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Country report

Non-discrimination

Slovakia

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Country report

Non-discrimination

Slovakia

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CONTENTS

EXECUTIVE SUMMARY	6
RÉSUMÉ	14
ZUSAMMENFASSUNG	23
INTRODUCTION	32
1 GENERAL LEGAL FRAMEWORK	37
2 THE DEFINITION OF DISCRIMINATION	39
2.1 Grounds of unlawful discrimination explicitly covered	39
2.1.1 Definition of the grounds of unlawful discrimination within the directives	39
2.1.2 Multiple discrimination	43
2.1.3 Assumed and associated discrimination	44
2.2 Direct discrimination (Article 2(2)(a))	45
2.2.1 Situation testing	45
2.3 Indirect discrimination (Article 2(2)(b))	48
2.3.1 Statistical evidence	50
2.4 Harassment (Article 2(3))	54
2.5 Instructions to discriminate (Article 2(4))	57
2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)	58
3 PERSONAL AND MATERIAL SCOPE	67
3.1 Personal scope	67
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)	67
3.1.2 Natural and legal persons (Recital 16 Directive 2000/43)	67
3.1.3 Private and public sector including public bodies (Article 3(1))	68
3.2 Material scope	69
3.2.1 Employment, self-employment and occupation	69
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))	70
3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))	70
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))	72
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))	72
3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)	73
3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)	75
3.2.8 Education (Article 3(1)(g) Directive 2000/43)	77
3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43)	84
3.2.10 Housing (Article 3(1)(h) Directive 2000/43)	85
4 EXCEPTIONS	89
4.1 Genuine and determining occupational requirements (Article 4)	89
4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)	89
4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78)	91
4.4 Nationality discrimination (Article 3(2))	91
4.5 Work-related family benefits (Recital 22 Directive 2000/78)	92

4.6	Health and safety (Article 7(2) Directive 2000/78)	93
4.7	Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)	93
4.7.1	Direct discrimination	93
4.7.2	Special conditions for young people, older workers and persons with caring responsibilities	96
4.7.3	Minimum and maximum age requirements	97
4.7.4	Retirement	98
4.7.5	Redundancy	101
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)	101
4.9	Any other exceptions	101
5	POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)	103
6	REMEDIES AND ENFORCEMENT	107
6.1	Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)	107
6.2	Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)	113
6.3	Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)	115
6.4	Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)	117
6.5	Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)	118
7	BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)	122
8	IMPLEMENTATION ISSUES	136
8.1	Dissemination of information, dialogue with NGOs and between social partners	136
8.2	Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)	139
9	COORDINATION AT NATIONAL LEVEL	141
10	CURRENT BEST PRACTICES	142
11	SENSITIVE OR CONTROVERSIAL ISSUES	144
11.1	Potential breaches of the directives (if any)	144
11.2	Other issues of concern	145
12	LATEST DEVELOPMENTS IN 2017	147
12.1	Legislative amendments	147
12.2	Case law	147
	ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION...	152
	ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS	158

LIST OF ABBREVIATIONS:

CERD – Convention on the Elimination of All Forms of Racial Discrimination
CEDAW - Convention on the Elimination of All Forms of Discrimination against Women
CoE – Council of Europe
CRPD – Convention on the Rights of Persons with Disabilities
CJEU – Court of Justice of the EU
ECHR – European Convention on Human Rights
ECtHR – European Court of Human Rights
EU – European Union
OSCE – Organization for Security and Co-operation in Europe
UN – United Nations

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 Foreigners constitute 1.7 % of the population; in the first half of 2017, 97 934 foreigners were living in Slovakia (out of which, 44 474 were third-country nationals). Ukrainians are the most represented group among foreigners living in Slovakia, followed by Serbians, Russians, Vietnamese, Chinese and Koreans. In the first half of 2017, 1 251 foreigners illegally crossed Slovak borders.⁴

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. Roma living in segregated settlements face an increased threat of forced eviction. Roma children are educated in segregated schools and/or classes and many of them are educated in schools for children with mental disabilities. The first (and so far the only final) case on the segregation of Roma children in education decided by national courts, in 2011 and 2012, concluded that education of Roma children in separate mainstream classes amounts to racial discrimination and undermines the human dignity of segregated Roma children. The inability of the Slovak Government to effectively address the segregation of Roma children in education and facilitate their school inclusion, resulted in the submission of other cases to the Slovak courts by the Slovak non-governmental organisation, the Centre for Civil and Human Rights. The Centre for Civil and Human Rights submitted a series of cases and one of them was dismissed by the District Court in Bratislava on 6 October 2016. In 2017, all of these cases were pending before domestic courts without significant legal progress. The segregation of Roma children in education is a very widespread problem. It is notable that Slovakia faces infringement proceedings by the European Commission for violating the EU Racial Equality Directive (2000/43/EC) in the practice of discriminating against Roma children in special and mainstream education systems.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. Public support for far-right policies increased and resulted in the accession of the far-right extremist party, National Party – Our Slovakia, to the Slovak Parliament after the elections in March 2016.

¹ See <http://census2011.statistics.sk/tabulky.html> (accessed 01 March 2018).

² See *Prvé výsledky ATLASU rómskych komunít na Slovensku 2013* (The First Results of the Atlas on Roma Communities in Slovakia 2013) (2013), The first results provided selected summarized data from the Atlas which can be found on the website of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities, available at http://www.minv.sk/?atlas_2013, (accessed 1 March 2018).

³ Each making up less than 1 % of the national population. See <http://census2011.statistics.sk/tabulky.html> (accessed 1 March 2018).

⁴ Migration Office of the Ministry of Interior of the Slovak Republic (2017), 'Migračný úrad MV SR: Štatistický prehľad legálnej a nelegálnej migrácie v Slovenskej republike za rok 2016' (Statistical overview of legal and illegal migration in the Slovak Republic for the I half of the year 2017), available at: https://www.minv.sk/swift_data/source/policia/hranicna_a_cudzinecka_policia/rocniky/rok_2017/I-half-2017-statistical-overview-UHCP-EN.pdf (accessed 22 February 2018).

⁵ European Commission's decision to initiate infringement proceedings against Slovakia, 'Non-conformity with Directive 2000/43/EC on Racial Equality - Discrimination of Roma children in education' from 29 April 2015, information available at http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/index.cfm?lang_code=EN&r_dossier=20152025&noncom=0&decision_date_from=&decision_date_to=&active_only=0&EM=SK&title=&submit=Search (accessed 28 February 2018).

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. The Slovak Public Defender of Rights in her opinion concluded that non-recognition of same sex partnerships violates the human rights obligations of the Slovak Republic.⁶

People with disabilities face numerous physical and societal barriers and segregation on a daily basis in all fields of life. The ombudswoman in her reports addressed the existing deficiencies and recommended specific measures that the responsible state authorities have to take in order to prevent discrimination against people with disabilities in accessing public buildings.⁷

Slovak Government authorities have been generally reluctant to accept refugees in recent years in comparison with other countries of the EU and representatives of some political parties publicly expressed hostility towards the refugees, particularly in the period before the parliamentary elections in March 2016.

Many other individuals and groups also face serious discrimination, often on combinations of several grounds. Roma 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 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*)⁸ 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 2004,⁹ immediately after Slovakia joined the EU. The ADA meets the minimum standards required by the directives and goes beyond them in some instances.

⁶ Office of the Public Defender of Rights (September 2017), 'Stanovisko verejnej ochránkyne práv k verejnej ochrankyne práv problematike práva párov rovnakého pohlavia na uznanie ich vzťahu v právnom poriadku SR' (2017) available at <http://www.vop.gov.sk/stanovisko-verejnej-ochrankyne-prav-k-problematike-prava-parov-rovnakeho-pohlavia-na-uznanie-ich-vztahu-v-pravnom-poriadku-sr> (accessed 22 February 2018).

⁷ Office of the Public Defender of Rights (October 2016), 'Správa o výsledkoch prieskumu bezbariérového prístupu do budov škôl a bezbariérovosti v nich' (Report on outcomes of the research on access to school buildings for the disabled); Office of the Public Defender of Rights (September 2016), 'Správa o výsledkoch prieskumu zabezpečenia bezbariérového prístupu v budovách, ktoré sú sídlami útvarov Policajného zboru a klientskych centier' (Report on outcomes of the research on access to police buildings and their client's centres for the disabled); Office of the Public Defender of Rights (September 2016), 'Bezbariérovosť v štátnych nemocniciach a iných zdravotníckych zariadeniach - správa o výsledkoch prieskumu' (Access to state run hospitals and other health care facilities for the disabled - report on outcomes of the research).

⁸ 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.

⁹ Slovakia, Act No. 365/2004 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*

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/gender¹⁰ or other status, or the reason of reporting criminality or other anti-social activity.¹¹ 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.¹² 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,¹³ and victimisation.¹⁴ 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 belief.¹⁵ 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.¹⁶

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.¹⁷

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.¹⁸

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.¹⁹ The ADA stipulates that it does not apply to legal regulation of the status of third-country nationals²⁰

oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (antidiskriminačný zákon) v znení neskorších predpisov).

¹⁰ The Slovak word *rod* can be translated as either 'lineage' or 'gender'.

¹¹ Slovakia, Anti-discrimination Act, 365/2004, Section 2(1).

¹² Slovakia, Anti-discrimination Act, 365/2004, Sections 2(1) and 2(3).

¹³ 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.

¹⁴ Slovakia, Anti-discrimination Act, 365/2004, Section 2a(1)-(8).

¹⁵ Slovakia, Anti-discrimination Act, 365/2004, Sections 2a(11)(b) and 2a(11)(c).

¹⁶ Slovakia, Anti-discrimination Act, 365/2004, Section 3(3).

¹⁷ Slovakia, Anti-discrimination Act, 365/2004, Section 7.

¹⁸ Slovakia, Anti-discrimination Act, 365/2004, Section 8(1).

¹⁹ Slovakia, Anti-discrimination Act, 365/2004, Section 8(2).

²⁰ Slovakia, Anti-discrimination Act, 365/2004, Section 4(1)(a).

and states that, in the armed forces and security and rescue services, discrimination on the grounds of disability and age is allowed.²¹

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.²² 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.²³

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).²⁴ 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.

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. In February 2018, the Ministry of Justice only presented data on 10 cases concerning (non-)discrimination that were finalised by effective judgments in the first half of 2017.²⁵ The available numbers on the ongoing and finished proceedings are not accurate because the corresponding data are either not collected or are not collected properly.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

²¹ Slovakia, Anti-discrimination Act, 365/2004, Sections 4(1)(b) and 4(1)(c).

²² Slovakia, Anti-discrimination Act, 365/2004, Section 8(3).

²³ Slovakia, Anti-discrimination Act, 365/2004, Sections 8(6) and 8(5).

²⁴ Slovakia, Anti-discrimination Act, 365/2004, Sections 3(1), 5 and 6.

²⁵ A response of the Ministry of Justice of 19 February 2018 to a request for information of 8 February 2018 (on file with the author).

²⁶ For example, the courts do not register discrimination-related proceedings and decisions properly and hence reliable statistics do not exist. See also the response of the Ministry of Justice of 19 February to the request for information of 8 February 2018 where also the Ministry finds data collection by courts problematic.

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. 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. The Regional Court in Košice in its final decision awarded a Roma couple who claimed to have been discriminated against based on their ethnic origin in a local bar in Spišské Vlachy financial compensation totalling EUR 600 (EUR 300 each). This is one of the first final cases in Slovakia in which the courts have awarded financial compensation for racial discrimination.²⁹ In 2017, the first instance court ruled in a case of discrimination against a Roma woman in access to employment and awarded her EUR 2 500 as non-pecuniary damage. This is a landmark decision as it was for the first time that the domestic court ruled in favour of a Roma victim of discrimination in a case of access to employment.³⁰

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 justifiable.³¹ The implementation of this measure by Slovak courts is still problematic in practice. This has been also highlighted by the UN Committee of the Elimination of Racial Discrimination in its decision against Slovakia concerning an individual case of discrimination against a Roma woman in access to employment.³²

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).³³

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*).³⁴ So far, a few such cases have been initiated (all by an NGO)³⁵ and only one of them was won and finalised (a case of segregation of Roma children in education).³⁶

²⁷ Slovakia, Anti-discrimination Act, 365/2004, Section 9(1)-(3), in conjunction with Section 11(1).

²⁸ Slovakia, Anti-discrimination Act, 365/2004, Section 9(4).

²⁹ Decision of the Košice Regional Court, No. 6 Co 833/2014 – 223 of 28 June 2016.

³⁰ Decision of the Spišská Nová Ves District Court, No. 8 C 268/2016 – 523, of 23 March 2017. After the cut-off date of this report, the Regional Court in Košice by its decision of 7 February 2018 (ref. No. 9Co 259/2017) upheld the decision of the District Court in Spišská Nová Ves, so it became final.

³¹ Slovakia, Anti-discrimination Act, 365/2004, Section 11(2).

³² See the opinion of the UN Committee on the Elimination of Racial Discrimination in the case of *V.S. v. Slovakia*, Communication no. 56/2014 of 16 December 2015, paragraphs 7.4. and 9.

³³ Slovakia, Anti-discrimination Act, 365/2004, Section 10.

³⁴ Slovakia, Anti-discrimination Act, 365/2004, Section 9a.

³⁵ Centre for Civil and Human Rights.

³⁶ 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.

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,³⁷ and another is Citizen, Democracy and Accountability.³⁸

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.³⁹ 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 either not imposed or their amount is insufficient and without dissuasive effect.

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 opportunity in practice.⁴⁰ Some positive action measures are in place with regard to the Roma. For example, the programme Healthy Communities, which employs 218 health mediators mostly of Roma origin in 213 marginalised Roma communities (the mediators mostly come from these communities) who assist people with everyday health-related situations. 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.⁴¹ Some business employers also adopt some measures towards their employees facing increased risks of discrimination, such as the company Accenture, which employs a positive policy towards LGBT persons and women, and the company Whirlpool Slovakia, which adopts some positive measures towards marginalised Roma.⁴² There are no specific positive action measures related to discrimination on the ground of 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.⁴³ The functioning of the council has some systemic and practical drawbacks.

³⁷ This NGO deals mainly with cases of discrimination against Roma.

³⁸ Citizen, Democracy and Accountability focuses mainly on gender-related discrimination.

³⁹ See Slovakia, Act No 311/2001 Labour Code (*zákon č. 311/2001 Z. z. Zákonník práce*), Section 13(5).

⁴⁰ Slovakia, Anti-discrimination Act, 365/2004, Section 8a.

⁴¹ Pursuant to Slovakia, Act No 5/2004 on Employment Services, Sections 63-65, 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.

⁴² More information about the measures adopted is available at <http://www.nadaciapontis.sk/clanok/tieto-firmy-postupili-do-finale-via-bona-slovakia/2600> and at <https://www.webnoviny.sk/zamestnatelnost-romov-z-vylucenych-oblasti-je-riesitelny-problem-zhoduju-sa-slovenski-experti/> (accessed on 23 February 2018).

⁴³ Slovakia, 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*), Section 2(3). The website of the Council of the Government: www.radavladylp.gov.sk/ (accessed 23 February 2018).

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.⁴⁴

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.⁴⁵ 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.

In 2017, the centre dealt with 70 complaints of possible discriminatory treatment, out of which four concerned age, five race, six gender, 35 other status, five disability, five ethnic origin, one nationality, one political or other opinion, 2 the reason on reporting criminality or other anti-social activity. Out of all the complaints received, the centre identified violation of the principle of equal treatment in nine complaints. In 2017, the centre received four complaints by third-country nationals, but none of them fall under the responsibility of the equality body and the centre referred the claimants to other institutions. The centre issued 22 expert opinions, provided legal representation in five court proceedings and did not submit any *actio popularis* lawsuits.⁴⁶

For a long time now, various sources have been reporting that the centre is not fulfilling its tasks efficiently and satisfactorily.⁴⁷ 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

⁴⁴ Slovakia, Act No 308/1993 on Establishing the Slovak National Centre for Human Rights (*zákon č. 308/1993 Z. z. o zriadení Slovenského národného strediska pre ľudské práva*), Sections 1 and 2(1)-(3).

⁴⁵ Slovakia, Act No 308/1993 on Establishing the Slovak National Centre for Human Rights, Sections 1(2)-(4).

⁴⁶ Response of the Centre for Human Rights of 22 January 2018 to a request for information of 10 January 2018 (on file with the author).

⁴⁷ 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 <https://www.poradna-prava.sk/sk/dokumenty/diskriminacia-na-slovensku-hladanie-barier-v-pristupe-k-ucinnej-pravnej-ochrane-pred-diskriminaciou/> (accessed 1 March 2018); 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: <https://www.poradna-prava.sk/en/documents/written-comments-to-the-committee-on-the-elimination-of-racial-discrimination/>). Concluding Observations of the Human Rights Committee from October 2016, (CCPR/C/SVK/CO/4, para. 8; available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSVK%2fCO%2f4&Lang=en (accessed 8 February 2018)).

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 new Government appointed in 2016 is already working on the legislative bill that should strengthen the independence and effective functioning of the centre. By the end of 2017, the legislation had not yet 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; racial prejudices among judges and lack of programmes to raise their awareness; 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 effective policies for the transition from a segregated to an inclusive educational system; lack of material, financial and human resources for mainstream schools to ensure inclusive education; 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; increased public support for far-right policies leading also to the accession of the far-right extremist party to the Slovak Parliament after the elections in March 2016.

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).⁴⁸ 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.⁴⁹ Parmi les autres minorités figurent les Tchèques, les Ukrainiens, les Croates, les Allemands, les Polonais, les Bulgares, les Moraves et les Juifs.⁵⁰ Les étrangers représentent 1,7 % de la population; au premier semestre 2017, 97 934 ressortissants étrangers vivaient en Slovaquie en 2016 (dont 44 474 ressortissants de pays tiers). Le groupe le plus nombreux est formé des Ukrainiens, suivis des Serbes, des Russes, des Vietnamiens, des Chinois et des Coréens. Au premier semestre 2017, 1 251 étrangers ont illégalement franchi les frontières slovaques.⁵¹

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. Les Roms établis dans des campements ségrégués vivent sous la menace grandissante d'une éviction forcée. Les enfants roms suivent leur enseignement dans des écoles et/ou des classes séparées, et beaucoup d'entre eux dans des établissements pour enfants mentalement handicapés. La première affaire (et, à ce jour, la seule passée en force de chose jugée) en matière de ségrégation des enfants roms dans l'enseignement, dans laquelle les juridictions nationales se sont prononcées en 2011 et 2012, conclut que l'éducation des enfants roms dans des classes ordinaires séparées est constitutive d'une discrimination raciale et va à l'encontre de la dignité des enfants roms ainsi mis à l'écart. L'incapacité du gouvernement slovaque de remédier efficacement à la ségrégation des enfants roms dans l'enseignement et de faciliter leur inclusion scolaire fait que les juridictions slovaques ont été saisies d'autres dossiers par le Centre pour les droits civils et humains, organisation non gouvernementale slovaque. Le tribunal départemental de Bratislava a rejeté l'un de ces recours le 6 octobre 2016. Tous étaient encore en instance devant des juridictions nationales en 2017 sans aucune réelle avancée juridique. La ségrégation des enfants roms dans l'enseignement est un problème très répandu, et il est à noter que la Slovaquie fait l'objet de la part de la Commission européenne d'une procédure d'infraction pour violation de la directive européenne relative à l'égalité raciale (2000/43/CE) en raison de la discrimination pratiquée à l'encontre des enfants roms dans les systèmes spéciaux et ordinaires d'enseignement.⁵²

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

⁴⁸ Voir <http://census2011.statistics.sk/tabulky.html> (consulté le 1^{er} mars 2018).

