked before the courts relying on the Anti-discrimination Act in cases of discriminatory job termination. See section 6.1(a) for further details.
- The conditions of job termination for university professors (when they reach 70 years of age) and for judges and prosecutors (when they reach 65 years of age) are very likely in conflict with CJEU case law. See sections 4.7.4(c) and (f) of this report for more details.
- The way in which the courts have dealt so far with cases where financial compensation for non-pecuniary damage was sought indicates that, with regard to this type of compensation, the sanctions are not effective, proportionate and dissuasive. See section 6.5(c) for more details.
- Organisations and the Slovak National Centre for Human Rights can represent persons affected by discrimination in civil proceedings and can only do so before 'ordinary courts' (i.e. courts of first or second instance). Legal representation is not possible before the Supreme Court or the Constitutional Court, or even before ordinary courts in proceedings concerning the judicial review of decisions by administrative bodies. See sections 6.2(a) for more details.
- Although the Slovak National Centre for Human Rights fulfils its tasks stemming from EU and national law on paper, it appears to have serious problems with efficiency,

transparency, independence and in general with its overall performance. See section 7 for more details.

- The segregation of Roma children in education remains a very serious problem. See section 3.2.8 for further details.
- Act 308/1991 on Freedom of Religious Belief and the Status of Churches and Religious Societies may be discriminatory on the ground of religion for members of certain religions or religious societies, since it significantly advantages registered churches and religious societies with regard to the legal and economic environment in which they operate. See section 2.1.1 for more details.

11.2 Other issues of concern

The key issues of concern with regards to the implementation and practical application of the anti-discrimination directives on the national level are the following:

- barriers to access to courts and to justice in general;
- lack of proper knowledge of anti-discrimination legislation by legal professionals (including those in decision-making positions) and by decision-makers in general, discriminatory attitudes and lack of training;
- lack of case law;
- deficiencies in the registration of cases and decisions on discrimination, the statistics on cases concerning discrimination provided by the Ministry of Justice being totally inaccurate and insufficient;
- lack of data and statistics connected to discrimination and its grounds;
- lack of effectiveness in the functioning and of independence of the equality body;
- lack of public policies in the field of anti-discrimination;
- lack of mainstreaming of the principle of non-discrimination and lack of coordination among public bodies and institutions responsible for non-discrimination;
- lack of resources to be invested by the Government into non-discrimination, lack of systemic support of NGOs by the Government;
- the system of education not sufficiently integrating the principles and values of human rights, non-discrimination and multiculturalism;
- lack of commitment and interest on the side of politicians in the values of human rights and non-discrimination;
- a very high level of occurrence and tolerance of racism and discriminatory attitudes in society at large.

12 LATEST DEVELOPMENTS

12.1 Legislative amendments

There were no major legislative amendments concerning the directives in 2014. There was a minor amendment to the Anti-discrimination Act of October 2014⁵¹¹ (coming into effect on 1 January 2015), which comprised adding a ground of 'the reason of reporting criminality or other anti-social activity' to the non-exhaustive list of prohibited grounds of discrimination contained in the Anti-discrimination Act.

12.2 Case law

Name of the court: Regional Court in Prešov

Date of decision: 11 March 2014

Name of the parties: claimants known only as: "1/ B. S.S.Č., 2/ A. S.S.Č., 3/ I. S.S.H., 4/ T. S.S.H., 5/ I. S.S.D., 6/ T. S.S.D., 7/ Z. S.S.H., 8/ S.S.D."; defendants: the Town of Sabinov and the Ministry of Construction and Regional Development

Reference number: 2Co/11/2013-134

Address of the webpage: the decision should be available here

<https://www.justice.gov.sk/Stranky/Sudne-rozhodnutia/Sudne-rozhodnutie-detail.aspx?PorCis=144ED2B3-C9AB-4A70-A8AF-764970B2AB61&PojCislo=105302>, but an error is occurring on the website

Brief summary: At the beginning of 2008, eight Roma complainants submitted a legal action against the Town of Sabinov and the Ministry of Construction and Regional Development. The case concerned the removal by the Town of Sabinov of Roma families, who had lived in the centre of Sabinov in houses which, by virtue of their location, made them attractive for business or housing purposes, to a new location one kilometre from the town boundary (where only Roma people were moved to). The new place chosen by the municipality was totally isolated from the town and had very poor infrastructure, and the new apartments were poorly equipped and not fully built.