⁴⁹ Voir *Prvé výsledky ATLASU rómskych komunít na Slovensku 2013* (Les premiers résultats de l'Atlas 2013 des communautés roms) (2013). Les premiers résultats sont une sélection de données sommaires tirées de l'Atlas, que l'on peut consulter sur le site web du Plénipotentiaire du gouvernement de la République de Slovaquie pour les communautés roms: http://www.minv.sk/?atlas_2013 (consulté le 1^{er} mars 2018).

⁵⁰ Chacune de ces minorités représentant moins de 1 % de la population nationale. Voir <http://census2011.statistics.sk/tabulky.html> (consulté le 1^{er} mars 2018).

⁵¹ Office des migrations du ministère de l'Intérieur de la République slovaque (2016), «*Migračný úrad MV SR: Štatistický prehľad legálnej a nelegálnej migrácie v Slovenskej republike za rok 2016*» (Aperçu statistique des migrations légales et illégales en République slovaque au premier semestre 2017), disponible sur: https://www.minv.sk/swift_data/source/policia/hranicna_a_cudzinecka_policia/rocniky/rok_2017/I-half-2017-statistical-overview-UHCP-EN.pdf (consulté le 22 février 2018).

⁵² Décision de la Commission européenne d'engager une procédure d'infraction à l'encontre de la Slovaquie «Non-conformity with Directive 2000/43/EC on Racial Equality - Discrimination of Roma children in education», 29 avril 2015, informations disponibles sur http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?r_dossier=20152025&noncom=0&decision_date_fr_om=&decision_date_to=&active_only=0&EM=SK&title=&submit=Search&lang_code=fr (consulté le 28 février 2018).

également au plus haut niveau politique. La haine raciale et nationaliste est une source de préoccupation supplémentaire. Le soutien public en faveur de politiques d'extrême-droite s'est intensifié et a donné lieu à l'entrée du parti national d'extrême-droite «Notre Slovaquie» au Parlement suite aux élections de mars 2016.

La communauté LGBTI n'a 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. Le Défenseur slovaque des droits a conclu que la non-reconnaissance des partenariats de même sexe constitue selon elle une violation par la République slovaque de ses obligations en matière de droits de l'homme.⁵³

Les personnes handicapées se heurtent à de nombreuses barrières physiques et sociétales ainsi qu'à une ségrégation quotidienne dans tous les domaines de vie. La médiatrice a fait part dans ses rapports des lacunes constatées, et recommandé des mesures spécifiques à prendre par les autorités publiques compétentes pour prévenir la discrimination envers les personnes handicapées en termes d'accès aux bâtiments publics.⁵⁴

De façon générale, les autorités publiques slovaques se sont montrées – par rapport à d'autres pays de l'UE – plutôt réticentes ces dernières années en termes d'accueil de réfugiés, et les représentants de plusieurs partis politiques ont publiquement exprimé leur hostilité à l'égard de ceux-ci, en particulier durant la période qui a précédé les élections parlementaires de mars 2016.

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 roms.

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

⁵³ Bureau du Défenseur public des droits (septembre 2017), «*Stanovisko verejnej ochrankyne práv k verejnej ochrankyne práv problematike práva párov rovnakého pohlavia na uznanie ich vzťahu v právnom poriadku SR*» (2017), disponible sur <http://www.vop.gov.sk/stanovisko-verejnej-ochrankyne-prav-k-problematike-prava-parov-rovnakeho-pohlavia-na-uznanie-ich-vztahu-v-pravnom-poriadku-sr> (consulté le 22 février 2018).

⁵⁴ Bureau du Défenseur public des droits (octobre 2016), «*Správa o výsledkoch prieskumu bezbariérového prístupu do budov škôl a bezbariérovosti v nich*» (Rapport des résultats de l'étude sur l'accès des personnes handicapées aux bâtiments scolaires); Bureau du Défenseur public des droits (septembre 2016), «*Správa o výsledkoch prieskumu zabezpečenia bezbariérového prístupu v budovách, ktoré sú sídlami útvarov Policajného zboru a klientskych centier*» (Rapport sur les résultats de l'étude sur l'accès des personnes handicapées aux bâtiments de la police et à ses centres ouverts à la clientèle); Bureau du Défenseur public des droits (septembre 2016), «*Bezbariérovosť v štátnych nemocniciach a iných zdravotníckych zariadeniach – správa o výsledkoch prieskumu*» (accès des personnes handicapées aux hôpitaux et autres centres de soins en gestion publique – rapport sur les résultats de l'étude).

options politiques, de son origine nationale ou sociale, de sa nationalité (*národnosť*)⁵⁵ 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 2004,⁵⁶ 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 genre⁵⁷ ou toute autre caractéristique personnelle, ou pour avoir signalé un délit ou une autre activité antisociale.⁵⁸ 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.⁵⁹ Le principe de l'égalité de traitement s'applique à tous les domaines 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 discriminer⁶⁰ et les rétorsions.⁶¹ 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 (*národnosť*), de l'ethnicité, de la religion et des convictions sont couverts.⁶² L'établissement de l'existence ou de la non-existence d'une discrimination ne tient pas

⁵⁵ 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.

⁵⁶ Slovaquie, loi n° 365/2004 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*).

⁵⁷ Le terme slovaque «rod» peut se traduire par «naissance» ou par «genre».

⁵⁸ Slovaquie, loi antidiscrimination, 365/2004, article 2, paragraphe 1.

⁵⁹ Slovaquie, loi antidiscrimination, 365/2004, article 2, paragraphes 1 et 3.

⁶⁰ 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.

⁶¹ Slovaquie, loi antidiscrimination, 365/2004, article 2a, paragraphes 1 à 8.

⁶² Slovaquie, loi antidiscrimination, 365/2004, article 2a, paragraphe 11 sous b) et c).

compte du fait que celle-ci ait été fondée sur des faits réels ou sur une supposition erronée.⁶³

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.⁶⁴

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.⁶⁵

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.⁶⁶ La loi antidiscrimination dispose qu'elle ne s'applique pas à la réglementation juridique du statut des ressortissants de pays tiers⁶⁷ et que la discrimination fondée sur le handicap et l'âge est admise dans les forces armées et de sécurité et dans les services de secours.⁶⁸

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.⁶⁹ 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 prêter un emploi si les exigences de santé sont déterminantes pour l'exécution de certaines activités professionnelles.⁷⁰

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

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

⁶³ Slovaquie, loi antidiscrimination, 365/2004, article 3, paragraphe 3.

⁶⁴ Slovaquie, loi antidiscrimination, 365/2004, article 7.

⁶⁵ Slovaquie, loi antidiscrimination, 365/2004, article 8, paragraphe 1.

⁶⁶ Slovaquie, loi antidiscrimination, 365/2004, article 8, paragraphe 2.

⁶⁷ Slovaquie, loi antidiscrimination, 365/2004, article 4, paragraphe 1 sous a).

⁶⁸ Slovaquie, loi antidiscrimination, 365/2004, article 4, paragraphe 1 sous b) et c).

⁶⁹ Slovaquie, loi antidiscrimination, 365/2004, article 8, paragraphe 3.

⁷⁰ Slovaquie, loi antidiscrimination, 365/2004, article 8, paragraphes 6 et 5.

des personnes physiques qui sont entrepreneurs).⁷¹ 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. En février 2018, les données communiquées par le ministère de la Justice concernaient uniquement 10 affaires relatives à une (non-)discrimination ayant fait l'objet d'un jugement exécutoire au cours du premier semestre 2017.⁷² Les chiffres disponibles concernant les procédures en cours et les procédures clôturées ne sont guère exacts car les données y relatives ne sont pas collectées ou ne sont pas collectées correctement.⁷³

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.⁷⁴ 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, par exemple. 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.⁷⁵

La jurisprudence existante 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. À un couple rom alléguant avoir fait l'objet d'une discrimination fondée sur son origine ethnique dans un bar local de Spišské Vlachy, le tribunal régional de Košice a alloué dans sa décision finale une indemnité financière s'élevant à 600 euros (300 euros à chacun des membres du couple). Il s'agit de l'une des premières affaires jugées en Slovaquie dans laquelle une juridiction attribue une indemnité financière en réparation d'une discrimination raciale.⁷⁶ En 2017, le tribunal de première instance s'est prononcé dans une affaire de discrimination dans l'accès à l'emploi envers une femme rom et lui a alloué un montant de 2 500 euros pour préjudice moral. Il s'agit d'un arrêt historique car c'est la première fois qu'une juridiction slovaque se prononce en

⁷¹ Slovaquie, loi antidiscrimination, 365/2004, article 3, paragraphe 1, et articles 5 et 6.

⁷² Réponse du ministère de la justice en date du 19 février 2018 à une demande d'information du 8 février 2018 (dans les dossiers de l'auteur).

⁷³ Ainsi par exemple, les cours et tribunaux n'enregistrent correctement ni les procédures ni les décisions en rapport avec des discriminations de sorte qu'il n'existe pas de statistiques fiables. Voir également la réponse du ministère de la justice en date du 19 février à la demande d'information du 8 février 2018 dans laquelle le ministère estime lui aussi que la collecte de données par les cours et tribunaux pose problème.

⁷⁴ Slovaquie, loi antidiscrimination, 365/2004, article 9, paragraphes 1 à 3, lu conjointement à l'article 11, paragraphe 1.

⁷⁵ Slovaquie, loi antidiscrimination, 365/2004, article 9, paragraphe 4.

⁷⁶ Arrêt du tribunal régional de Košice, n° 6 Co 833/2014 – 223 du 28 juin 2016.

faveur d'une personne rom victime de discrimination dans une affaire portant sur l'accès à l'emploi.⁷⁷

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.⁷⁸ La mise en œuvre de cette mesure par les juridictions slovaques reste problématique sur le terrain – un constat également mis en lumière par le comité des NU pour l'élimination de la discrimination raciale dans sa décision à l'encontre de la Slovaquie à propos d'une affaire individuelle de discrimination en matière d'accès à l'emploi à l'encontre d'une femme rom.⁷⁹

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).⁸⁰

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.⁸¹ À ce jour, quelques actions ont été engagées (toutes par une ONG)⁸² et une seule d'entre elle a abouti (une affaire de ségrégation d'enfants roms dans l'enseignement).⁸³

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,⁸⁴ et de l'ONG «Citoyenneté, démocratie et responsabilité».⁸⁵

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.⁸⁶ 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

⁷⁷ Arrêt du tribunal départemental de Spišská Nová Ves, n° 8 C 268/2016 – 523 du 23 mars 2017.

Ultérieurement à la date limite fixée pour le présent rapport, le tribunal régional de Košice a confirmé dans son arrêt du 7 février 2018 (réf. n° 9Co 259/2017) l'arrêt du tribunal départemental de Spišská Nová Ves, lequel est donc passé en force de chose jugée.

⁷⁸ Slovaquie, loi antidiscrimination, 365/2004, article 11, paragraphe 2.

⁷⁹ Voir l'avis du comité des Nations unies pour l'élimination de la discrimination raciale dans l'affaire *V.S. c. Slovaquie*, communication n° 56/2014 du 16 décembre 2015, points 7.4 et 9.

⁸⁰ Slovaquie, loi antidiscrimination, 365/2004, article 10.

⁸¹ Slovaquie, loi antidiscrimination, 365/2004, article 9a.

⁸² Centre des droits civils et humains.

⁸³ 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 du tribunal régional de Prešov du 30 octobre 2012, réf. n° 20Co 125/2012, 20Co 126/2012.

⁸⁴ Cette ONG traite principalement de cas de discrimination envers les Roms.

⁸⁵ Cette ONG se concentre pour sa part sur la discrimination liée au genre.

⁸⁶ Slovaquie, loi n° 311/2001 – Code du travail (*zákon č. 311/2001 Z. z. Zákonník práce*), article 13, paragraphe 5.

et même lorsque de telles actions sont engagées, les amendes ne sont pas infligées ou leur montant insuffisant est sans effet dissuasif.

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.⁸⁷ Certaines mesures d'action positive sont en place en faveur des Roms. Le programme pour des communautés en bonne santé, qui emploie 218 médiateurs de santé principalement d'origine rom dans 213 communautés roms marginalisées (dont la plupart de ces médiateurs sont issus) pour venir en aide aux personnes dans le cadre de situations courantes en rapport avec leur santé, en fournit un exemple. 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.⁸⁸ Certaines entreprises adoptent également des mesures en faveur de leurs salariés exposés à un risque croissant de discrimination: tel est notamment le cas de la société Accenture, qui pratique une politique positive à l'égard des personnes LGBT et des femmes, et de la société Whirlpool Slovaquie, qui adopte des mesures positives envers les Roms marginalisés.⁸⁹ Aucune mesure d'action positive n'a été spécifiquement adoptée en rapport avec la discrimination fondée sur la religion et les convictions.

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.⁹⁰ Le fonctionnement du Conseil présente 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.

⁸⁷ Slovaquie, loi antidiscrimination, 365/2004, article 8a.

⁸⁸ En vertu des articles 63 à 65 de la loi slovaque n° 5/2004 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.

⁸⁹ De plus amples informations concernant les mesures adoptées sont disponibles sur <http://www.nadaciapontis.sk/clanok/tieto-firmy-postupili-do-finale-via-bona-slovakia/2600> and at <https://www.webnoviny.sk/zamestnatelnost-romov-z-vylucenych-oblasti-je-riesitelny-problem-zhoduju-sa-slovenski-experti/> (consulté le 23 février 2018).

⁹⁰ Slovaquie, 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*), article 2, paragraphe 3. Site web du Conseil du gouvernement: www.radavladyp.gov.sk/ (consulté le 23 février 2018).

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.⁹¹

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.⁹² Il peut également intenté 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.

En 2017, le Centre a traité 70 plaintes alléguant un éventuel traitement discriminatoire, parmi lesquelles quatre concernaient l'âge, cinq la race, six le genre, trente-cinq d'autres statuts, cinq un handicap, cinq l'origine ethnique, une la nationalité, une l'opinion politique ou autre, et deux le signalement d'un acte criminel ou autre activité antisociale. Parmi toutes les plaintes qu'il a reçues, le centre a établi un non-respect du principe de l'égalité de traitement dans neuf cas. Il a été saisi en 2017 de quatre plaintes émanant de ressortissants de pays tiers, mais aucun de ces dossiers ne relevait de la compétence de l'organisme pour l'égalité et le Centre a donc renvoyé les plaignants vers d'autres institutions. Le Centre a émis 22 avis d'experts; il a assuré une représentation légale dans cinq procédures judiciaires; et il n'a engagé aucune action collective (*actio popularis*).⁹³

Des sources diverses signalent de longue date que le Centre n'accomplit pas ses tâches de manière efficace et satisfaisante.⁹⁴ 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.

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

⁹¹ Slovaquie, loi n° 308/1993 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*), articles 1 et 2, paragraphes 1 à 3.

⁹² Slovaquie, loi n° 308/1993 portant création du Centre national slovaque des droits de l'homme, article 1, paragraphes 2 à 4.

⁹³ Réponse du Centre des droits de l'homme en date du 22 janvier 2018 à une demande d'information du 10 janvier 2018 (dans les dossiers de l'auteur).

⁹⁴ Voir notamment 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. 110-112. Cette publication est aussi disponible sur <https://www.poradna-prava.sk/sk/dokumenty/diskriminacia-na-slovensku-hladanie-barier-v-pristupe-k-ucinnei-pravnej-ochrane-pred-diskriminaciou/> (consulté le 1^{er} mars 2018); voir également 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 <https://www.poradna-prava.sk/en/documents/written-comments-to-the-committee-on-the-elimination-of-racial-discrimination/>; et les Observations finales du Comité pour les droits de l'homme d'octobre 2016 (CCPR/C/SVK/CO/4, point 8), disponible sur: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSVK%2fCO%2f4&Lang=en (consulté le 8 février 2018).

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 nouveau gouvernement désigné en 2016 étudie d'ores et déjà un projet de loi qui devrait renforcer l'indépendance et l'efficacité de fonctionnement du Centre. Fin 2017 toutefois, cet acte législatif n'avait pas encore été présenté 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; de préjugés raciaux de la part des magistrats et de l'absence de programmes destinés à les sensibiliser; 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; du manque d'actions efficaces pour assurer la transition d'un système éducatif ségrégué à un système éducatif inclusif; de l'insuffisance des ressources matérielles, financières et humaines nécessaires à ce que les écoles ordinaires pratiquent un enseignement inclusif; 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 pour ce qui concerne le racisme et les attitudes discriminatoires dans l'ensemble de la société; d'un soutien public accru en faveur de politiques d'extrême-droite, ce qui a notamment conduit à l'entrée du parti d'extrême-droite au parlement slovaque au lendemain des élections de mars 2016.

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 %),⁹⁵ allerdings zeigt der Atlas der Roma-Gemeinschaften von 2013, dass in der Slowakei 400 000 Roma leben, was 7,45 % der Gesamtbevölkerung entspricht.⁹⁶ Weitere Minderheiten sind Tschechen, Ukrainer, Kroaten, Deutsche, Polen, Bulgaren, Mährer und Juden.⁹⁷ Ausländer machen 1,7 % der Bevölkerung aus; im ersten Halbjahr 2017 lebten in der Slowakei 97 934 Ausländer (davon waren 44 474 Drittstaatsangehörige). Die stärkste Gruppe unter den in der Slowakei lebenden Ausländern ist die der Ukrainer, gefolgt von Serben, Russen, Vietnamesen, Chinesen und Koreanern. Im ersten Halbjahr 2017 überquerten 1251 Ausländer illegal die slowakischen Grenzen.⁹⁸

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. Roma, die in separaten Siedlungen leben, sind in erhöhtem Maße von Zwangsräumungen bedroht. Roma-Kinder werden in separaten Schulen und/oder Klassen unterrichtet, viele von ihnen auch in Schulen für Kinder mit geistiger Behinderung. Im ersten (und bislang einzigen abgeschlossenen) Verfahren wegen Segregation von Roma-Kindern im Bildungswesen kamen nationale Gerichte 2011 bzw. 2012 zu dem Ergebnis, dass die Beschulung von Roma-Kindern in separaten Regelklassen eine Diskriminierung aufgrund von Rasse darstellt und die Menschenwürde der separierten Roma-Kinder untergräbt. Die Unfähigkeit der slowakischen Regierung, wirkungsvoll gegen die Segregation von Roma-Kindern im Bildungswesen vorzugehen und deren schulische Integration zu fördern, führte dazu, dass eine slowakische Nichtregierungsorganisation, das Zentrum für Bürger- und Menschenrechte, den slowakischen Gerichten weitere Fälle vorlegte. Am 6. Oktober 2016 wurde eine dieser Klagen vom Bezirksgericht Bratislava abgewiesen. 2017 waren alle diese Verfahren bei nationalen Gerichten anhängig, ohne nennenswerte rechtliche Fortschritte. Die Segregation von Roma-Kindern im Bildungswesen ist ein sehr weit verbreitetes Problem. Es ist festzustellen, dass die Slowakei seitens der Europäischen Kommission mit einem Vertragsverletzungsverfahren wegen Verstoßes gegen die Antirassismusrichtlinie (2000/43/EG) in Form der Diskriminierung von Roma-Kindern in speziellen und allgemeinen Bildungssystemen konfrontiert ist.⁹⁹

⁹⁵ Siehe <http://census2011.statistics.sk/tabulky.html> (letzter Zugriff am 1. März 2018).

⁹⁶ Siehe *Prvé výsledky ATLASU rómskych komunit na Slovensku 2013* (Erste Ergebnisse aus dem Atlas der Roma-Gemeinschaften in der Slowakei 2013). Die ersten Ergebnisse lieferten ausgewählte, zusammengefasste Daten aus dem Atlas, der auf der Website des Regierungsbeauftragten für Roma-Gemeinschaften veröffentlicht wurde; abrufbar unter http://www.minv.sk/?atlas_2013 (letzter Zugriff am 1. März 2018).

⁹⁷ Jede dieser Gruppen stellt weniger als 1 % der Bevölkerung. Siehe <http://census2011.statistics.sk/tabulky.html> (letzter Zugriff am 1. März 2018).

⁹⁸ Migrationsamt des Innenministeriums der Slowakischen Republik (2017), „Migračný úrad MV SR: Štatistický prehľad legálnej a nelegálnej migrácie v Slovenskej republike za rok 2016“ (Statistischer Überblick über legale und illegale Migration in der Slowakischen Republik für das 1. Halbjahr 2017), abrufbar unter: https://www.minv.sk/swift_data/source/policia/hranicna_a_cudzinecka_policia/rocniky/rok_2017/I-half-2017-statistical-overview-UHCP-EN.pdf (letzter Zugriff am 22. Februar 2018).

⁹⁹ Entscheidung der Europäischen Kommission über die Einleitung eines Vertragsverletzungsverfahrens gegen die Slowakei, „Nichteinhaltung der Richtlinie 2000/43/EG über Gleichbehandlung ohne Unterschied der Rasse – Diskriminierung von Roma-Kindern im Bildungswesen“ vom 29. April 2015; Informationen abrufbar unter http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?r_dossier=20152025&noncom=0&decision_date_from=&decision_date_to=&active_only=0&EM=SK&title=&submit=Search&lang_code=de (letzter Zugriff am 28. Februar 2018).

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. Die öffentliche Unterstützung für rechtsextreme Positionen nahm zu und führte dazu, dass die rechtsextremistische „Volkspartei Unsere Slowakei“, bei den Wahlen im März 2016 ins slowakische Parlament einzog.

Die LGBTI-Gemeinschaft genießt keine volle rechtliche und politische Anerkennung etwa in Form des Rechts auf Eheschließung oder eingetragene Partnerschaften. 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. Die slowakische Bürgerbeauftragte kam in ihrer Stellungnahme zu dem Ergebnis, dass die Nichtanerkennung gleichgeschlechtlicher Partnerschaften gegen die Menschenrechtsverpflichtungen der Slowakischen Republik verstößt.¹⁰⁰

Menschen mit Behinderungen sind tagtäglich in allen Bereichen des Lebens mit zahlreichen physischen und gesellschaftlichen Barrieren und Segregation konfrontiert. In ihren Berichten beschrieb die Bürgerbeauftragte die bestehenden Mängel und empfahl spezifische Maßnahmen, die seitens der zuständigen Behörden zu ergreifen seien, um eine Diskriminierung von Menschen mit Behinderungen beim Zugang zu öffentlichen Gebäuden zu verhindern.¹⁰¹

Die slowakischen Behörden haben sich, anders als andere EU-Länder, in den letzten Jahren im Allgemeinen dagegen gesperrt, Flüchtlinge aufzunehmen, und Vertreter einiger politischer Parteien äußerten sich, vor allem im Vorfeld der Parlamentswahlen im März 2016, offen feindselig gegenüber Flüchtlingen.

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

2. Wichtigste Rechtsvorschriften

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

¹⁰⁰ Zentralbüro der Bürgerbeauftragten (September 2017), „Stanovisko verejnej ochránkyne práv k verejnej ochránkyne práv problematike práva párov rovnakého pohlavia na uznanie ich vzťahu v právnom poriadku SR“ (2017), abrufbar unter <http://www.vop.gov.sk/stanovisko-verejnej-ochrankyne-prav-k-problematike-prava-parov-rovnakeho-pohlavia-na-uznanie-ich-vztahu-v-pravnom-poriadku-sr> (letzter Zugriff am 22. Februar 2018).

¹⁰¹ Zentralbüro der Bürgerbeauftragten (Oktober 2016), „Správa o výsledkoch prieskumu bezbariérového prístupu do budov škôl a bezbariérovosti v nich“ (Bericht über die Ergebnisse der Studie über den Zugang zu Schulgebäuden für Menschen mit Behinderungen); Zentralbüro der Bürgerbeauftragten (September 2016), „Správa o výsledkoch prieskumu zabezpečenia bezbariérového prístupu v budovách, ktoré sú sídlami útvarov Policajného zboru a klientskych centier“ (Bericht über die Ergebnisse der Studie über den Zugang zu Polizeigebäuden und den entsprechenden Kundencentern für Menschen mit Behinderungen); Zentralbüro der Bürgerbeauftragten (September 2016), „Bezbariérovosť v štátnych nemocniciach a iných zdravotníckych zariadeniach- správa o výsledkoch prieskumu“ (Zugang zu staatlichen Krankenhäusern und anderen Gesundheitseinrichtungen für Menschen mit Behinderungen – Bericht über die Ergebnisse der Studie).

(*národnosť*)¹⁰² 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,¹⁰³ 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 Geschlecht¹⁰⁴ oder einem sonstigen Status oder wegen der Anzeige von Straftaten oder anderen kriminellen Aktivitäten.¹⁰⁵ 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 beinhaltet der Grundsatz der Gleichbehandlung nicht nur ein Verbot von Diskriminierung, sondern auch eine Pflicht zu positiven Maßnahmen, die Diskriminierung verhindern.¹⁰⁶ Der Gleichbehandlungsgrundsatz gilt für alle Bereiche, die unter die Richtlinien fallen (diese sind alle vom ADG abgedeckt) und für weitere im ADG genannte Bereiche.

3. Wichtigste Grundsätze und Begriffe

Das ADG definiert unmittelbare und mittelbare Diskriminierung, Belästigung, sexuelle Belästigung, Anweisung zur Diskriminierung, Anstiftung zur Diskriminierung¹⁰⁷ und Viktimisierung.¹⁰⁸ 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 (*národnosť*), ethnische Zugehörigkeit, Religion und Weltanschauung.¹⁰⁹ Bei der Bewertung

¹⁰² 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.

¹⁰³ Slowakei, 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*).

¹⁰⁴ Das slowakische Wort *rod* kann sowohl „Abstammung“ als auch „biologisches Geschlecht“ bedeuten.

¹⁰⁵ Slowakei, Antidiskriminierungsgesetz 365/2004, Artikel 2(1).

¹⁰⁶ Slowakei, Antidiskriminierungsgesetz 365/2004, Artikel 2(1) und Artikel 2(3).

¹⁰⁷ 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.

¹⁰⁸ Slowakei, Antidiskriminierungsgesetz 365/2004, Artikel 2a(1)-(8).

¹⁰⁹ Slowakei, Antidiskriminierungsgesetz 365/2004, Artikel 2a(11)(b) und Artikel 2a(11)(c).

einer Handlung als Diskriminierung spielt es keine Rolle, ob die Gründe für die Diskriminierung auf Tatsachen oder irrtümlichen Annahmen beruhen.¹¹⁰

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.¹¹¹

Ausnahmen für wesentliche und entscheidende berufliche Anforderungen sind zulässig, wenn sie gemäß den in den Richtlinien genannten Vorgaben gerechtfertigt sind.¹¹²

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.¹¹³ Das ADG gilt nicht für Rechtsvorschriften, die den Status von Drittstaatsangehörigen betreffen,¹¹⁴ und erlaubt den Streitkräften sowie den Sicherheits- und Rettungsdiensten eine Ungleichbehandlung aufgrund von Behinderung und Alter.¹¹⁵

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.¹¹⁶ 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.¹¹⁷

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

4. Sachlicher Geltungsbereich

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

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).¹¹⁸ In all diesen Bereich ist Diskriminierung aufgrund

¹¹⁰ Slowakei, Antidiskriminierungsgesetz 365/2004, Artikel 3(3).

¹¹¹ Slowakei, Antidiskriminierungsgesetz 365/2004, Artikel 7.

¹¹² Slowakei, Antidiskriminierungsgesetz 365/2004, Artikel 8(1).

¹¹³ Slowakei, Antidiskriminierungsgesetz 365/2004, Artikel 8(2).

¹¹⁴ Slowakei, Antidiskriminierungsgesetz 365/2004, Artikel 4(1)(a).

¹¹⁵ Slowakei, Antidiskriminierungsgesetz 365/2004, Artikel 4(1)(b) und 4(1)(c).

¹¹⁶ Slowakei, Antidiskriminierungsgesetz 365/2004, Artikel 8(3).

¹¹⁷ Slowakei, Antidiskriminierungsgesetz 365/2004, Artikel 8(6) und 8(5).

¹¹⁸ Slowakei, Antidiskriminierungsgesetz 365/2004, Artikel 3(1), 5 und 6.

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. Im Februar 2018 legte das Justizministerium lediglich Angaben zu zehn Verfahren im Zusammenhang mit (Nicht-)Diskriminierung vor, die im ersten Halbjahr 2017 mit einem rechtskräftigen Urteil abgeschlossen worden waren.¹¹⁹ Die verfügbaren Zahlen über laufende und bereits abgeschlossene Verfahren sind nicht präzise, da die entsprechenden Daten entweder gar nicht oder nicht ordnungsgemäß erfasst werden.¹²⁰

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 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.¹²¹ Das Gericht kann den geforderten Betrag in jedem Einzelfall akzeptieren, senken oder ganz ablehnen. Kläger können grundsätzlich auch auf andere Forderungen erheben, beispielsweise, dass das Gericht die Handlungen der beklagten Partei für diskriminierend erklärt. Personen, die diskriminiert wurden, können außerdem auf eine Entschädigung klagen, wenn sie nachweisen können, dass durch die Diskriminierung ein Schaden entstanden ist.¹²²

Das bisherige Fallrecht zeigt, dass die Gerichte gegen die Täter nur sehr selten wirksame, verhältnismäßige und abschreckende Sanktionen verhängen. Dies gilt insbesondere für Schmerzensgeld für nicht-materielle Schäden. In einem rechtskräftigen Urteil gewährte das Regionalgericht Košice einem Roma-Paar, das geltend gemacht hatte, aufgrund seiner ethnischen Herkunft in einem Lokal in Spišské Vlachy diskriminiert worden zu sein, eine Entschädigung in Höhe von insgesamt 600 Euro (je 300 Euro). Dies ist eines der ersten rechtskräftig abgeschlossenen Verfahren in der Slowakei, in denen die Gerichte eine finanzielle Entschädigung wegen rassistischer Diskriminierung zugesprochen haben.¹²³ 2017 entschied das erstinstanzliche Gericht in einem Fall von Diskriminierung einer Roma-Frau beim Zugang zur Beschäftigung und sprach ihr 2500 Euro Schadenersatz zu. Dies ist eine bahnbrechende Entscheidung, da es das erste Mal war, dass ein inländisches Gericht in einem Fall von Diskriminierung beim Zugang zur Beschäftigung zugunsten einer Person entschied, die der Roma-Bevölkerung angehörte.¹²⁴

¹¹⁹ Antwort des Justizministeriums vom 19. Februar 2018 auf ein Auskunftsersuchen vom 8. Februar 2018 (liegt der Verfasserin vor).

¹²⁰ Beispielsweise werden Verfahren und Entscheidungen im Zusammenhang mit Diskriminierung von den Gerichten nicht ordnungsgemäß erfasst, weshalb keine verlässlichen Statistiken existieren. Siehe auch die Antwort des Justizministeriums vom 19. Februar auf das Auskunftsersuchen vom 8. Februar 2018, in dem auch das Ministerium die Erhebung von Daten durch die Gerichte als problematisch bezeichnet.

¹²¹ Slowakei, Antidiskriminierungsgesetz 365/2004, Artikel 9(1)-(3) in Verbindung mit Artikel 11(1).

¹²² Slowakei, Antidiskriminierungsgesetz 365/2004, Artikel 9(4).

¹²³ Entscheidung des Regionalgerichts Košice, Nr. 6 Co 833/2014 – 223 vom 28. Juni 2016.

¹²⁴ Entscheidung des Bezirksgerichts Spišská Nová Ves, Nr. 8 C 268/2016 – 523, vom 23. März 2017. Nach dem Stichtag dieses Berichts hat das Regionalgericht Košice mit Beschluss vom 7. Februar 2018

Sobald der Kläger Tatsachen glaubhaft macht, die eine Verletzung des Gleichbehandlungsgrundsatzes vermuten lassen, gilt in Gerichtsverfahren die Verlagerung der Beweislast. Der Beklagte muss dann beweisen, dass er den Kläger nicht diskriminiert hat oder dass die Ungleichbehandlung notwendig und gerechtfertigt war.¹²⁵ Die Anwendung dieser Regel seitens der slowakischen Gerichte ist in der Praxis jedoch nach wie vor problematisch. Dies wurde auch vom UN-Ausschuss zur Beseitigung der Rassendiskriminierung in seiner Entscheidung gegen die Slowakei in einen Fall von Diskriminierung einer Roma beim Zugang zu Beschäftigung hervorgehoben.¹²⁶

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 NROs, grundsätzlich könnte es sich dabei aber auch um Gewerkschaften handeln).¹²⁷

Wenn die Diskriminierung mehrere oder eine nicht genau abgegrenzte Anzahl von Menschen betrifft oder anderweitig von öffentlichem Interesse ist, können diese Organisationen, etwa das Slowakische Nationale Zentrum für Menschenrechte, im eigenen Namen gegen den/die Verursacher/in der Diskriminierung klagen (so genannte Popularklage).¹²⁸ Bisher wurden ein paar solche Verfahren initiiert (alle von derselben NRO)¹²⁹ und nur eines wurde in letzter Instanz gewonnen (ein Fall von segregierter Bildung für Roma-Kinder).¹³⁰

In der Slowakei gibt es nur wenige NROs, die Rechtsbeistand für Diskriminierungsoffer anbieten. Eine davon ist das Zentrum für Bürger- und Menschenrechte in Košice,¹³¹ eine andere die NRO „Občan, demokracia a zodpovednosť“ (Bürger, Demokratie und Verantwortung, kurz: ODZ).¹³²

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.¹³³ 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 Verfahren bei den Aufsichtsbehörden zur Durchsetzung des Diskriminierungsverbots in der Praxis noch kaum genutzt, sie sehen keine Verlagerung der Beweislast vor und selbst wenn solche Verfahren stattfinden, wird entweder gar kein Bußgeld verhängt oder die Höhe des Bußgelds ist unzureichend und ohne abschreckende Wirkung.

(Az. 9Co 259/2017) die Entscheidung des Bezirksgerichts Spišská Nová Ves bestätigt, die somit rechtskräftig geworden ist.

¹²⁵ Slowakei, Antidiskriminierungsgesetz 365/2004, Artikel 11(2).

¹²⁶ Vgl. die Stellungnahme des UN-Ausschusses zur Beseitigung der Rassendiskriminierung in dem Verfahren *V.S. v. Slovakia*, Mitteilung Nr. 56/2014 vom 16. Dezember 2015, Abschnitte 7.4. und 9.

¹²⁷ Slowakei, Antidiskriminierungsgesetz 365/2004, Artikel 10.

¹²⁸ Slowakei, Antidiskriminierungsgesetz 365/2004, Artikel 9a.

¹²⁹ Zentrum für Bürger- und Menschenrechte.

¹³⁰ Rechtssache *Poradňa pre občianske a ľudské práva vs Základná škola v Šarišských Michaľanoch* (Zentrum für Bürger- und Menschenrechte gegen die Šarišské Michaľany Grundschule, Urteil des Bezirksgerichts Prešov vom 5. Dezember 2011, Az. 25C 133/10-229-, und Urteil des Regionalgerichts Prešov vom 30. Oktober 2012, Az. 20Co 125/2012, 20Co 126/2012).

¹³¹ Diese NRO befasst sich hauptsächlich mit Fällen, in denen Roma diskriminiert wurden.

¹³² ODZ konzentriert sich vor allem auf Diskriminierung aufgrund des Geschlechts.

¹³³ Slowakei, Gesetz Nr. 311/2001 Arbeitsgesetzbuch (zákon č. 311/2001 Z. z. Zákoník práce), Artikel 13(5).

Nach dem ADG sind öffentliche Behörden und andere Einrichtungen berechtigt, Fördermaßnahmen zu beschließen (so genannte „zeitweilige 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.¹³⁴ In Bezug auf die Roma gibt es bereits eine Reihe von Fördermaßnahmen, so zum Beispiel das Programm „Gesunde Gemeinden“, das 218 – zumeist romastämmige – Gesundheitsmediatoren in 213 marginalisierten Roma-Gemeinden beschäftigt (die Mediatoren stammen zum Großteil selbst aus diesen Gemeinden), die die Menschen bei alltäglichen Gesundheitsfragen und -problemen unterstützen. Das Arbeitsrecht sieht für Menschen mit Behinderungen einen speziellen Schutz vor, und es gibt ein Quotensystem für Unternehmen mit mindestens 20 Beschäftigten.¹³⁵ Manche Unternehmen ergreifen auch Maßnahmen zugunsten von Arbeitnehmerinnen und Arbeitnehmern, die einem erhöhten Diskriminierungsrisiko ausgesetzt sind, so zum Beispiel die Firma Accenture, die gegenüber LGBT-Personen und Frauen eine positive Politik verfolgt, und die Firma Whirlpool Slovakia, die positive Maßnahmen für marginalisierte Roma umsetzt.¹³⁶ Für Menschen, die aufgrund 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, dem Beratungsorgan der Regierung, findet ein gewisser Austausch mit NROs statt.¹³⁷ Die Arbeit des Rates wird durch einige systemische und praktische Probleme behindert.