The complainants urged the District Court in Prešov to rule that the defendants breached the principle of equal treatment and to order the provision of better infrastructure in their new place of residence, and they also asked the defendants to pay EUR 3 319.39 in damages to each claimant. The claimants partially won their case before the District Court in Prešov on 15 June 2009⁵¹², with the court ruling that the defendants breached the principle of equal treatment and ordering the defendants to pay each of the claimants EUR 1 000. In this ruling, the court emphasised the segregation component, the breach of the duty to adopt measures to prevent discrimination, a need for a strict scrutiny test in the case of a 'suspicious criterion' consisting of ethnicity (the court referred here to the ECtHR's *DH v Czech Republic* judgment), and noted that the concept of formal equality is 'already obsolete'.

The defendants appealed the decision and on 13 May 2010 the appellate Regional Court in Prešov changed the district court ruling, fully dismissing the claims of the claimants.⁵¹³ The Regional Court held, *inter alia*, that, given the fact that the claimants had merely claimed a breach of the principle of equal treatment and had not initiated any legal action against the fact of being moved to the compensatory apartments (such as claiming the termination of tenancy invalid or refusing to move into the compensatory apartments), the Town of Sabinov could not be held responsible for breaching the principle of equal treatment contained in the Anti-discrimination Act.

⁵¹¹ By Act No 307/2014 Coll.

⁵¹² Decision of the District Court in Prešov of 15 June 2009, ref. No 25 C 197/2007 – 585.

⁵¹³ Decision of the Regional Court in Prešov of 13 May 2010, ref. No 13Co/44/2009 – 655.

The case was referred to the Supreme Court of the Slovak Republic which, on 22 February 2012, cancelled the decision of the Regional Court in Prešov and referred the case back to the Regional Court for further proceedings.⁵¹⁴

On 22 October 2012 the court of first instance (the District Court in Prešov, to which the case was referred by the Regional Court in Prešov) issued a new decision and practically confirmed its original decision from 15 June 2009 (see above), in which it basically reiterated all of its original argumentation.⁵¹⁵ Although bound by the original amount of the non-pecuniary compensation awarded (none of the parties appealed against it), it provided some interesting argumentation relating to the violation of human dignity of a person as a ground for granting this type of compensation (showing that the dignity of a person has been 'considerably impaired' by the discriminatory treatment in question is a statutory condition for granting non-pecuniary compensation).

The defendants appealed again against the ruling by the court of first instance and a new decision was issued by the Regional Court in Prešov on 11 March 2014.⁵¹⁶ The Regional Court again dismissed the District Court decision, this time arguing that it did not follow from the testimonies of the complainants that they found themselves to be discriminated against but that it followed that they were not satisfied with the state of the compensatory apartments that they were given and with the fact that they had to adjust them by themselves in order to make them fit for living. The District Court said that it does see a difference between the testimony of a layperson and a qualified statement of a legal representative (who was consistently alleging violations of the principle of equal treatment throughout the proceedings) but that the legal interpretation provided by the legal representative of the claimants (based on discrimination) does not correspond to the allegations of the claimants who were merely not satisfied with what the new apartments looked like. The District Court also added that allegations of a legal representative 'do not have force of allegations and evidence that would be as strong as written documentation or hearing of witnesses'. The Regional Court also reiterated its earlier argumentation contained in its previous decision of May 2010 that the claimants have *inter alia* not claimed the termination of tenancy invalid before a court or have not refused to move into the compensatory apartments, which supported its finding on the absence of a violation of the principle of equal treatment.

The case is now pending before the Supreme Court of the Slovak Republic, but it has only been referred to this court by some of the original claimants (some have already given up).

Name of the court: District Court in Spišská Nová Ves

Date of decision: 25 April 2014

Name of the parties: not known

Reference number: 1C/118/2010-175

Address of the webpage: not available online

Brief summary: The case concerned two Roma consumers (a married couple) who were not admitted to a bar in Spišské Vlachy in 2009, which they wanted to visit jointly with the non-Roma colleagues of one of the complainants. Before the court, the bar owner (the defendant) argued that the complainants did not have 'club cards', but during the police investigation that preceded the judicial proceeding he admitted that the reason for not serving the complainants was their Roma origin, and fear that other Roma would start visiting the bar. Back in 2012, the District Court in Prešov decided the case for the first time and ruled that the complainants were discriminated against on the ground of their Roma origin, ordered the defendant to apologise in writing and also to publish a written apology on the entrance door to the bar as well as in regional newspapers.⁵¹⁷ However, it

⁵¹⁴ Decision of the Supreme Court of the Slovak Republic of 22 February 2012, ref. No 5 Cdo 257/2010.