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.¹³⁸

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.

¹³⁴ Slowakei, Antidiskriminierungsgesetz 365/2004, Artikel 8a.

¹³⁵ Nach dem slowakischen Gesetz Nr. 5/2004 über Arbeitsvermittlungsdienste, Artikel 63-65, ist jeder Arbeitgeber, der mindestens 20 Mitarbeiter beschäftigt, verpflichtet zu gewährleisten, dass Menschen mit Behinderungen mindestens 3,2 % der 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 selbstständig Beschäftigten mit Behinderung kaufen.

¹³⁶ Weitere Informationen über die durchgeführten Maßnahmen unter <http://www.nadaciapontis.sk/clanok/tieto-firmy-postupili-do-finale-via-bona-slovakia/2600> und unter <https://www.webnoviny.sk/zamestnatelnost-romov-z-vylucenych-oblasti-je-riesitelny-problem-zhoduju-sa-slovenski-experti/> (letzter Zugriff am 23. Februar 2018).

¹³⁷ Slowakei, Gesetz 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*), Artikel 2(3). Die Website des Rates der Regierung: www.radavladyp.gov.sk/ (letzter Zugriff am 23. Februar 2018).

¹³⁸ Slowakei, Gesetz 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*), Artikel 1 und 2(1)-(3).

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.¹³⁹ 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.

2017 bearbeitete das Zentrum 70 Beschwerden wegen mutmaßlicher diskriminierender Behandlung; 4 davon betrafen Alter, 5 „Rasse“, 6 Geschlecht, 35 sonstigen Status, 5 Behinderung, 5 ethnische Herkunft, 1 Nationalität, 1 politische oder sonstige Meinung, 2 das Melden krimineller Handlungen oder anderer unsozialer Aktivitäten. Bei neun der insgesamt eingegangenen Beschwerden stellte das Zentrum einen Verstoß gegen den Grundsatz der Gleichbehandlung fest. 2017 gingen bei dem Zentrum vier Beschwerden von Drittstaatsangehörigen ein. Keine von ihnen fiel jedoch in die Zuständigkeit der Gleichbehandlungsstelle, weshalb das Zentrum die Beschwerdeführer an andere Stellen verwies. Das Zentrum gab 22 Gutachten ab, leistete rechtliche Vertretung in fünf Gerichtsverfahren und erhob keine Popularklagen.¹⁴⁰

Seit längerem berichten verschiedene Quellen, dass das Zentrum seine Aufgaben nicht effizient und zufriedenstellend erfüllt.¹⁴¹ 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 neue Regierung, die 2016 ernannt wurde, arbeitet bereits an der Gesetzesvorlage, mit der die Unabhängigkeit und effiziente Arbeitsweise des Zentrums gestärkt werden sollen. Bis Ende 2017 war das Gesetz der Öffentlichkeit noch nicht vorgestellt worden.

7. Zentrale 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.

¹³⁹ Slowakei, Gesetz Nr. 308/1993 über die Einrichtung des Slowakischen nationalen Zentrums für Menschenrechte, Artikel 1(2)-(4).

¹⁴⁰ Antwort des Zentrums für Menschenrechte vom 22. Januar 2018 auf ein Auskunftersuchen vom 10. Januar 2018 (liegt der Verfasserin vor).

¹⁴¹ 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. Die Veröffentlichung ist auch verfügbar unter <https://www.poradna-prava.sk/sk/dokumenty/diskriminacia-na-slovensku-hladanie-barier-v-pristupe-k-ucinnej-pravnej-ochrane-pred-diskriminaciou/> (letzter Zugriff am 1. März 2018); siehe ebenso 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*, S. 2, 13, 16 (auch verfügbar unter: <https://www.poradna-prava.sk/en/documents/written-comments-to-the-committee-on-the-elimination-of-racial-discrimination/>). Abschließende Bemerkungen des Menschenrechtsausschusses vom Oktober 2016 (CCPR/C/SVK/CO/4), Pkt. 8, abrufbar unter: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSVK%2fCO%2f4&Lang=en (letzter Zugriff am 8. Februar 2018).

Allerdings fällt die praktische Durchsetzung derzeit noch weit hinter die Anforderungen der Richtlinien zurück. Dafür gibt es die folgenden Gründe: mangelhafter Zugang zu den Gerichten und zur Justiz im Allgemeinen; fehlende Kenntnisse über das Antidiskriminierungsrecht bei Juristen und Entscheidungsträgern; rassistische Vorurteile unter Richtern und mangelnde Programme für deren Sensibilisierung; mangelndes Fallrecht und Defizite bei der Erfassung von Diskriminierungsfällen; fehlende Daten und Statistiken über Diskriminierungsfälle und Diskriminierungsgründe; ineffiziente Arbeit und mangelnde Unabhängigkeit der Gleichbehandlungsstelle; Mangel an politischen Strategien zur Bekämpfung von Diskriminierung; Mangel an wirksamen Strategien für den Übergang von einem segregierten zu einem integrativen Bildungssystem; die Regelschulen haben nicht genug materielle, finanzielle und menschliche Ressourcen, um integrative Bildung zu gewährleisten; keine durchgängige Berücksichtigung des Grundsatzes der Nichtdiskriminierung und mangelnde Koordination der für Nichtdiskriminierung zuständigen öffentlichen Stellen; fehlende staatliche Mittel für die Durchsetzung des Diskriminierungsverbots; keine systematische Unterstützung von NROs seitens der 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; zunehmende öffentliche Unterstützung rechtsextremer Positionen, was bei den Wahlen im März 2016 auch der rechtsextremistischen Partei Zugang zum slowakischen Parlament verschaffte.

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,¹⁴² 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.¹⁴³ Legally binding acts of the European Union take precedence over the laws of the Slovak Republic.¹⁴⁴ 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.¹⁴⁵

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.¹⁴⁶ 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.¹⁴⁷

Together with the Constitution, the Act on Equal Treatment in Certain Areas and Protection against Discrimination (Anti-discrimination Act),¹⁴⁸ 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'.¹⁴⁹ The duty to observe the principle of equal treatment is defined as comprising the prohibition of discrimination¹⁵⁰ 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

¹⁴² Slovakia, The Constitution of the Slovak Republic No. 460/1992, as amended (*Ústava Slovenskej republiky č. 460/1992 Zb. v znení neskorších predpisov*), 1 September 1992. The English text of the Constitution can be found at <http://www.slovak-republic.org/constitution/> (accessed 12 January 2018). The version of Constitution effective until 31 December 2017 can be found in Slovak at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1992/460/20170601?ucinnost=31.12.2017> (accessed 12 January 2018). All other laws published in the Collection of Laws from 1998 onwards can be found in the Slovak language at: <https://www.slov-lex.sk/domov> (accessed 12 January 2018).

¹⁴³ 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.

¹⁴⁴ Article 7(2) of the Constitution.

¹⁴⁵ Article 125(1)(b) of the Constitution.

¹⁴⁶ Article 71(2) of the Constitution.

¹⁴⁷ Article 125(1)(d) of the Constitution.

¹⁴⁸ Slovakia, Act No. 365/2004 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), 20 May 2004. The English text of the Anti-discrimination Act can be found at http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf (accessed 12 January 2018).

¹⁴⁹ Slovakia, Anti-discrimination Act, 365/2004, Section 3 (1).

¹⁵⁰ Slovakia, Anti-discrimination Act, 365/2004, Section 2a (1). According to section, discrimination can take the following forms: direct discrimination, indirect discrimination, harassment, sexual harassment, victimisation, instruction to discriminate and incitement to discriminate.

anti-social activity).¹⁵¹ It also requires 'measures for protection against discrimination'¹⁵² 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'.¹⁵³

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 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 May 2004

Latest amendments: 12 November 2015 (No. 378/2015)

Entry into force: 01 July 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 (*zákon č. 311/2001 Z. z. Zákonník práce*)

Abbreviation: ZP (*Zákonník práce*)

Date of adoption: 02 July 2001

Latest amendments: 30 November 2017 (No. 335/2017)

Entry into force: 01 April 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 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 September 2009

Latest amendments: 23 November 2016 (No. 340/2016)

Entry into force: 01 November 2009

Effective until 31 December 2017, replaced by the new Act No. 55/2017 on 1 January 2018.

¹⁵¹ Slovakia, Anti-discrimination Act, 365/2004, Section 2(1).

¹⁵² Slovakia, Anti-discrimination Act, 365/2004, Section 2(3).

¹⁵³ Slovakia, Anti-discrimination Act, 365/2004, Section 2(2).

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

Material scope: employment

Title of the law: Act No. 5/2004 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 December 2003

Latest amendments: 23 March 2017 (No. 82/2017)

Entry into force: 01 February 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 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 May 2008

Latest amendments: 20 June 2017 (No. 182/2017)

Entry into force: 01 September 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 on Higher Education, as amended

Abbreviation:

Date of adoption: 21 February 2002

Latest amendments: 25 November 2015 (No 422/2015)

Entry into force: 01 April 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 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 October 2004

Latest amendments: 21 December 2017 (No. 351/2017)

Entry into force: 01 January 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 on Social Insurance, as amended (*zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov*)

Abbreviation:

Date of adoption: 30 October 2003

Latest amendments: 12 October 2017 (No. 279/2017)

Entry into force: 01 January 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 on Social Services and on amending and supplementing Act No. 455/1991 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 October 2008

Latest amendments: 21 December 2017 (No. 351/2017)

Entry into force: 01 January 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 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 December 1993

Latest amendments: 28 July 2015 (No. 176/2015)

Entry into force: 01 January 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. 160/2015 Civil Dispute Act (*zákon č. 160/2015 Z. z. Civilný sporový poriadok*)

Abbreviation: CSP (*Civilný sporový poriadok*)

Date of adoption: 21 May 2015

Latest amendments: 28 March 2017 (No. 87/2017)

Entry into force: 01 July 2016

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: Act No. 162/2015 Administrative Judicial Act (*zákon č. 162/2015 Z. z. Správny súdny poriadok*)

Abbreviation: SSP (*Správny súdny poriadok*)

Date of adoption: 21 May 2015

Latest amendments: 28 March 2017 (No. 88/2017)

Entry into force: 01 July 2016

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

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/gender¹⁵⁴ 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’.¹⁵⁵ 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.¹⁵⁶ 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.¹⁵⁷ 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 legislation¹⁵⁸ or even not covered by generally binding Slovak legal acts, are also constitutionally protected grounds.¹⁵⁹
- 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.

¹⁵⁴ 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), 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. See the finding of the Constitutional Court of the Slovak Republic, PL. ÚS 13/2012-90, 19 June 2013, paragraph 139, available at <https://www.ustavnysud.sk/vyhľadavanie-rozhodnuti#!DecisionsSearchResultView> (accessed 12 January 2018).

¹⁵⁵ 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.

¹⁵⁶ Finding of the Constitutional Court of the Slovak Republic, I. ÚS 17/99, 22 September 1999.

¹⁵⁷ See the Finding of the Constitutional Court of the Slovak Republic, PL. ÚS 8/04-202, 18 October 2005, available at <https://www.ustavnysud.sk/vyhľadavanie-rozhodnuti#!DecisionsSearchResultView> (accessed 12 January 2018).

¹⁵⁸ Such as marital and family status, which are covered, for example, by the Anti-discrimination Act or by the Labour Code.

¹⁵⁹ 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 of the Slovak Republic, No III. ÚS 64/00-65, 31 January 2001, available at <https://www.ustavnysud.sk/vyhľadavanie-rozhodnuti#!DecisionsSearchResultView> (accessed 12 January 2018).

These 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.¹⁶⁰

Thus, these provisions cannot be enforced against private actors (or against the state).

¹⁶⁰ See the Finding of the Constitutional Court, PL. ÚS 8/04-202, 18 October 2005, paragraph 13, available at <https://www.ustavnysud.sk/vyhľadavanie-rozhodnuti#!DecisionsSearchResultView> (accessed 12 January 2018).

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.¹⁶¹ The Constitutional Court has also confirmed that sexual orientation is a constitutionally prohibited ground of discrimination.¹⁶²

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'):¹⁶³ 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.¹⁶⁴

Grounds explicitly covered by other laws (in addition to those listed in the Anti-discrimination Act) are, for example, trade union activities,¹⁶⁵ unfavourable state of health¹⁶⁶ and genetic features.¹⁶⁷

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 origin 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 definitions.

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.

Criminal law 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

¹⁶¹ See Article 12(2) of the Constitution.

¹⁶² See the Finding of the Constitutional Court of the Slovak Republic, PL. ÚS 8/04-202, 18 October 2005, available at <https://www.ustavnysud.sk/vyhľadavanie-rozhodnuti#!DecisionsSearchResultView> (accessed 12 January 2018).

¹⁶³ Slovakia, Anti-discrimination Act, 365/2004, Section 3(1).

¹⁶⁴ Slovakia, Anti-discrimination Act, 365/2004, Section 2(1).

¹⁶⁵ Slovakia, Act No 311/2001 Labour Code, as amended (*zákon č. 311/2001 Z. z. Zákonník práce v znení neskorších predpisov*), 1 April 2002, Section 13(2). The English text of the Labour Code is available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61871/60966/F-506442866/SVK61871.pdf> (accessed 12 January 2018).

¹⁶⁶ See Slovakia, Labour Code, 311/2001, Article 1 of the Basic Principles.

¹⁶⁷ See Slovakia, Labour Code, 311/2001, Article 1 of the Basic Principles and Section 13(2).

other communities. An ethnic group usually exists beyond the borders of one state. In Slovakia an example would be the Roma'.¹⁶⁸

The Supreme Court confirmed in 2013 that the Roma represent an ethnic group.¹⁶⁹

The Slovak courts have a strong tendency to interpret the concept of (Roma) ethnicity, in the context of hate speech and hate crimes, narrowly. Evidence of this can also be found in the decision of the Supreme Court of 2013.¹⁷⁰ 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.¹⁷¹

- 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'.¹⁷²

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 education¹⁷³ 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'.¹⁷⁴

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.¹⁷⁵

¹⁶⁸ 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.

¹⁶⁹ Decision of the Supreme Court of the Slovak Republic, 4 Tdo 49/2012, 19 March 2013, pp. 7-8, available at http://www.nssr.gov.sk/rozhodnutia/?ID=48&nazov=&art_datroz_h_od=&art_datroz_h_do=&art_katrozh=0&art_cisroz_h=&art_spisznac=4+Tdo+49%2F2012&art_obsah=&odoslat=Odosla%C5%A5 (accessed 12 January 2018).

¹⁷⁰ Decision of the Supreme Court of the Slovak Republic, 4 Tdo 49/2012, 19 March 2013.

¹⁷¹ Decision of the Supreme Court of the Slovak Republic, 4 Tdo 49/2012, 19 March 2013, pp. 6-7.

¹⁷² See e.g., Stiffel, H., Kočica, J. (2001), *Trestný zákon: Stručný komentár* (The Criminal Code: A Brief Commentary), Bratislava, p. 403.

¹⁷³ Slovakia, Agreement between the Slovak Republic and Registered Churches and Religious Societies regarding Religious Education, published in the Collection of Laws under No. 395/2004.

¹⁷⁴ Slovakia, Agreement between the Slovak Republic and Registered Churches and Religious Societies regarding Religious Education, 395/2004, Article 2(7).

¹⁷⁵ See the finding of the Constitutional Court of the Slovak Republic, III. ÚS 64/00-65, 31 January 2001, available at <https://www.ustavnysud.sk/vyhľadavanie-rozhodnuti#!DecisionsSearchResultView> (accessed 12 January 2018).

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 50 000 adult members confirming their membership of the church or religious society, their permanent residency in Slovakia and Slovak citizenship. 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.¹⁷⁶

- 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 Act¹⁷⁷ and who submits to their employer a decision proving entitlement to a disability pension.¹⁷⁸ 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.¹⁷⁹

In addition, Article 1 of the Basic Principles of the Labour Code and Section 13(2) of the Labour Code 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,¹⁸⁰ 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.¹⁸¹

The Act on Benefits for Compensation of Serious Disability¹⁸² uses the term 'serious disability' and defines it as a 'disability with a level of functional impairment of at least

¹⁷⁶ 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.

¹⁷⁷ Slovakia, Act No 461/2003 on Social Insurance, as amended (*Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov*), 30 October 2003.

¹⁷⁸ Slovakia, Labour Code, 311/2001, Section 40(8).

¹⁷⁹ Slovakia, Social Insurance Act, 461/2003, Sections 70-72.

¹⁸⁰ Slovakia, Act No 5/2004 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*), 4 December 2003.

¹⁸¹ Slovakia, Employment Services Act, 5/2004, Section 9.

¹⁸² Slovakia, Act No 447/2008 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.*), 29 October 2008.

50 %'.¹⁸³ 'Functional impairment' is defined as a lack of physical ability, sensory ability or mental ability with a prognosis in excess of 12 months.¹⁸⁴

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. However, it must be considered that the Anti-discrimination Act also prohibits discrimination on the grounds of past disability and presumed disability ('discrimination against a person who could be presumed, based on external signs, to have a disability').¹⁸⁵ It should also be borne in mind that Slovakia signed and ratified the Convention on the Rights of Persons with Disabilities (CRPD), which, in conjunction with Article 7(5) of the Slovak Constitution, takes precedence over Slovak laws, and the Supreme Court has already confirmed this principle in a case that concerned the right of a child with a disability to inclusive education.¹⁸⁶ 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 psychosocial and intellectual disabilities,¹⁸⁷ 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).¹⁸⁸ 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 (...).'¹⁸⁹

In a case that concerned the right of a child with special educational needs stemming from a combination of disabilities/disadvantages (Down's syndrome, an intellectual disability, a

¹⁸³ Slovakia, Act on benefits for compensation of serious disability, 447/2008, Section 2(3).

¹⁸⁴ Slovakia, Act on benefits for compensation of serious disability, 447/2008, Section 2(4).

¹⁸⁵ Slovakia, Anti-discrimination Act, 365/2004, Section 2a(11)(d).

¹⁸⁶ Decision of the Supreme Court of the Slovak Republic, ref. No 7Sžo/83/2014, 24 September 2015, available at http://www.nssr.gov.sk/rozhodnutia/?ID=48&nazov=&art_datrozh_od=&art_datrozh_do=&art_katrozh=0&art_cisrozh=&art_spisznac=7S%C5%BEO%2F83%2F2014&art_obsah=&odoslat=Odosla%C5%A5 (accessed 15 January 2018). The Supreme Court held that the CRPD 'was incorporated into the Slovak legal order, and hence is a part of it, with a regime of preferential application in relation to the national law (Article 7(5) of the Constitution). ... Due to [CRPD's] legal force, it was the duty of the administrative bodies to interpret the particular provisions of the [Slovak] Schools Act in accordance with the Convention on the Rights of Persons with Disabilities, or the administrative bodies could directly apply the rules of international law contained in the Convention' (p. 9 of the decision).