⁵¹⁵ Decision of the District Court in Prešov of 22 October 2012, ref. No 25C 1/12 – 33.

⁵¹⁶ Decision of the Regional Court in Prešov of 11 March 2014.

⁵¹⁷ Decision of the District Court in Spišská Nová Ves of 27 January 2012, ref. No 1C/118/2010-88.

did not award the complainants any financial compensation for their non-pecuniary damage, which was the reason why a higher instance court returned the case to the District Court for further proceedings (but only with relation to the issue of financial compensation for non-pecuniary damages – the rest of the judgment became effective). The new District Court decision was issued on 25 April 2014 and the District Court in Spišská Nová Vec ordered the defendant to pay EUR 300 to each of the complainants. The court argued that the defendant's action was directed against the dignity of the complainants and that they were 'gravely humiliated' by this action. The court went on to say that '[a]ny discrimination is undoubtedly objectively degrading for every person affected by it' and that it represents action that is 'particularly dangerous and socially inadmissible.' Both of the parties appealed against the decision.

Trends and patterns in 2014 in cases brought by Roma:

The type and number of cases brought by Roma depend on the existence and available resources of NGOs active in the relevant field; cases where Roma would access courts by themselves, without the assistance of NGOs or the Slovak National Centre for Human Rights,⁵¹⁸ are extremely scarce (which is very indicative of access to justice for people of Roma origin). There are no official figures available as far as cases brought before courts or other authorities are concerned (concerning discrimination on the ground of ethnic origin but also concerning discrimination in general).

In the author's view, the general trends and patterns for cases brought by Roma (in the grave majority of the cases represented by the Centre for Civil and Human Rights) in 2014 (but also in the previous years) are the following:

- extreme amount of barriers Roma people face in order to access courts, independent legal action of Roma people discriminated against is basically non-existent if assistance is not provided by NGOs;
- general reluctance of courts to determine discrimination based on ethnic origin, and if this is the case, extreme reluctance to award financial compensation for non-pecuniary damages; if compensation is awarded, it is generally symbolic;
- extreme length of the judicial proceedings and extreme endurance required on the side of the complainants and their legal representatives to carry on with the proceedings; incompetence of the Slovak National Centre for Human Rights (the equality body) to deal with ethnicity-based discrimination efficiently.

⁵¹⁸ To the best knowledge of the author of this report, the Slovak National Centre for Human Rights has so far represented only two people of Roma origin before the courts (one case was unsuccessful and in the other the claimant withdrew her authorisation of the centre to provide her with legal representation).

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Please list below the **main transposition and anti-discrimination legislation** at both federal and federated/provincial level.

Country: Slovakia

Date: 1 January 2015

Anti-discrimination Act	<p>Title of the law: Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection Against Discrimination (Anti-discrimination Act) (<i>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)</i>)</p> <p>Date of adoption: 20.05.2004</p> <p>Latest amendments: 16.10.2014 (No. 307/2014 Coll.)</p> <p>Entry into force: 01.07.2004</p> <p>Web link: http://www.zbierka.sk/sk/predpisy/365-2004-z-z.p-7967.pdf; http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf (English version)</p> <p>Grounds covered: sex, religion or belief, race, affiliation with a nationality (<i>národnosť</i>) 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, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act (as well as some other grounds contained in some other acts, mainly trade union involvement and unfavourable state of health, contained, for example, in the Labour Code)</p>
	Civil/administrative/criminal law: civil and to some extent also administrative
	Material scope: employment and occupation, social security, social advantages, healthcare, provision of goods and services including housing and education
	Principal content: the basic act transposing the directives
Labour Code	<p>Title of the law: Labour Code No. 311/2001 Coll. (<i>zákon č. 311/2001 Z. z. Zákonník práce</i>)</p> <p>Abbreviation: ZP (Zákonník práce)</p> <p>Date of adoption: 02.07.2001</p> <p>Latest amendments: 16.10.2014 (No. 307/2014 Coll.)</p> <p>Entry into force: 01.04.2002</p> <p>Web link: http://www.zbierka.sk/sk/predpisy/311-2001-z-z.p-5855.pdf, http://www.employment.gov.sk/files/slovensky/uvod/legislativa/pracovna-legislativa/zakonnik-prace-anglicka-verzia-labour-code-full-wording-2013.pdf (English version)</p> <p>Grounds covered: sex, religion or belief, race, affiliation with nationality (<i>národnosť</i>) 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, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act as well as trade union involvement, unfavourable state of health and genetic features</p>
	Civil/administrative/criminal law: civil
	Material scope: employment
	Principal content: labour relations in private employment and in parts of public employment