¹⁸⁷ 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'.

¹⁸⁸ Finding of the Constitutional Court of the Slovak Republic, I. ÚS 313/2012-52, 28 November 2012, available at www.zpmvpsr.sk/dokumenty/I_US_313_2012.pdf (accessed 15 January 2018).

¹⁸⁹ Finding of the Constitutional Court of the Slovak Republic, I. ÚS 313/2012-52, 28 November 2012, paragraph 34.

hearing impairment and a belated talking ability), the Supreme Court implicitly took it as a given that the claimant had a disability.¹⁹⁰

The Schools Act,¹⁹¹ regulating legal relations in the field of primary and secondary education and in related facilities, defines a 'child with a disability or a pupil with a disability' in section 2(l) as a child or a pupil with a

'mental¹⁹² disability, hearing impairment, visual impairment, physical impairment, communication ability disorder, autism, or with other pervasive developmental disorders, or with multiple disabilities'.

The Schools Act 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 legislation 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.

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.

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*),¹⁹³ an NGO based in Košice.

¹⁹⁰ Decision of the Supreme Court of the Slovak Republic, ref. No 7Sžo/83/2014, 24 September 2015.

¹⁹¹ Slovakia, Act No. 245/2008 on Education (Schools Act), as amended (*zákon č. 245/2009 Z. z. o výchove a vzdelávaní (školský zákon) a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*), 22 May 2008.

¹⁹² In Slovak, the act uses the word 'mental' (and not, for example, 'intellectual').

¹⁹³ See <https://www.poradna-prava.sk/en/>, (accessed 12 January 2018).

The Centre for Civil and Human Rights initiated a case, using the concept of *actio popularis* (to sue the state) against a provision in the Act on Childbirth Allowance¹⁹⁴ 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 specifically discriminatory 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 2014¹⁹⁵ and by the appeal court in September 2017.¹⁹⁶ The case is now pending before the Slovak Supreme Court. The lower courts in their reasonings focused only on argumentation regarding the form of discrimination (indirect discrimination), but did not provide any specific argumentation regarding discriminatory grounds. See also section 3.2.7 of this report.

In 2013, the Centre for Civil and Human Rights submitted an *actio popularis* against a state-run hospital in Eastern Slovakia and at the same time against the Ministry of Health and the Slovak Republic.¹⁹⁷ The *actio popularis* concerns segregation of Roma women in maternity hospitals and qualifies it as discrimination on the (multiple) grounds of ethnicity and sex. The case is still pending before the first instance court.

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.

¹⁹⁴ Slovakia, 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*), 23 October 2013. The relevant provision against which the Centre for Civil and Human Rights filed its lawsuit is Section 3(4)(b).

¹⁹⁵ Decision of the District Court Bratislava I, ref. No 12C 231/2010-132, of 16 May 2014.

¹⁹⁶ Decision of the Regional Court in Bratislava, ref. No. 14 Co 552/2014 – 180, of 26 September 2017.

¹⁹⁷ The case is conducted before the District Court Bratislava III under ref. No 14 C 288/2014.

These rules are, in principle, in compliance with the judgment in *Coleman v Attridge Law and Steve Law*,¹⁹⁸ 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.

There are a number of specific exceptions, called 'permissible differential treatment',¹⁹⁹ 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 Dispute Act stipulates that the only admissible evidence is evidence that has been obtained legally.²⁰⁰ However, the act provides an exception to this rule, in particular in a situation where the 'justifiability of taking such evidence acquired contrary to the law is provided for by applying Article 3(1) [of the basic principles of the act]'.²⁰¹ Article 3(1) of the basic principles stipulates that each provision of the act requires interpretation that is in accordance with the Constitution, with public order, with the principles on which the act is based, with international obligations of the Slovak Republic that take precedence over laws, with case law of ECtHR and CJEU, and with permanent regard to the values that are protected by these sources. The explanatory report that was submitted by the Government when it proposed the act makes it clear that proceedings concerning discrimination should be an example of cases when the exception will be applied.²⁰²

¹⁹⁸ Court of Justice of the EU, C-303/06 *S. Coleman v Attridge Law and Steve Law*, 17 July 2008.

¹⁹⁹ See Slovakia, Anti-discrimination Act, 365/2004, Sections 8 and 8a.

²⁰⁰ Slovakia, Civil Dispute Act, 160/2015, Section 187 and basic principles of the act, Article 16(2). Available at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/160/20170501?ucinnost=31.12.2017> (accessed 15 January 2018).

²⁰¹ Slovakia, Civil Dispute Act, Article 16(2) of the basic principles of the act.

²⁰² Explanatory Report to the Governmental Proposal of the Civil Dispute Act - Special Part (*Dôvodová správa k vládnemu návrhu Civilného sporového poriadku - osobitná časť*), p 4. available at

Thus, although situation testing is not specified in domestic legislation, the general definition of 'evidence' 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.

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 and the Slovak Trade Inspectorate during its monitoring of discrimination in access to goods and services. In particular, the Inspectorate uses situation testing to address complaints of discrimination in relation to Roma being denied access to restaurants or pubs in some localities.

The 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 Slovak NGO Centre for Civil and Human Rights (*Poradňa pre občianske a ľudské práva*), has already successfully litigated a few discrimination cases using this method (mainly cases of racial discrimination in access to goods and services and access to employment). The testing involves creating comparable situations on the spot and securing the evidence (testimonies, audio recordings and transcripts of the audio recordings).

The first important case where evidence was gathered through testing concerned racial discrimination in access to services. The case concerned three Roma activists who were refused access to a bar for the reason that they did not own a 'club card, which is a condition for entering the bar. 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 without any 'club card'. Although the courts accepted the sound recording and ordered the owner to issue a written apology, they did not grant the financial compensation requested.

<http://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=6&ID=1333> (accessed 15 January 2018).

The courts reasoned, inter alia, that the effect on the claimants' personal dignity was not serious enough to order financial compensation, as the claimants must have expected the discrimination, given that the whole action was planned.²⁰³

The claimants submitted the case to the Constitutional Court, which rejected their complaint as ill-founded.²⁰⁴ On 15 August 2014, the case was decided by the Committee on the Elimination of Racial Discrimination,²⁰⁵ which did not find a violation of the Convention on the Elimination of All Forms of Racial Discrimination (CERD).²⁰⁶

Another case where situation testing has been used in order to gather evidence in cooperation with the Centre for Civil and Human Rights, was a case of Roma man who sued a mobile operator. He claimed he was discriminated against in access to services on the ground of his Roma ethnic origin. When trying to buy a phone service for fixed tariff from a mobile operator he was requested to provide confirmation that he was employed while non-Roma customers in a comparable situation were not requested to do so. Within the court proceedings the court heard the audio recording and also heard non-Roma customers from the NGO. The court 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.²⁰⁷ 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

²⁰³ Decision of the Regional Court in Košice, No. 2 Co 115/2008 of 15 July 2010. The decision is available in Slovak at <https://obcan.justice.sk/infosud/-/infosud/i-detail/rozhodnutie/af5f583a-1ef6-41b2-8b12-727c43d1cc83%3Ad481702b-2bfd-4c49-a9dd-01f23ceb9aa4> (accessed 15 January 2018).

²⁰⁴ Decision of the Slovak Constitutional Court, No. I.US 43/2011 of 3 February 2011. The decision is available at <http://merit.slv.cz/I.US43/2011> (accessed 15 January 2018).

²⁰⁵ 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).

²⁰⁶ CERD, *L.A et al v. Slovak Republic*, CERD/C/85/D/49/2011, Communication No 49/2011, (officially available at CERD/C/85/D/49/2011, para 7.2).

²⁰⁷ Decision of the Regional Court in Košice, No. 1Co/334/2008-238, 18 March 2010. The case has been decided on merits again by the first instance court (decision of the District Court Spišská Nová Ves, No. 5 C 266/2005 – 544 confirming racial discrimination). This decision was overturned by the Regional Court in Košice's decision, No. 5 Co 197/2012 of 18 September 2013, which rejected the claim, stating that the defendants were not responsible for discriminatory treatment. The Supreme Court in its decision No. 3 Cdo405/2015 and 3 Cdo 406/2015 of 8 December 2016 rejected the claimant's extraordinary appeal concluding that it agreed with the appeal court's reasoning on the lack of responsibility of the defendants. The case is now pending before the Constitutional Court. The decision of the Supreme Court is available at: http://www.supcourt.gov.sk/data/att/59378_subor.pdf (accessed 02 March 2018).

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 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.'²⁰⁸

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'. It can thus be argued that, with regard to the concept of disadvantage, the Slovak definition may be even more favourable than the concept of 'particular disadvantage' as interpreted by CJEU in *CHEZ*.²⁰⁹ However, judicial interpretation of the concept of 'disadvantage' in cases of indirect discrimination is still lacking in Slovakia.

²⁰⁸ Decision of the Regional Court in Banská Bystrica, No 14Co/82/2011-371; 6710201619, 28 April 2011.

²⁰⁹ CJEU, Case C-83/14 *CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia*, judgment of 16 July 2015, para 109.

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

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.

The domestic courts dealt with indirect discrimination and its justification in a case on discriminatory provisions in the Act on Childbirth Allowance initiated by the Centre for Civil and Human Rights as an *actio popularis* claim (described above in chapter 2.1.2 of this report). The NGO as claimant argued that such a provision is discriminatory and as such constitutes indirect discrimination against Roma women based on sex and ethnic origin. The alleged provision conditions the provision of the subsidy on the woman not leaving the healthcare facility (in practice, a maternity hospital) upon giving birth without the consent of the healthcare facility. In its decision no. 12 C 231/2010 of 16 May 2014, the District Court Bratislava I dismissed the case, concluding that there was no indirect discrimination because the provision is objectively justified as it pursues the legitimate aim of protecting health of the child and mother. The court also reasoned that the provision is universal, and puts nobody in either a favourable or a disadvantaged position. The court did not provide any justification as to whether the measures to achieve the aim are appropriate and necessary. The court's decision lacks any justification test for indirect discrimination.²¹⁰

The decision of the first instance court has been confirmed by the appeal court, which fully complied with the reasoning of the first instance court. The appeal court considered the lawsuit to be based on hypothetical assumptions and concerned unspecified cases of alleged discrimination against Roma mothers, stating that the alleged indirect discrimination could be claimed before court only by directly affected individuals. This would enable the court to thoroughly assess whether specific persons were discriminated against by the challenged legal provision. The appeal court only examined whether the challenged legal provision fulfilled a legitimate aim, but did not consider its adequacy and necessity with regard to the documented negative impact on Roma women from socially disadvantaged environments and their children.²¹¹ The case is now pending before the Slovak Supreme Court.

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.

²¹⁰ Decision of the District Court Bratislava I, No. 12 C 231/2010 of 16 May 2014.

²¹¹ Decision of the Regional Court in Bratislava, n. 14Co/552/2014 – 180 of 26 September 2017.

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 Data²¹² 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 two surveys conducted in 2009²¹³ and 2015,²¹⁴ by a civil society organisation, Citizen, Democracy and Accountability, that public institutions do not collect data relating to prohibited grounds of discrimination in general (including the grounds covered by the directives)— although some minor exceptions exist.²¹⁵ The 2009 survey found that the institutions concerned did not collect data as they wrongfully deemed it illegal in the context of the Act on Protection of Personal Data.²¹⁶ In 2015 the institutions concerned no longer excused the failure to collect data by the argument of illegality. Instead, most of the institutions stated that they do not collect equality data without further reasoning, or by giving other reasons.²¹⁷

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,

²¹² Slovakia, Act No 122/2013 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*).

²¹³ 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 15 January 2018).

²¹⁴ Representatives of Citizen, Democracy and Accountability searched websites of relevant public institutions. Public institutions were also directly addressed with requests for information, pursuant to the Free Access to Information Act (Act No 2011/2000, as amended). These official requests were sent to 49 public administration bodies at all levels of governance (6 ministries, 17 various central public institutions, 4 independent public institutions, all 8 self-government regions, and 14 local governments of selected towns and villages). Responses were obtained from all 49 public administration bodies. The overwhelming majority of those institutions explicitly said that they do not collect equality data, or have information available on the existence of such a need or practice. The outcomes of the 2015 survey have not been published and are on file with the civil society organisation, Citizen, Democracy and Accountability.

²¹⁵ Mainly with regard to ethnicity.

²¹⁶ 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 08 February 2018).

²¹⁷ The authors of the survey presume that this could be a result of the introduction of information requests, in which the authors briefly stated the definition of equality data, made a case for their collection pursuant to the relevant legislation, and outlined conditions under which their collection is not prohibited. The abandonment of the illegality argument could also be due to more advanced awareness of the need to collect equality data as a consequence of newly passed Government strategies and action plans.

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 4(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 identifier²¹⁸ 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.

In addition, in the National Strategy for Human Rights Protection and Promotion in Slovakia²¹⁹ ('the Human Rights Strategy') one of the tasks is to draft a 'comprehensive analysis of how human rights are observed and protected in Slovakia', as well as an 'analysis of institutional mechanisms'. One of the framework measures to fulfil this task is:

'comprehensive research will assess the compatibility of national human rights policies with the policies of the UN, the CoE, the EU, the OSCE and other international organisations. It will also define a methodology basis for a continuous monitoring and data collection in respect of human rights in Slovakia.'

So far, no measures have been taken that would start the intended data collection and analytical work on a systemic level.

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.²²⁰ One conclusion that can be drawn from the collected information (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 analyses based on data, but rather from general knowledge/perceptions about existing problems and/or from wider policy documents. Nevertheless, there have been some minor improvements in the field of data collection in 2012-2014, mainly with regard to ethnicity and age.²²¹

In Slovakia, statistical evidence is permitted by national law in order to establish indirect discrimination. As has been stated in detail in section 2.2.1. of this report, the use of statistical evidence before the courts follows the general admissibility conditions of evidence set by legislation.

²¹⁸ A so-called birth number (a unique number assigned to each person at birth and used throughout their whole life for various official purposes).

²¹⁹ *Celoštátna stratégia ochrany a podpory ľudských práv v Slovenskej republike*, adopted by the Slovak Government on 18 February 2015 by resolution No 71/2015. For English version, see Council of Europe, *National Strategy for Human Rights Protection and Promotion in Slovakia*, available at: <http://www.coe.int/t/commissioner/source/NAP/Slovakia-National-Action-Plan-on-Human-Rights.pdf> (accessed 08 February 2018).

²²⁰ Slovakia, Anti-discrimination Act, 365/2004, Section 8a (4).

²²¹ For example, in 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, published the Atlas of Roma Communities 2013 (*Atlas rómskych komunit 2013* available at http://www.minv.sk/?atlas_2013, accessed 08 February 2018).

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). Furthermore, in general, neither public institutions nor employers collect statistics. Some statistics or other sets of data have been collected by NGOs and academics.

When the concept of indirect discrimination does start to be invoked,²²² 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).²²³

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, as the Centre for Civil and Human Rights argued, 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. 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 administrative court proceedings 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 alleged 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 sections 2.1.2 and 2.3). The case is pending before the Slovak Supreme Court after it was dismissed by the first instance and appeal courts.²²⁴

In some of its other cases, the Centre for Civil and Human Rights also relied on data collected by public institutions. From experience, the centre has found that many primary

²²² 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 <https://www.poradna-prava.sk/sk/dokumenty/diskriminacia-na-slovensku-hladanie-barier-v-pristupe-k-ucinnej-pravnej-ochrane-pred-diskriminaciou/> (accessed 15 January 2018).

²²³ See for example the restrictive interpretation in the decision of the Regional Court in Bratislava, No. 14 Co 552/2014 – 180 from 26 September 2017.

²²⁴ Decision of the District Court Bratislava I, No. 12C 231/201016, May 2014; decision of the Regional Court in Bratislava, No. 14 Co 552/2014 – 180, 26 September 2017.

schools tend to collect their own unofficial data about the number of Roma pupils based on third-party identification made by school personnel, although they may be reluctant to provide such data. The centre is currently litigating three *actio popularis* lawsuits before Slovak courts addressing the segregation of Roma children in education while relying on the ethnic data from *Atlas of Roma Communities 2013* (a large sociographic mapping of Roma communities – see section 2.3.1a) and/or data obtained directly from the relevant schools based on written demand. So far, the relevance of this data has never been questioned in the court proceedings.²²⁵ However, the centre did not claim indirect discrimination in these cases and addresses racial segregation of Roma children as a form of direct discrimination.

Ethnic data about the Roma population in Slovakia available in the *Atlas of Roma Communities 2013* was collected on the basis of information provided to researchers by selected informants - representatives of the municipalities with a good overview about living conditions in the local villages/towns. This information was further verified in communication with Roma NGOs or activists and public sources.²²⁶ No other involvement of Roma in collecting data has been reported. As the authors of the *Atlas* emphasised, their research particularly aimed to collect data about the infrastructure of villages and Roma settlements, availability of social and health services, political and civic participation of the Roma, economic and social activities and school infrastructure. Subsequently, in relation to those characteristics, data about the numbers of the Roma population were also specified. All data about the number of the Roma population resulted from estimates based on third-party mass identification by the local informants (not by individually declared ethnicity).²²⁷ The methodology was originally established in 2004, when the first *Atlas of Roma Communities* was created. There are, reportedly, no records showing that Roma representatives were consulted about the methodology at the time when it was established. Equally, no relevant Roma or pro-Roma public stakeholders have questioned this methodology in the subsequent years.²²⁸

New collection of data about the Roma population has been already planned and should be conducted in 2018, using the same methodology.²²⁹

The State school inspectorate as the administrative body responsible for overseeing the quality of education in schools intensified its efforts to uncover the practices of discrimination against Roma children in education. In this regard they also dealt with the issue of collecting ethnic data about children that would enable them to identify racial segregation of Roma children during the inspection controls. However, the inspectorate does not have a comprehensible methodology for collecting ethnic data. In general, the inspectorate takes into account data about Roma children provided by the schools themselves. In order to prevent the school under inspection from distorting the number of Roma children so as not to be accused of their segregation, inspectors can approach the founder of the school (usually the municipality) asking for data about Roma children. In

²²⁵ For example, in an *actio popularis* submitted to the District Court Bratislava III, No 11 C 351/2015, 29 April 2015, the Centre for Civil and Human Rights claims segregation of Roma children in education that is taking place through educating these children in an ethnically homogeneous school and through financing and constructing a so-called 'container school' ('container schools' have a strong element of racial segregation – see section 3.2.8 for more details). On 6 October 2016 the district court dismissed the lawsuit, but data about ethnic composition on the given school has not been questioned. The case is currently pending before the Regional Court in Bratislava.