Act on Civil Service	<p>Title of the law: Act No. 400/2009 Coll. on Civil Service, as amended (<i>zákon č. 400/2009 Z. z. o štátnej službe a o zmene a doplnení niektorých zákonov</i>)</p> <p>Abbreviation:</p> <p>Date of adoption: 16.09.2009</p> <p>Latest amendments: 27.11.2014 (No. 362/2014 Coll.)</p> <p>Entry into force: 01.11.2009</p> <p>Web link: http://www.zbierka.sk/sk/predpisy/400-2009-z-z.p-33174.pdf</p> <p>Grounds covered: all grounds covered by the Anti-discrimination Act as well as unfavourable state of health, duties to family, membership of or involvement in a political party or a political movement, a trade union or another association</p>
	Civil/administrative/criminal law: civil, administrative
	Material scope: employment
	Principal content: labour relations in public service
Act on Employment Services	<p>Title of the law: Act No. 5/2004 Coll. on Employment Services, amended (<i>zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov</i>)</p> <p>Abbreviation:</p> <p>Date of adoption: 04.12.2003</p> <p>Latest amendments: 16.10.2014 (No. 311/2014 Coll.)</p> <p>Entry into force: 01.02.2004</p> <p>Web link: http://www.zbierka.sk/sk/predpisy/5-2004-z-z.p-7594.pdf</p> <p>Grounds covered: sex, religion or belief, race, affiliation with nationality (<i>národnosť</i>) 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 as well as activity in trade unions</p>
	Civil/administrative/criminal law: civil, administrative
	Material scope: employment
	Principal content: employment services provided by the state
Act on Education (Schools Act)	<p>Title of the law: Act No. 245/2008 Coll. on Education (Schools Act) (<i>zákon č. 245/2009 Z. z. o výchove a vzdelávaní (školský zákon) a o zmene a doplnení niektorých zákonov</i>)</p> <p>Abbreviation:</p> <p>Date of adoption: 22.05.2008</p> <p>Latest amendments: 09.12.2014 (No. 337/2014 Coll.)</p> <p>Entry into force: 01.09.2008</p> <p>Web link: http://www.zbierka.sk/sk/predpisy/245-2008-z-z.p-32362.pdf</p> <p>Grounds covered: all grounds covered by the Anti-discrimination Act as well as social disadvantage</p>
	Civil/administrative/criminal law: administrative
	Material scope: education
	Principal content: legal relations in pre-school, primary and secondary education
Act on Higher Education	<p>Title of the law: Act No 131/2002 Coll. on Higher Education, as amended</p> <p>Abbreviation:</p> <p>Date of adoption: 21.02.2002</p> <p>Latest amendments: 04.12.2013 (No 464/2013 Coll.)</p> <p>Entry into force: 01.04.2002</p> <p>Web link: http://www.minedu.sk/12284-sk/zakony/</p> <p>Grounds covered: sex, religion or belief, race, affiliation with a nationality (<i>národnosť</i>) 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, or the reason of reporting criminality or other anti-social activity contained in Section 2(1) of the Anti-discrimination Act</p>