²²⁶ The *Atlas of Roma Communities* does not provide more specific information about the selection process of local informants, their ethnicity or professional and social background in the village/town.

²²⁷ For detailed information see *Atlas Rómskych komún na Slovensku 2013* (Atlas of Roma Communities in Slovakia 2013), introduction and methodology, pp. 6-7.

²²⁸ Information was provided by co-author of the *Atlas of Roma Communities 2013*, sociologist Daniel Škobla, by e-mail on the request from 19 April 2018, (on file with the author).

²²⁹ The research is planned within the national project, 'Monitoring and Evaluation of Inclusive Policies and their Impact on Marginalised Roma Communities', coordinated by the Ministry of Interior and funded by the European Social Fund within the Slovak operational programme: human resources. For more information about the project see: <https://www.minv.sk/?NP-monitorovanie-hodnotenie-MRK>.

case the founder also tends to distort such data, the inspectors can collect data by themselves, following the inspectorate's own procedures.²³⁰ The inspectorate did not provide more specific information about these procedures or on what criteria the inspectors determine ethnicity of children. The inspectorate may arguably lack a more comprehensive methodology of collecting and assessing the ethnic data based on objective criteria.

According to reported information, in the school year 2016/2017, the inspectorate identified a number of shortcomings concerning the education of socially disadvantaged Roma children at primary schools, which also included cases of segregated education of Roma children in special classes for children with intellectual disabilities placed outside the main school building or even directly in the socially disadvantaged Roma community. The inspectorate also found violation of school legislation in three primary schools due to their education of Roma children in separate classes within the school building, which it considered to be segregation.²³¹

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. The full material scope of protection against harassment of both directives is covered by domestic anti-discrimination legislation.

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.

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.

²³⁰ Response of the Head School Inspector, Viera Kalmarova, of 13 February 2018 to a request for information of 13 February 2018 (on file with the author).

²³¹ Slovak State School Inspectorate (2017) *Správa o stave vytvárania predpokladov na zabezpečenie inkluzívneho vzdelávania pre žiakov zo sociálne znevýhodňujúceho prostredia v základných školách v školskom roku 2016/2017 v SR* (Report on the situation for creating conditions for ensuring inclusive education for pupils from socially disadvantaged backgrounds in primary schools in the school year 2016/2017). Available at: https://www.ssiba.sk/admin/fckeditor/editor/userfiles/file/Dokumenty/SPRAVY/2017/UZP_Inkluzia_ZS_2016_2017.pdf (accessed 24 April 2018).

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'.²³² 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 relationship, similar legal relationship, and related legal relationships' and legal theory defines legal relationships basically as relationships between employers and employees,²³³ it is hard to state unambiguously whether there is individual liability for discrimination

²³² Slovakia, Anti-discrimination Act, 365/2004, Section 9(2).

²³³ See for example Barancová, H., Schronk, R. (2007), *Pracovné právo* (Labour Law), Bratislava, Sprint, pp. 197-208.

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.²³⁴ 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).²³⁵

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,²³⁶ 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.

A harassment case decided by domestic courts concerned a Roma woman who claimed to be discriminated against in her workplace on the ground of her Roma ethnic origin in March 2009 when - unlike non-Roma employees in comparable working positions - she was transferred to an inconvenient office room placed in the basement, which caused her health problems. Later in 2010, her workplace was transferred to the segregated Roma ghetto where she was again placed in an inconvenient office room negatively impacting her health. She also claimed that the employer did not give her any bonus to her salary and was harassing her, and she pointed out that direct discrimination and harassment against her also resulted from victimisation after she repeatedly complained to the employer about how she was treated. The District Court Košice II dismissed the lawsuit by its judgment no. 20C68/2012-350 of 8 September 2015, reasoning that no discrimination occurred. As for harassment, the first instance court concluded that the conduct of the employer did not result or could not result in an intimidating, unfriendly, shameful, humiliating, insulting, degrading or offensive environment, the purpose or effect of which is or can be violation of freedom or human dignity of the claimant. According to the court, under the definition of the harassment there is a need to identify a person in a comparable situation to the claimant (a comparator), as the subjective perception of a specific person is not sufficient to assess harassment. The claimant in her appeal asked the appeal court to refer the case to the CJEU for a preliminary ruling. The claimant found the identification of a comparator

²³⁴ See Slovakia, Labour Code, 311/2001, Sections 81 and 82 respectively.

²³⁵ See Slovakia, Labour Code, 311/2001, Section 82, 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.'

²³⁶ Slovakia, Civil Code (as amended), 40/1964, Section 420(2).

when assessing discrimination in the form of harassment clearly impossible and legally groundless. The Regional Court in Košice, sitting as the appeal court, by its decision, no 2Co/657/2015 - 379 of 13 December 2016 rejected the request for a referral to the CJEU reasoning that it is not necessary to resolve the issue of the requirement to identify a comparator when assessing harassment, because the evidence provided in this case by the respondent sufficiently disproved the alleged harassment and reaffirmed the first instance court decision.²³⁷ This judicial practice of finding a need to identify a comparator in a case of harassment is contrary to the directives.

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).

The Anti-discrimination Act also defines incitement to discriminate as 'persuading, affirming or inciting a person to discriminate against a third person'.²³⁸ Under Section 2a (1) of the Anti-discrimination Act, incitement to discriminate is considered a form of discrimination.

The full material scope of both directives of the protection against instruction to discriminate is covered by domestic anti-discrimination legislation.

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 Act²³⁹ 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

²³⁷ Decision of the District Court Košice II, No 20C68/2012-350 of 8 September 2015 and decision of the Regional Court in Košice, No 2Co/657/2015 - 379 of 13 December 2016.

²³⁸ See Slovakia, Anti-discrimination Act, 365/2004, Section 2(7).

²³⁹ Slovakia, Act No 55/2017 on Civil Service and on Changing and Supplementing Some Other Laws, (*zákon č. 55/2017 Z. z. o štátnej službe a o zmene a doplnení niektorých zákonov*).

legally binding legal regulations²⁴⁰ (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.²⁴¹ Civil servants are also obliged to follow the instructions of their superiors unless these instructions are in conflict with generally binding legal regulations²⁴² (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.²⁴³ 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.

According to the knowledge of the author of this report, the only case in which an instruction to discriminate was partially involved is that of a Roma man, I.H., who sued a mobile operator (the case is described in section 2.2.1 of this report). The domestic courts dismissed the claim, reasoning that the defendants are not responsible for discriminatory treatment. As for a possible instruction to discriminate on the basis of an agency contract (*zmluva o obchodnom zastúpení*) the Supreme Court concluded that a violation of the principle of equal treatment has a personal character and that the employee of the company which provides services under a contract with the mobile operator has an obligation to refuse to act in accordance with potentially discriminatory instructions given by the mobile operator, which is why the mobile operator cannot be found responsible for discrimination.²⁴⁴ The case is now pending before the Slovak Constitutional Court.

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 for people with disabilities in the area 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.²⁴⁵ 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;

²⁴⁰ Slovakia, Civil Service Act, 55/2017, Section 111(3).

²⁴¹ Slovakia, Civil Service Act, 55/2017, Section 111(1)(a).

²⁴² Slovakia, Civil Service Act, 55/2017, Section 111(1)(i).

²⁴³ Slovakia, Civil Service Act, 55/2017, Section 111(3).

²⁴⁴ Decision of the Slovak Supreme Court, No 3 Cdo 405/2015 – 773 of 8 December 2016.

²⁴⁵ Slovakia, Anti-discrimination Act, 365/2004, Section 7(1).

- 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.²⁴⁶

The measure shall not be considered as giving rise to a disproportionate burden if its adoption by the employer is mandatory under separate provisions.²⁴⁷

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 in employment.

b) Practice

There is no case law yet on the duty to provide reasonable accommodation in employment. In one case that has been litigated, the claimant was working as a nursing assistant and asked her employer to shift her to another working position, as due to her disability she could no longer fulfil the tasks required by the job. The first instance court in its decision²⁴⁸ did not provide any interpretation of the duty to provide reasonable accommodation, as it dismissed the claim stating that the statute of limitation had expired. The claimant in the case is being legally represented by the Slovak National Centre for Human Rights (the equality body). On 27 October 2017 the Regional Court in Bratislava decided on claimant's appeal and quashed the decision of the court of the first instance.²⁴⁹ The case is now pending again before the court of first instance which will decide on its merits.²⁵⁰

²⁴⁶ Slovakia, Anti-discrimination Act, 365/2004, Section 7(2)(a)-(c).

²⁴⁷ Slovakia, Anti-discrimination Act, 365/2004, Section 7(3).

²⁴⁸ Decision of the District Court Bratislava II, No. 19 C/445/2015 – 86, 1 March 2016

²⁴⁹ Decision of the Regional Court in Bratislava, No 8Co/248/2016-123, 27 October 2017 which quashed the decision of the District Court Bratislava II, No. 19 C 446/2015 – 86, 1 March 2016.

²⁵⁰ See information provided by the Slovak National Centre for Human Rights to the author of this report on 29 January 2018.

However, in 2015, the Supreme Court decided a case on the right to inclusive education of a child with a disability and held that a refusal to provide reasonable accommodation is a form of discrimination.²⁵¹ Although the case primarily applies to reasonable accommodation in education, it will probably have wider applicability in relation to reasonable accommodation in employment (and in other fields) given that the Supreme Court applied the CRPD and reiterated the constitutional principle that the CRPD is a part of the national legal order, has priority over national legislation, and is even directly applicable. See section 2.6.d for more detail.

c) Definition of disability and non-discrimination protection

There is no definition of disability contained in the Anti-discrimination Act, neither in general nor for the purposes of the duty to provide reasonable accommodation.

A definition of disability is included in the Labour Code. However, its only purpose is to identify a duty to provide reasonable accommodation and not to claim protection from discrimination in general (Labour Code, Sections 158 – 159).

The Schools Act defines a 'child with a disability or a pupil with a disability' as a child or a pupil with a

'mental²⁵² disability, hearing impairment, visual impairment, physical impairment, communication ability disorder, autism, or with other pervasive developmental disorders, or with multiple disabilities.'²⁵³

The Schools Act also uses the term 'health disadvantage'. A child or a pupil with a 'health disadvantage' is defined 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'.²⁵⁴

Please see section 2.1.1 for further details.

d) Duties to provide reasonable accommodation in areas other than employment for people with disabilities

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

²⁵¹ Decision of the Supreme Court of the Slovak Republic, No. 7Sžo/83/201424, September 2015.

²⁵² In Slovak, the Act uses the word 'mental' (and not, for example, 'intellectual').

²⁵³ Slovakia, Schools Act, 245/2008, Section 2(l).

²⁵⁴ Slovakia, Schools Act, 245/2008, Section 2(k).

facilities.²⁵⁵ 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.²⁵⁶ The Road Transport Act²⁵⁷ and the Railways Act²⁵⁸ also contain some special provisions that relate to creating conditions for access for people with disabilities.

In 2015, the Supreme Court decided a case on the right to inclusive education of a child with a disability and held that a refusal to provide reasonable accommodation is a form of discrimination.²⁵⁹

The Supreme Court held, referring to Article 2 of the CRPD, that a refusal to provide reasonable accommodation is a form of discrimination on the ground of disability and that this type of discrimination is prohibited. The court also emphasised that the best interest of a child must represent the primary perspective, and that in this case inclusive education of the complainant, accompanied by the reasonable accommodation that she needed, was in her best interest. The court referred to an expert opinion that recommended considering the education of the complainant in a mainstream school, with a simultaneous provision of an individual educational plan and a teacher assistant for her. The court, referring to another expert opinion, also emphasised that inclusive education of children with disabilities is beneficial for all children (that is for children both with and without a disability).

Although the Supreme Court did not mention the Anti-discrimination Act in its decision at all and although the case primarily applies to reasonable accommodation in education, it will probably have wider applicability in relation to reasonable accommodation in other fields – given that the Supreme Court applied the CRPD and reiterated the constitutional principle that the CRPD is a part of the national legal order, has priority over national legislation, and is even directly applicable.

e) Failure to meet the duty of reasonable accommodation for people with disabilities

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.²⁶⁰

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, 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.

In 2015, the Supreme Court held (referring to the CRPD and applying it, but not referring to the Anti-Discrimination Act) that the failure to provide reasonable accommodation is a form of discrimination (see also answer to the previous section 2.6.d).

²⁵⁵ Slovakia, Act No 245/2008 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*).

²⁵⁶ Slovakia, Act on Higher Education, 131/2002, Sections 16a, 57, 96 and 100.

²⁵⁷ Slovakia, Act No 56/2012 on Road Transport, as amended (*zákon č. 56/2012 Z. z. o cestnej doprave v znení neskorších predpisov*).

²⁵⁸ Slovakia, Act No 513/2009 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*).

²⁵⁹ Decision of the Supreme Court of the Slovak Republic, No. 7Sžo/83/2014, 24 September 2015.

²⁶⁰ Slovakia, Anti-discrimination Act, 365/2004, Section 7(4).

Given that 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 to 11 of the Anti-discrimination Act, and all procedural rules contained in these sections apply, including the shift in burden of proof. In principle, this applies not only to the duty to provide reasonable accommodation in employment entrenched in the Anti-discrimination Act (see section 2.6.a), but also to fields falling outside the scope of employment given that the duty to adopt measures to prevent discrimination applies across all fields and grounds falling under the scope of the Anti-discrimination Act, and given that the Supreme Court has already held – referring to that CRPD and applying it – that the failure to provide reasonable accommodation is a form of discrimination.

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).

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 (for which a specific reasonable accommodation duty exists in the Anti-Discrimination Act),²⁶¹ 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 for all grounds, since for grounds other than disability, neither legislation nor case law provide any detail on how the duty is supposed to be fulfilled or whether justification is possible. To the best knowledge of the author of this report no public or academic discussion has been conducted in Slovakia on those issues.

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.

²⁶¹ Slovakia, Anti-discrimination Act, 365/2004, Section 7(4).

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.²⁶² 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, and also in the context of a decision of the Supreme Court of 2015 where the Supreme Court (albeit deciding a case of a refusal to provide disability-related reasonable accommodation in education), held that a refusal to provide reasonable accommodation is a form of discrimination and applied the CRPD, emphasising the constitutional principle of the precedence of the CRPD over the national legislation and its direct applicability (see section 6.2.d) for further detail).²⁶³ 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). Thus, where issues of (in)accessibility of services, buildings and infrastructure arise, they will also have to be judged, as a matter of national law, in the light of the CRPD.

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 and the decision of the Supreme Court of 2015.

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. Furthermore, in light of the Supreme Court decision of 2015 (see above and in section 6.2.d) the CRPD should be directly applicable on the national level. This also serves as an interpretative framework for the legal duties mentioned below.

In fields covered by the directives other than employment (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

²⁶² Regulation of the Ministry of Environment of the Slovak Republic No 532/2002 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*).

²⁶³ Decision of the Supreme Court of the Slovak Republic, No 7Sžo/83/2014, 24 September 2015.

(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'.²⁶⁴

Section 4(2) of the Road Transport Act²⁶⁵ stipulates that carriers are obliged to have written conditions of transport 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'.²⁶⁶ 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'.²⁶⁷ 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 Act²⁶⁸ contains general rules for creating conditions for access for people with disabilities. Special regulations allowing reduced fares for public transport have been adopted by the self-governing regions.

There is no case law on accessibility of services, buildings and infrastructure.

In 2016, the Slovak ombudswoman²⁶⁹ conducted field research on the accessibility of public places to people with disabilities. She focused on three areas:

- access to public schools (primary, secondary schools and universities);
- access to police buildings;
- access to state-run hospitals and other healthcare facilities.

She summarised her outcomes in three separate reports,²⁷⁰ in which she described the problems in respect of each area and also made relevant recommendations to the state authorities to remedy the situation.

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

²⁶⁴ Section 2(4) of regulation No. 532/2002.

²⁶⁵ Slovakia, Act No 56/2012 on Road Transport, as amended (zákon č. 56/2012 Z. z. o cestnej doprave v znení neskorších predpisov).

²⁶⁶ Slovakia, Road Transport Act, 56/2012, Section 4(2)(f).

²⁶⁷ Slovakia, Road Transport Act, 56/2012, Section 4(2)(h).

²⁶⁸ Slovakia, Railways Act, 513/2009.

²⁶⁹ The author of the report is using the word 'ombudswoman' in order to indicate gender sensitive language and highlight that in Slovakia this position is currently occupied by woman. Originally in Slovak language using terms "verejná ochránkyňa práv" or "ombudsmanka".

²⁷⁰ Office of the Public Defender of Rights (October 2016), *Správa o výsledkoch prieskumu bezbariérového prístupu do budov škôl a bezbariérovosti v nich* (Report on outcomes of the research on access to school buildings for the disabled), available at <http://www.vop.gov.sk/files/Sprava%20bezbarierovost%20skoly.pdf> (accessed 16 January 2018). Office of the Public Defender of Rights (September 2016), *Správa o výsledkoch prieskumu zabezpečenia bezbariérového prístupu v budovách, ktoré sú sídlami útvarov Policajného zboru a klientskych centier* (Report on outcomes of the research on access to police buildings and their clients' centres for the disabled), available at http://www.vop.gov.sk/files/Bezbarierovost_policia.pdf (accessed 16 January 2018). Office of the Public Defender of Rights (September 2016), *Bezbariérovosť v štátnych nemocniciach a iných zdravotníckych zariadeniach - správa o výsledkoch prieskumu*. (Access to state run hospitals and other health care facilities for the disabled- report on outcomes of the research). Available at: <http://www.vop.gov.sk/files/Spr%C3%A1va%20-%20bezbarierovost%20nemocnic.pdf> (accessed 16 January 2018).

universally accessible to all people with visual impairments. However, there are a few laws containing some partial duties in this regard.

For example, the Free Access to Information Act²⁷¹ (enabling inter alia requests for information from public bodies and some other bodies about their everyday activities,²⁷² apart from a few exceptions stipulated by the law)²⁷³ makes it explicit that it is also possible to request information in Braille and in an enlarged font.²⁷⁴ 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)²⁷⁵ 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.²⁷⁶ 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,²⁷⁷ 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).²⁷⁸

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 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.²⁷⁹

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.²⁸⁰ 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, and to access information related to public interest and on the rights of people who are deaf.²⁸¹ 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.²⁸² These translation services are provided for free unless special legal regulations stipulate for compensation of costs (connected mainly to legal proceedings).²⁸³ 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

²⁷¹ Act No 211/2000 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*).

²⁷² The list of the bodies obliged to provide information is contained in Slovakia, Free Access to Information Act, 211/2000, Section 2.

²⁷³ The list of exceptions is contained in Slovakia, Free Access to Information Act, 211/2000, Sections 8-13.

²⁷⁴ Slovakia, Free Access to Information Act, 211/2000, Section 16(2)-(4).