	Civil/administrative/criminal law: administrative
	Material scope: education
	Principal content: legal relations in university education
Act on Healthcare	<p>Title of the law: Act No. 576/2004 Coll. on Healthcare, Services Related to the Provision of Healthcare and on amending and supplementing certain acts, as amended (<i>zákon č. Act No. 576/2004 Z. z. o zdravotnej starostlivosti, službách súvisiacich s poskytovaním zdravotnej starostlivosti a o zmene a doplnení niektorých zákonov</i>)</p> <p>Abbreviation:</p> <p>Date of adoption: 21.10.2004</p> <p>Latest amendments: 25.06.2014 (No. 204/2014 Coll.)</p> <p>Entry into force: 01.01.2005</p> <p>Web link: http://www.zbierka.sk/sk/predpisy/576-2004-z-z.p-8184.pdf</p> <p>Grounds covered: sex, religion or belief, race, affiliation with a nationality (<i>národnosť</i>) 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, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act</p>
	Civil/administrative/criminal law: administrative
	Material scope: healthcare
	Principal content: legal relations in providing healthcare
Act on Social Insurance	<p>Title of the law: Act No. 461/2003 Coll. on Social Insurance, as amended (<i>zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov</i>)</p> <p>Abbreviation:</p> <p>Date of adoption: 30.10.2003</p> <p>Latest amendments: 15.10.2014 (No. 298/2014 Coll.)</p> <p>Entry into force: 01.01.2004</p> <p>Web link: http://www.zbierka.sk/sk/predpisy/461-2003-z-z.p-7427.pdf</p> <p>Grounds covered: sex, religion or belief, race, affiliation with a nationality (<i>národnosť</i>) 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, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act</p>
	Civil/administrative/criminal law: administrative
	Material scope: social security
	Principal content: legal relations in state social insurance
Act on Old-Age Pension Saving	<p>Title of the law: Act No. 43/2004 Coll. on Old-Age Pension Saving and amending and supplementing certain laws, as amended (<i>zákon č. 43/2004 Z. z. o starobnom dôchodkovom sporení a o zmene a doplnení niektorých zákonov</i>)</p> <p>Abbreviation:</p> <p>Date of adoption: 20.01.2004</p> <p>Latest amendments: 16.10.2004 (No. 301/2014 Coll.)</p> <p>Entry into force: 01.01.2004</p> <p>Web link: http://www.zbierka.sk/sk/predpisy/43-2004-z-z.p-7635.pdf</p> <p>Grounds covered: sex, religion or belief, race, affiliation with a nationality (<i>národnosť</i>) 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, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act</p>
	Civil/administrative/criminal law: civil, administrative
	Material scope: social security

	Principal content: old-age pension saving
Act on Supplementary Pension Saving	<p>Title of the law: Act No. 650/2004 Coll. on Supplementary Pension Saving and on Amending and Supplementing Certain Laws, as amended (<i>zákon č. 650/2004 Z. z. o doplnkovom dôchodkovom sporení a o zmene a doplnení niektorých zákonov</i>)</p> <p>Abbreviation:</p> <p>Date of adoption: 26.10.2014</p> <p>Latest amendments: 16.10.2014 (No. 301/2014 Coll.)</p> <p>Entry into force: 01.01.2005</p> <p>Web link: http://www.zbierka.sk/sk/predpisy/650-2004-z-z.p-8261.pdf</p> <p>Grounds covered: sex, religion or belief, race, affiliation with a nationality (<i>národnosť</i>) 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, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act</p>
	Civil/administrative/criminal law: civil, administrative
	Material scope: social security
	Principal content: supplementary pension saving (incl. occupational pensions)
Act on Social Services	<p>Title of the law: Act No. 448/2008 Coll. on Social Services and on amending and supplementing Act No. 455/1991 Coll. on Licensed Trades (Small Business Act), as amended (<i>zákon č. 448/2008 Z. z. o sociálnych službách a o zmene a doplnení zákona č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov</i>)</p> <p>Abbreviation:</p> <p>Date of adoption: 30.10.2008</p> <p>Latest amendments: 04.12.2014 (No. 376/2014 Coll.)</p> <p>Entry into force: 01.01.2009</p> <p>Web link: http://www.zbierka.sk/sk/predpisy/448-2008-z-z.p-32603.pdf</p> <p>Grounds covered: sex, religion or belief, race, affiliation with a nationality (<i>národnosť</i>) 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, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act as well as unfavourable social situation</p>
	Civil/administrative/criminal law: administrative
	Material scope: social security
	Principal content: legal relations in social services for people in need of them with regard to e.g. age or disability
Act on Benefits for Compensation of Serious Disability	<p>Title of the law: Act No. 447/2008 Coll. on Benefits for Compensation of Serious Disability, amending and Supplementing Certain Laws, as amended (<i>zákon č. 447/2008 o peňažných príspevkoch na kompenzáciu ťažkého zdravotného postihnutia a o zmene a doplnení niektorých zákonov</i>)</p> <p>Abbreviation:</p> <p>Date of adoption: 29.10.2008</p> <p>Latest amendments: 04.12.2014 (No. 375/2014 Coll.)</p> <p>Entry into force: 01.01.2009</p> <p>Web link: http://www.zbierka.sk/sk/predpisy/447-2008-z-z.p-32602.pdf</p> <p>Grounds covered: sex, religion or belief, race, affiliation with a nationality (<i>národnosť</i>) 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, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act</p>