²⁷⁵ Slovakia, Free Access to Information Act, 211/2000, Sections 16(3) and 16(4).

²⁷⁶ Slovakia, Free Access to Information Act, 211/2000, Section 16(5).

²⁷⁷ Slovakia, Free Access to Information Act, 211/2000, Section 17(1).

²⁷⁸ Slovakia, Free Access to Information Act, 211/2000, Section 17(2).

²⁷⁹ See Slovakia, Act No 308/2000 on Broadcasting and Re-Transmission and on Changing the Act No 195/2000 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*), Section 18(2)(c).

²⁸⁰ Slovakia, Act No 149/1995 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).

²⁸¹ Slovakia, Sign Language Act, 149/1995, Section 4.

²⁸² Slovakia, Sign Language Act, 149/1995, Section 5(1).

²⁸³ Slovakia, Sign Language Act, 149/1995, Section 5(2).

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.²⁸⁴

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 it is necessary, the court engages an interpreter. The interpretation can be provided also by the assistant; in other than criminal proceedings the interpretation can be provided also by a judge or a member of the senate.’

This also applies to hearings involving persons who are ‘deaf, dumb or deaf-dumb in cases where it is not possible to understand each other in another reliable way’.²⁸⁵

As far as the communication of public authorities and their representatives is concerned, cases in which they translate their direct media communications (e.g. press conferences) into sign language are very rare.

There are no rules on providing documents in easy-to-read formats for people with intellectual disabilities.

²⁸⁴ Slovakia, Free Access to Information Act, 211/2000, Section 16(5).

²⁸⁵ Slovakia, Ordinance of the Ministry of Justice of the Slovak Republic No 543/2005 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 súdy, krajské súdy, Špeciálny súd a vojenské súdy v znení neskorších predpisov*), Sections 51(1) and 51(2).

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,²⁸⁶ 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.²⁸⁷

In addition, separate acts set out the requirement to be a citizen of the Slovak Republic for specific professions or employment.²⁸⁸

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.²⁸⁹

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

a) Protection against discrimination

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 Act²⁹⁰ with respect to its members, associates, shareholders, members of its bodies, employees, persons acting on its behalf or persons on behalf of which such a legal entity is acting.'

²⁸⁶ E.g. Slovakia, Act No. 404/2011 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*), Slovakia, Act No. 480/2002 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*).

²⁸⁷ Slovakia, Act on the residence of foreigners, 404/2011, Section 2(2).

²⁸⁸ Senior state officials, prosecutors, constitutional judges, judges, police officers, customs officers, fire and rescue service members, mountain rescue service members and professional soldiers.

²⁸⁹ For example: Slovakia, Act on the residence of foreigners, 404/2011 and Slovakia, Asylum Act 480/2002.

²⁹⁰ 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.

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

b) Liability for discrimination

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.²⁹¹ There is no case law on the issue.

3.1.3 Private and public sector including public bodies (Article 3(1))

a) Protection against discrimination

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 Act²⁹² 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.

b) Liability for discrimination

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.²⁹³

²⁹¹ Slovakia, Anti-discrimination Act, 365/2004, Section 5(2)(d).

²⁹² 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.

²⁹³ See Slovakia, Anti-discrimination Act, 365/2004, Section 5(2)(d).

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 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.²⁹⁴ 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.²⁹⁵

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

²⁹⁴ Neither the Anti-discrimination Act nor case law stipulates 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).

²⁹⁵ The most relevant acts are Slovakia, Labour Code, 311/2001, Slovakia, Civil Service Act, 400/2009, and some special laws on performing public service in special fields (the judiciary, military service, Police Corps, Slovak Information Service, etc).

setting up and running their business. It does not regulate the relations between the freelancers and their purchasers, which are regulated either by the Civil Code²⁹⁶ or the Commercial Code.²⁹⁷ 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 prohibits discrimination in the following areas: 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).²⁹⁸

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 prohibits discrimination in the following area: working conditions including pay and dismissals, for all five grounds and for both private and public employment.

²⁹⁶ Slovakia, Civil Code, 40/1964.

²⁹⁷ Slovakia, Commercial Code, 513/1991.

²⁹⁸ Slovakia, Small Business Act, 455/1991.

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 the grounds contained in the Anti-discrimination Act (see section 2.1 above), 'the performance of employment²⁹⁹ 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'.³⁰⁰ 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.³⁰¹ Therefore it can be argued that these provisions apply equally to all other prohibited grounds of discrimination.

3.2.3.1 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'.³⁰²

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)³⁰³ or after termination of work as a dance artist (without regard to the style and technique) or a musician playing a wind instrument.³⁰⁴ Within the framework of supplementary pension insurance, an employer pays, on the

²⁹⁹ The term 'employment' includes occupation, other gainful activity or function.

³⁰⁰ Slovakia, Labour Code, 311/2001, Section 119a (1), second sentence.

³⁰¹ See Slovakia, Labour Code, 311/2001, Section 119a (4).

³⁰² Slovakia, Labour Code, 311/2001, Section 119a (1), second sentence.

³⁰³ See Slovakia, Act No 355/2007 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*), Sections 31(4) and 31(5).

³⁰⁴ Slovakia, Act No 650/2004 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*), Section 2(2).

ground of a contract, a regular contribution for employees to a supplementary pension company.

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 Learning³⁰⁵ 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 does not contain any equality/anti-discrimination clause or any reference to the Anti-discrimination Act.

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.³⁰⁶

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 prohibits discrimination in the following area: 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.

³⁰⁵ Slovakia, Act No 568/2009 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*).

³⁰⁶ Slovakia, Higher Education Act, 131/2002, Section 55(2).

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 prohibits discrimination in the following area: 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),³⁰⁷ 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', the Act on Aid in Material Need³⁰⁸ regulates, among other things, the provision of financial aid to those who are deemed to be in material need.³⁰⁹ 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;³¹⁰ in 2017, the sum for one adult was EUR 199.48 per month). The allowance (financial aid in material need) is supposed to secure basic living conditions.³¹¹

The act 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)³¹² or

³⁰⁷ Slovakia, Act No 448/2008 on Social Services and on amending and supplementing Act No 455/1991 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*).

³⁰⁸ Slovakia, Act No 417/2013 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*).

³⁰⁹ See Slovakia, Act on aid in material need, 417/2013, Section 1(1).

³¹⁰ Slovakia, Act No 601/2003 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*).

³¹¹ Slovakia, Act on Aid in Material Need, 417/2013, Section 10(1,2). Under the act, the basic sum of this 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).

³¹² Slovakia, Act No 406/2011 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*).

some kind of work that prevents or solves emergency situations, for at least 32 hours per month. This provision was presented by Government representatives as a way of motivating the Roma 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 – therefore it is also very clear on whom the act has impact.

The act was criticised very heavily by civil society and NGOs³¹³ and in 2014 led also to the submission of a constitutional complaint by the Public Defender of Rights (the Slovak ombudswoman) alleging the infringement of, among other rights, the right to equality and the right not to be subject to forced labour. The Constitutional Court rejected the case, arguing, quite unpersuasively, that the Public Defender of Rights was not entitled to submit it.³¹⁴

The basic law on the state social security scheme is the Social Insurance Act.³¹⁵ 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.³¹⁶

The Social Services Act³¹⁷ regulates legal relations in connection with the provision of social services.³¹⁸ 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,³¹⁹ 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.³²⁰ Similarly, according to the Act on Supplementary Pension Saving, discrimination in the performance of supplementary

³¹³ See, for example, Balážová, G., Gallová Kriglerová, E., Chudžíková, A., Lajčáková, J., Kadlečíková, J. (2017), *Riešenie nezamestnanosti Romov, Od mýtov k praxi a späť*, available at http://cvek.sk/wp-content/uploads/2017/04/Nezamestnanost-Romov_studia.pdf (accessed 21 February 2018); Balážová, G., Gallová Kriglerová, E., Chudžíková, A., Lajčáková, J., Surová, S., Števulová, 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://cvek.sk/mensinova-politika-na-slovensku-v-roku-2013-vyroczna-sprava/> (accessed 19 January 2018).

³¹⁴ Decision of the Constitutional Court of the Slovak Republic, No. PL. ÚS 36/2015, 10 June 2015.

³¹⁵ Slovakia, Act No 461/2003 on Social Insurance as amended (*zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov*).

³¹⁶ Slovakia, Act No 328/2002 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*).

³¹⁷ Slovakia, Act No 448/2008 on Social Services and on amending and supplementing Act No 455/1991 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*).

³¹⁸ 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; f) harmonising a family and work life'. See Slovakia, Social Services Act, 448/2008, Section 2(1).

³¹⁹ Slovakia, Act on benefits for compensation of serious disability, 447/2008.

³²⁰ Slovakia, Act No 43/2004 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*), Section 9.

pension saving is prohibited in compliance with the Anti-discrimination Act, unless the Act on Supplementary Pension Saving states otherwise.³²¹

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).³²²

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.³²³

The only case dealing with multiple discrimination in the field of social protection, social security and healthcare decided by a national court based on anti-discrimination legislation is the case on the discrimination against Roma women in state social support/social advantages in connection with birth benefits decided by District Court Bratislava I and confirmed by the Regional Court in Bratislava (see section 3.2.7 below) now pending before the Slovak Supreme Court.³²⁴ Another case of discrimination against Roma women in the provision of healthcare (segregation in maternity hospitals) is still pending before the first instance court.

3.2.6.1 Article 3.3 exception (Directive 2000/78)

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 prohibits discrimination in the following area: social advantages as formulated in the Racial Equality Directive, although 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).

³²¹ Slovakia, Act on Supplementary Pension Saving, 650/2004, Section 7(1). 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.

³²² Slovakia, Act No 576/2004 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*), Section 11(2)-(6).

³²³ Slovakia, Act No 580/2004 on Health Insurance and on amendment and supplementation of Act No 95/2002 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*), Section 29.

³²⁴ Decision of the District Court Bratislava I, No 12C 231/2010, 16 May 2014 confirmed by the decision of the Regional Court in Bratislava, No 14Co/552/2014-180, 26 September 2017.

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.³²⁵ The provision referred to is the Act on 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.³²⁶ 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 a power imbalance that prevents women from deciding freely and voluntarily about the length of their stay in a maternity hospital after childbirth. The situation has a disproportionate effect on Roma women, who, in many cases, leave the hospital because of caring responsibilities for other children and as a result of discrimination and hostility in the hospital – in most cases they come back to collect their child.³²⁷

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 (see section 2.1.2). The case is pending before the Slovak Supreme Court, after having been dismissed by the first instance and appeal courts.³²⁸

Other provisions of the same act can also be held to be discriminatory towards Roma women (but they can also be discriminatory towards other women). For example, Section

³²⁵ This is the wording of Section 3(4)(b) as of 30 June 2014 (after an amendment of the act No 185/2014). Before this amendment, Section 3(4)(b) of the Act on Childbirth Allowance and on Allowance for More Concurrently Born Children, 383/2013 stipulated that a woman 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.

³²⁶ Slovakia, Healthcare Act, 576/2004, Section 9(6)(c). 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.'

³²⁷ 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).

³²⁸ Decision of the District Court Bratislava I, No 12C 231/2010, 16 May 2014. Decision of the Regional Court in Bratislava, No 14Co/552/2014-180, 26 September 2017.

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.³²⁹

In 2015, the Centre for Civil and Human Rights issued analyses of specific provisions of domestic legislation that are incompatible with anti-discrimination legislation and constitute indirect discrimination. Aside from the provisions mentioned above, the centre also identified other discriminatory provisions, specifically Section 4(3) of the Parental Care Allowance Act, 571/2009 and Article 12a of the Child Allowance Act, 600/2003.³³⁰ In this regard it should be noted that the UN Committee on the Rights of the Child in its recent concluding observations from July 2016 called on Slovakia to amend the discriminatory legislation making the rates of payment of child benefit, parental care allowance and child birth allowance conditional on compliance with preventive measures. The Committee has stated that this legislation is largely ineffective and has a disproportionately negative effect on the socioeconomic wellbeing and right to social security of marginalised Roma families and their children.³³¹

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 prohibits discrimination in the following area: 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

³²⁹ 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.

³³⁰ Poradňa pre občianske a ľudské práva (Centre for Civil and Human Rights) (2015), 'Monitoring vybraných právnych predpisov a analýza ich nesúlady s antidiskriminačným právom' (The monitoring of specific legislation and analyses of their incompatibility with anti-discrimination law) available in Slovak at <https://www.poradna-prava.sk/sk/dokumenty/monitoring-vybranych-pravnych-predpisov-a-analyza-ich-nesuladu-s-antidiskriminacnym-pravom/> (accessed 19 January 2018); see also European Roma Rights Centre and Centre for Civil and Human Rights (2015), *Written Comments Concerning Slovakia for Consideration by the Committee on the Rights of the Child at the 72nd Pre-Sessional Working Group (5 - 9 October 2015)* available at <https://www.poradna-prava.sk/en/documents/written-comments-for-the-un-committee-on-the-rights-of-the-child/> (accessed 19 January 2018).

³³¹ UN Committee on the Rights of the Child (2016), *Concluding observations of the Committee on the Rights of the Child on the combined third to fifth periodic reports of Slovakia*. CRC/C/SVK/CO/3-5. para. 43a.

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.

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',³³² as well as the 'prohibition of all forms of discrimination, and especially segregation',³³³ as 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'.³³⁴

Foreigners/migrants and nationals benefit equally from domestic anti-discrimination legislation law enforcement and implementation in education.

Children of foreigners/migrants with residence in the territory of the Slovak Republic, asylum seekers and Slovaks living abroad are provided with upbringing and education, accommodation and meals at schools under the same conditions as citizens of the Slovak Republic, which means that they can study at state (not private nor religious schools) schools free of charge and they may also borrow basic textbooks free of charge. Basic and advanced Slovakian language courses are organised for children of foreigners/migrants to eliminate language barriers at primary and secondary schools.³³⁵

The Schools Act has a specific provision on education of foreigners in Section 146, which establishes the definitions and conditions of providing education for children of foreigners, as mentioned above.³³⁶

As for providing education for adult foreigners, the Constitution of the Slovak Republic entitles foreigners, among other things, to education-related rights. According to Article 33 of the Slovak Constitution, the fact of belonging to any national minority or ethnic group must not be used to the detriment of any individual. This principle is also reflected in the legislation governing education and applies to access to education for adult foreigners.

Under Article 34 of the Slovak Constitution, citizens belonging to national minorities or ethnic groups in the Slovak Republic are guaranteed their universal development, particularly the rights to promote their culture together with other members of the minority or group, to disseminate and receive information in their mother tongues, to associate in national minority associations and to establish and maintain educational and cultural institutions. In addition to the right to learn the official language, citizens belonging to national minorities or ethnic groups are, under the conditions laid down by law, guaranteed the right to be educated in their own language.

An especially important area is the recognition of certificates and diplomas, which is regulated by Act No. 422/2015.³³⁷

a) 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

³³² Slovakia, Schools Act, 245/2008, Section 3(c).

³³³ Slovakia, Schools Act, 245/2008, Section 3(d).

³³⁴ Slovakia, Schools Act, 245/2008, Section 2(s). However, the act does not define in more detail what such integration would mean.

³³⁵ For more details see also <http://www.mic.iom.sk/en/social-issues/education/266-education-in-slovakia.html> (accessed 19 January 2018).

³³⁶ Slovakia, Schools Act, 245/2008, Section 146.

³³⁷ For more details see information available at <http://www.mic.iom.sk/en/social-issues/education/266-education-in-slovakia.html> (accessed 19 January 2018).

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'. A child or a pupil with disability is defined in Section 2(l) to mean a child or a pupil with a 'mental'³³⁸ disability, hearing impairment, visual impairment, physical impairment, communication ability disorder, autism, or with other pervasive developmental disorders, or with multiple disabilities'. 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 put in special schools unnecessarily, and in breach of the principle of inclusive education and non-segregation. 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.³³⁹

In 2015, the Supreme Court decided an important case regarding the right to inclusive education of children with disabilities.³⁴⁰ The claimant was a female child with an intellectual disability and a hearing impairment who was refused enrolment at a mainstream primary school.

The Supreme Court quashed the decision of the director of the mainstream school and that of the local government district and ordered the latter to continue conducting proceedings in the case. It applied the CRPD and noted that, according to the Slovak Constitution, the CRPD is a part of the Slovak legal order and takes precedence over the national legislation, and hence it was the duty of the school director and the local government district to interpret the provisions of the Schools Act in accordance with it. The Supreme Court noted that the defendant's argument that the inability of a mainstream school to provide special conditions for a child with special educational needs justifies non-enrolment of such a child at this school cannot be accepted in this case, mainly because the case file did not contain any evidence on whether the school director was actively trying to create special conditions for the complainant. The Supreme Court also noted that neither the school director, nor the local government district, nor the regional court specified what comprised the disproportionate or excessive burden for the realisation of reasonable accommodation.

For further detail about the case, see section 2.6.d.

³³⁸ In Slovak, the act uses the word 'mental' (and not, for example, 'intellectual').

³³⁹ See Kubánová, M., Košťál, C., Beblavý, M. (2009), 'Základné a stredné školstvo' (Primary and Secondary Schooling), in: Kollár, M., Mesežnikov, G., Bútorá, 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.

³⁴⁰ Judgment of the Supreme Court of the Slovak Republic, No. 7Sžo/83/2014, 24 September 2015.

b) Trends and patterns regarding Roma pupils

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

The segregation of Roma children in education is a very widespread problem, already documented in many reports by national and international NGOs,³⁴¹ as well as by the reports of the Slovak National Centre for Human Rights (the equality body)³⁴² and the Slovak ombudswoman.³⁴³ In March 2017 Amnesty International and the European Roma Rights Centre published an advocacy report documenting that Romani children are still systemically denied their rights to education in primary education in Slovakia, facing segregation in Roma-only mainstream schools or classes, or special schools and classes for children with 'mild mental disabilities'.³⁴⁴ Notably, Slovakia faces infringement proceedings by the European Commission for violating the EU Racial Equality Directive in the practice of discriminating against Roma children in special and mainstream education systems.³⁴⁵

One form of segregation of Roma children in education is their placement in 'special classes' or 'special schools'. The legal provisions listed in the section above on educating pupils with disabilities and with a health disadvantage in special schools or special classes are also often relied upon when placing Roma pupils in these schools or classes. This happens after misdiagnosing Roma children with intellectual disabilities (in Slovak, the term 'mental disability' is used).

Under Section 29(11) of the Schools Act, primary schools may, after obtaining approval from the school founder, establish a 'specialised class' for the education of those pupils who are 'not likely to successfully manage the content of education in the corresponding year, in order to compensate them for the lacking content of education'. Pursuant to this provision, the decision to place a pupil in the specialised class is taken by the school director upon a proposal from the class teacher, following consultation with an educational counsellor, and after informed consent from a legal representative of the pupil has been obtained. The placement in a specialised class can only last for the period of unavoidable need and it cannot exceed one school year.