	Civil/administrative/criminal law: administrative
	Material scope: social security
	Principal content: legal rules for providing benefits for compensation of serious disability
Act on Establishing the Slovak National Centre for Human Rights	Title of the law: Act No. 308/1993 Coll. on Establishing the Slovak National Centre for Human Rights (<i>zákon č. 308/1993 Z. z. o zriadení Slovenského národného strediska pre ľudské práva</i>) Abbreviation: Date of adoption: 15.12.1993 Latest amendments: 14.02.2008 (No. 85/2008 Coll.) Entry into force: 01.01.1994 Web link: http://www.zbierka.sk/sk/predpisy/308-1993-z-z.p-2695.pdf Grounds covered: all grounds covered by national law: sex, religion or belief, race, affiliation with nationality (<i>národnosť</i>) 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, contained in Section 2(1) of the Anti-discrimination Act as well as some other grounds contained in other acts (unfavourable state of health, genetic features, duties to family, membership of or involvement in a political party or a political movement, a trade union or other association)
	Civil/administrative/criminal law: administrative
	Material scope: employment and occupation, social security, social advantages, healthcare, provision of goods and services including housing and education
	Principal content: rules on obligations and the functioning of the equality body
	Title of the law: Act No. 99/1963 Coll. Civil Procedure Act, as amended (<i>zákon č. 99/1963 Zb. Občiansky súdny poriadok v znení neskorších predpisov</i>) Abbreviation: OSP (Občiansky súdny poriadok) Date of adoption: 04.12.1963 Latest amendments: 27.11.2014 (No. 353/2014 Coll.) Entry into force: 01.04.1964 Web link: http://www.zbierka.sk/sk/predpisy/zakon-99-1963-zb.p-26087.html?aspi_hash=OTkvMTk2MyBaYi4 Grounds covered: sex, religion or belief, race, affiliation with nationality (<i>národnosť</i>) 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, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act (as well as some other grounds contained in other acts, mainly trade union involvement and unfavourable state of health, genetic features contained for example in the Labour Code)
	Civil/administrative/criminal law: civil
	Material scope: employment and occupation, social security, social advantages, healthcare, provision of goods and services including housing and education
	Principal content: rules of civil proceedings before courts

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Slovakia

Date: 1 January 2015

Instrument	Date of signature (if not signed please indicate) Dd/mm/yyyy	Date of ratification (if not ratified please indicate) Dd/mm/yyyy	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)	Signed 21.02.1991	Ratified 18.03.1992	No	Yes	Yes
Protocol 12, ECHR	Signed 04.11.2000	Not ratified	No	No	No
Revised European Social Charter	Signed 18.11.1999	Ratified 23.04.2009	Yes Reservations applied by Slovak Republic: Article 15 Paragraph 3 Article 18 Paragraph 3 Article 19 Paragraph 2, 3, 4c, 8, 10, 12 Article 31	Ratified collective complaints protocol? No	Yes
International Covenant on Civil and Political Rights	Signed 07.10.1968	Ratified 28.05.1993	No	Yes	Yes
Framework Convention for the Protection of National Minorities	Signed 01.02.1995	Ratified 14.09.1995	No	N/A	Yes
International Covenant on Economic, Social and Cultural Rights	Signed 07.10.1968	Ratified 28.05.1993	No	Yes	Yes
Convention on the Elimination of All Forms of Racial	Signed 07.10.1966	Ratified 28.05.1993	No	Yes	Yes

Instrument	Date of signature (if not signed please indicate) Dd/mm/yyyy	Date of ratification (if not ratified please indicate) Dd/mm/yyyy	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?
Discrimination					
Convention on the Elimination of Discrimination Against Women	Signed 17.07.1980	Ratified 28.05.1993	No	Yes	Yes
ILO Convention No. 111 on Discrimination	Signed 25.06.1958	Ratified 01.01.1993	No	N/A	Yes
Convention on the Rights of the Child	Signed 30.09.1990	Ratified 28.05.1993	No	No	Yes
Convention on the Rights of Persons with Disabilities	Signed 26.09.2007	Ratified 26.05.2010	No	Yes	Yes

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