The Schools Act stipulates that 'a child or a pupil whose educational needs stem exclusively from their development in a socially disadvantaged environment cannot be placed in special schools or special classes' (meaning special schools or special classes for children with disabilities or a health disadvantage – see the previous section),³⁴⁶ and the education

³⁴¹ 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 08 February 2018).

³⁴² See Slovenské národné stredisko pre ľudské práva (2017), *Správa o dodržiavaní ľudských práv vrátane zásady rovnakého zaobchádzania v Slovenskej republike za rok 2016* (Report on the observance of human rights including the observance of the principle of equal treatment in the Slovak Republic for the year 2016), p. 58-71, available in English at http://www.snslp.sk/CCMS/files/2016_HR_Report_SNCHR_eng.pdf (accessed February 2018).

³⁴³ 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 8 February 2017).

³⁴⁴ Amnesty International, European Roma Rights Centre (2017), *A Lesson in Discrimination: Segregation of Romani Children in Primary Education in Slovakia*. Available at <https://www.amnesty.org/en/documents/eur72/5640/2017/en/> (accessed 28 February 2018).

³⁴⁵ The European Commission gave formal notice about starting these infringement proceedings against the Slovakia on 29 April 2015. For more information see e.g. Equinet (2015), 'European Commission's decision to initiate infringement proceedings against Slovakia', www.euroactiv.com, 30 April 2015. Available at: <http://www.equineteurope.org/European-Commission-s-decision-to-> (accessed on 19 January 2018).

³⁴⁶ Slovakia, Schools Act, 245/2008, Section 107(2).

of children from socially disadvantaged environments must be pursued through 'individual conditions', meaning the adjustments of the organisation of education on the one hand and the environment in which education is taking place on the other, as well as the use of special methods and forms of education.³⁴⁷ Children from socially disadvantaged backgrounds are to be placed into classes 'together with other children or pupils'. This rule, however, does not apply to cases of placing pupils in zero grade classes³⁴⁸ (with informed consent of the legal representative; for more information on zero grade classes, see section 5.b), and to placing pupils in a 'specialised class' pursuant to Section 29(11) (see the previous paragraph).³⁴⁹

In summary, Slovakian domestic legislation still retains the concept of a child unable to meet the demands of the system, instead of pursuing the concept of adjusting the system to meet the different needs of different children. Furthermore, the main problem, which is the misdiagnosis and stigmatisation of Roma children as 'mentally disabled' and subsequently placing them in 'special' classes/schools, as well as other forms of segregation of Roma children in education still persists (for other forms of segregation, see below for more detail).

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.³⁵⁰ Special classes/special schools for children with intellectual disabilities follow reduced curricula and thus offer very limited opportunities for subsequent education. The poor diagnostics leading to the placement of Roma children in these classes/schools results 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 child³⁵¹ etc.³⁵² 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. Another factor contributing to the segregation of Roma children in special schools/classes is the system

³⁴⁷ Slovakia, Schools Act, 245/2008, Section 107(1).

³⁴⁸ Zero grade classes can be established pursuant to Section 60(4) of the Schools Act.

³⁴⁹ Slovakia, Schools Act, 245/2008, Section 107(3).

³⁵⁰ 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, available at https://www.romaeducationfund.org/sites/default/files/publications/school_as_ghetto.pdf (accessed 12 February 2018).

³⁵¹ 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 19 January 2018). Anecdotal evidence shows that the person doing the diagnostic tests sometimes examines as many as 30 children per day.

³⁵² 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 19 January 2018), 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).

of subsidies for children in special schools/classes, in which the subsidies are higher than the subsidies for children in mainstream schools.³⁵³

School segregation, however, 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 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.³⁵⁴ According to the results of the EU-MIDIS II survey from November 2016, 22 % of Roma children in Slovakia are educated in segregated Roma-only schools.³⁵⁵

The first, and so far the only final case on the segregation of Roma children in education was decided by the District Court in Prešov in December 2011 and the Regional Court in Prešov in October 2012, based on the *actio popularis* lawsuit filed by the NGO Centre for Civil and Human Rights.³⁵⁶ The courts decided that education of Roma children in separate mainstream classes amounts to racial discrimination and undermines the human dignity of segregated Roma children.

The decision of the regional court 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*.

The court decisions 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. 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.³⁵⁷ In the author's view, the Government is

³⁵³ 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.

³⁵⁴ For more information on the segregation of Roma children in education, see also Centre for Civil and Human Rights (2016), *Written Comments concerning Slovakia for Consideration by the UN Human Rights Committee*, pp. 7 - 9. Available online at <https://www.poradna-prava.sk/en/documents/we-submitted-the-written-comments-to-the-un-human-rights-committee/> (accessed 8 February 2018). Centre for Civil and Human Rights (2017), *Alternative Report concerning Eleventh and Twelfth Periodic Report of Slovakia*, pp. 8 -10. Available at <https://www.poradna-prava.sk/en/documents/the-report-for-the-un-committee-on-the-elimination-of-racial-discrimination/> (accessed 28 February 2018). See also Rafael, V. (ed.); various authors (2011), *(De)segregation of Roma pupils in Slovak educational system: Questions and answers*, Bratislava, Nadácia otvorenej spoločnosti. The publication is available at <http://www.eduroma.sk/wp-content/uploads/2016/01/desegregacia.pdf> (accessed 8 February 2018).

³⁵⁵ Second European Union and Discrimination Survey - Roma - Selected Findings (2016), section 2.3.2.

³⁵⁶ The English translation of the decisions of the first and second instance courts is available online at <https://www.poradna-prava.sk/en/documents/?type=decisions> (accessed 8 February 2018).

³⁵⁷ The project of container schools introduced by the Government in 2013 was also criticised by Amnesty International in its article from March 2015 based on its realised field monitoring. Available online at: <https://www.amnesty.org/en/latest/news/2015/03/slovakia-segregation-of-roma-schoolchildren-worsens/> (accessed 19 January 2018). The Centre for Civil and Human Rights is litigating a case against this type of

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 emerging practice is that of establishing external branches to vocational schools that are already a part of the official secondary education system. Many of these external branches are placed very close to segregated Roma settlements.³⁵⁸ In March 2015, 56 of such branches were relocated away from 25 state schools, and at the end of 2014, 36 of such branches were relocated away from 14 private schools.³⁵⁹ Apart from the geographical and ethnic segregation, the problem is that such schools offer courses/programmes with very low employability prospects (and some of them only last for two years), which often perpetuate gender stereotypes and stereotypes about the Roma (for example, one of the courses taught, called 'practical woman', is aimed at teaching, among other things, 'the basics of hygiene', 'keeping and maintaining a household', 'basic principles of household economy', 'correct ways of storing and processing foodstuffs and preparing meals', 'correct upbringing and caring for children', etc.), and are generally of very poor quality.³⁶⁰ In addition, the state subsidy for a pupil enrolled at this type of external branch to a vocational school is about a double the subsidy for a pupil attending a regular secondary grammar school.³⁶¹ Thus the system of financing these external branches does nothing but serve as an incentive for further segregation of Roma pupils in secondary education.

Given the inability of the Slovak Government to effectively address the segregation of Roma children in education and facilitate their school inclusion, the NGO Centre for Civil and Human Rights is currently litigating four *actio popularis* cases addressing different forms of segregation of Roma children in education. Two of those cases address segregation of Roma children in segregated mainstream schools. Another case specifically addresses the segregation of Roma children in special classes for pupils with intellectual disabilities, placed separately near a segregated local Roma settlement, and which is attended by 90 % of all school-age Roma children living in this settlement. The last case challenges the decision of a regional school office that has organised a local school district in a way that concentrates Roma children in one school, instead of supporting their integration in other local schools.

One of the *actio popularis* cases was dismissed by the District Court in Bratislava on 6 October 2016.³⁶² In that case, the Centre for Civil and Human Rights argued that by not adopting effective measures to eliminate the segregation in a primary school in the town Stara Ľubovňa, the municipality and the responsible State authorities, including the Ministry of Education, are violating domestic and international anti-discrimination

school segregation, by an *actio popularis*, decided by the District Court Bratislava III, No 11 C 351/2015, on 6 October 2016.

³⁵⁸ For details about the policy and its implementation, see Balážová, Z. (2015) *Elokované pracoviská stredných odborných škôl pri marginalizovaných rómskych komunitách: Cesta k začleneniu alebo vylúčeniu rómskej mládeže?* (Elocated Branches Of Secondary Trade Schools Situated Near Marginalised Romani Communities: A path toward inclusion or exclusion of Romani youth?), CVEK – Centrum pre výskum etnicity a kultúry, available at <http://cvek.sk/publikacie/> (accessed 19 January 2018).

³⁵⁹ Balážová, Z. (2015) *Elokované pracoviská stredných odborných škôl pri marginalizovaných rómskych komunitách: Cesta k začleneniu alebo vylúčeniu rómskej mládeže?* (Elocated Branches Of Secondary Trade Schools Situated Near Marginalised Romani Communities: A path toward inclusion or exclusion of Romani youth?), CVEK, pp. 12-14.

³⁶⁰ Balážová, Z. (2015) *Elokované pracoviská stredných odborných škôl pri marginalizovaných rómskych komunitách: Cesta k začleneniu alebo vylúčeniu rómskej mládeže?* (Elocated Branches Of Secondary Trade Schools Situated Near Marginalised Romani Communities: A path toward inclusion or exclusion of Romani youth?), CVEK, pp. 62-64, 65-66.

³⁶¹ Balážová, Z. (2015) *Elokované pracoviská stredných odborných škôl pri marginalizovaných rómskych komunitách: Cesta k začleneniu alebo vylúčeniu rómskej mládeže?* (Elocated Branches Of Secondary Trade Schools Situated Near Marginalised Romani Communities: A path toward inclusion or exclusion of Romani youth?), CVEK, pp. 64-65.

³⁶² Decision of the District Court Bratislava III in the case brought by the Centre for Civil and Human Rights against the State represented by the Ministry of Education and the city of Stara Ľubovňa from 6 October 2016. No. 11C/351/2015-387.

legislation. Instead of adopting remedial measures to eliminate discrimination, they expanded the capacity of this primary school by adding a new container following the Government project mentioned above. In its decision, the district court reasoned that Roma children are not segregated at the school since they are educated there based on their permanent residence in a given school district and not based on their ethnic origin. According to the court, no evidence had been presented that would prove Roma children are treated less favourably than children in other schools and thus are disadvantaged. The case is now pending before the appeal court.

The other *actio popularis* cases litigated by the Centre for Civil and Human Rights are currently pending at first-instance courts.

In addition, there are two cases currently pending before Slovak first-instance courts that specifically address the illegal placement of Roma children in the special educational system, which have been initiated directly by the affected individuals based on the Anti-discrimination Act. The Centre for Civil and Human Rights provides representation for three Roma children arguing their illegal enrolment in special classes in the primary school in a village Hermanovce. To the knowledge of the author of this report another case addresses the illegal placement of Roma children in a special school in a village called Plavecký Štvrtok. The legal representation for the child affected in this case is provided by the NGO European Roma Rights Centre.

To the best knowledge to the author of this report no cases regarding discrimination of migrants in education are pending before Slovak courts.

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 prohibits discrimination in the following area: access to and supply of goods and services as formulated in the Racial Equality Directive, although 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).

3.2.9.1 Distinction between goods and services available publicly or privately

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 prohibits discrimination in the following area: housing as formulated in the Racial Equality Directive, although 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).

The following forms of accommodation are available for foreigners/migrants living in Slovakia: rented property, personally owned flats or houses and facilities providing accommodation services, such as hotels, guesthouses and hostels. There are also reception camps and accommodation centres of the Ministry of Interior of the Slovak Republic for asylum seekers and various integration facilities for refugees (those who have been granted asylum) and children's homes for unaccompanied minors.

Asylum seekers and foreigners/migrants who have been granted asylum, may apply for a social flat within the existing allocation of these flats in some towns of the Slovak Republic. Asylum seekers also have the option to decide to find accommodation, according to their own means and abilities. Groups of migrants who are able to find living accommodation relatively easily are international students, interns or acquaintances of Slovak nationals. To the knowledge of the author there are no reported cases of migrants being denied the rental of apartments.

The state does not provide assistance with finding accommodation to other groups of migrants, such as employed foreigners with permanent or temporary residence permits and people with tolerated residence permits, although for some of them, proof of arranged accommodation is a pre-condition for the granting of a residence permit in the Slovak Republic.³⁶³ Responsibility for acquiring one's housing in the Slovak Republic is given to the individual citizen. The state's essential role is to create a stable market environment, allowing households to procure a dwelling adequate to their income. In terms of state support, foreigners and migrants are included among the disadvantaged groups in the housing market and are eligible to apply for rental dwellings designated for social housing. Third-country nationals may obtain a loan on preferable terms for the acquisition of housing provided by municipalities, when requirements stipulated by law are met.

Foreigners/migrants and nationals benefit equally from domestic anti-discrimination legislation law enforcement and implementation in housing.

³⁶³ For more details see <http://www.mic.iom.sk/en/social-issues/housing/263-accommodation-options-for-foreigners-in-slovakia.html> (accessed 19 January 2018).

3.2.10.1 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 (11.5 %), at the edge of municipalities (23.6 %), or in segregated settlements (18.4 %).³⁶⁴ There are altogether 231 segregated 'concentrations',³⁶⁵ 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.³⁶⁶ The further away a concentration with Roma inhabitants is from a municipality, the poorer the housing conditions of its inhabitants.³⁶⁷ The Slovak Constitution does not entrench the right to housing, and the Slovak Republic opted out of the provision on the right to housing in the Revised European Social Charter.

Furthermore, Roma in Slovakia living in segregated settlements face an increased threat of forced eviction. This is due to changes in land-ownership and limited legal protection against forced evictions. In the past many Roma built their houses on state-owned property. However, due to the processes of land privatisation and decentralisation in the last three decades, from which Roma rarely benefitted, these lands are now owned by private persons or municipalities who may at any time initiate demolition proceedings.³⁶⁸

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.³⁶⁹ The entities entitled to such subsidies are, inter alia, municipalities or higher regional units.³⁷⁰ When applying for subsidies under the act, there are two

³⁶⁴ *ATLAS rómskych komunít na Slovensku 2013* (Atlas on Roma Communities in Slovakia 2013) (2013), Available at: http://www.minv.sk/?atlas_2013, (accessed 19 January 2018).

³⁶⁵ 'Concentration' is the term used in the *Atlas on Roma Communities in Slovakia 2013*.

³⁶⁶ *Prvé výsledky ATLASU rómskych komunít na Slovensku 2013* (The First Results of the Atlas on Roma Communities in Slovakia 2013) (2013). The first results provided selected summarised data from the Atlas (the document is available at http://www.minv.sk/?atlas_2013, accessed 19 January 2018).

³⁶⁷ 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.

³⁶⁸ See European Roma Rights Centre (2017), *Written Submission concerning Slovakia for Consideration by the UN Committee on the Elimination of Racial Discrimination*. Available online at <http://www.errc.org/cms/upload/file/slovakia-cerd-submission-5-november-2017.pdf> (accessed 7 February 2018).

³⁶⁹ See Slovakia, Act No 443/2010 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*), Sections 1 and 3(a), in conjunction with Section 4.

³⁷⁰ See Slovakia, Act on Subsidies for Housing Development and on Social Housing, 443/2010, Section 7.

different types of social housing between which the municipalities can decide: a) regular standard housing, b) lower standard housing.³⁷¹

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.³⁷² 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).³⁷³

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.

The Office of the Plenipotentiary of the Slovak Government for the Roma Communities in 2016 facilitated the process of updating action plans in relation to the 'Strategy of the Slovak Republic for Roma Integration to 2020'. The updated action plan on housing was adopted by the Slovak Government on 22 February 2017 and its goals include reducing residential segregation of marginalised Roma communities.³⁷⁴ This particular goal is supposed to be pursued by enhancing the individual integration of citizens from marginalised Roma communities by facilitating their access to the system of social housing.

³⁷¹ These two types are defined in more detail in Slovakia, Act on Subsidies for Housing Development and on Social Housing, 443/2010, Section 2(1)(e) and (f).

³⁷² 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 January 2018).

³⁷³ 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 January 2018).

³⁷⁴ Slovak Government (2017), *Aktualizované akčné plány stratégie Slovenskej Republiky pre integráciu Rómov do roku 2020 na roky 2016-2018 pre oblasti: D.2.1 Oblasť vzdelávania, D.2.2 Oblasť zamestnanosti, D.2.3 Oblasť zdravia, D.2.4 Oblasť bývania a nový akčný plan D.2.5 pre oblasť finančného začlenenia* (Updated action plans of the Strategy of the Slovak republic for Integration of Roma up to 2020 for areas of D.2.1 Area of Education, D.2.2 Area of employment, D.2.3 Area of health, D.2.4 Area of housing and a new action plan D.2.5 for the area of financial inclusion), p. 36 – 44. Available at <http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=26278> (accessed 8 February 2018)

³⁷⁵ The system is supposed to be multistaged and thus provides social housing of different quality, which should enable people from marginalised Roma communities to gradually improve their standard of living, provided that they meet the given conditions (such as paying rent on time). Activities include the realisation of pilot programme as well as creating a model example and methodology, although this was not created until the end of 2017. In 2016 and 2017 The Office of the Plenipotentiary of the Slovak Government for the Roma Communities financially supported a pilot project pursuing this goal in the village of Lenartov. In pursuit of the goal of the action plan, the Ministry of Interior plans to issue an open call for project proposals aimed at improving forms of housing for villages with marginalised Roma communities.³⁷⁶

A case alleging discrimination in housing has been pending before national courts since 2008. 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. Several decisions of the district court were overturned by the appeal court's decision to dismiss the claim.³⁷⁷ In 2017, the case was decided by the Supreme Court again. The Supreme Court quashed the decision of the Regional Court in Prešov as an appeal court and returned the case to the same regional court for further proceeding. The Supreme Court in its decision of 19 April 2017 stressed the importance of considering this case in the broader context of the situation and vulnerable position of the Roma minority in Slovak society. According to the Supreme Court, it was premature for the regional court to legally assess the fact that the claimants had agreed to move to new rental apartments and voluntarily signed the new rental agreements before having determined whether discrimination was proven. However, in this regard it added that even if the claimants agreed with their discrimination, such consent would be relevant only if it has been informed. On the issue of the responsibility of the Ministry of Transport, the Supreme Court stressed that even though the relevant directive of the ministry on providing subsidies for building projects can appear to be legally neutral, the ministry was obliged to consider the compliance of this provision with the principle of equal treatment when applying it in specific cases. In addition, the ministry is obliged to take positive measures if it finds out that the application of the given provision may imply possible discrimination. In this respect, when the request of the town for the subsidy contained facts implying possible discrimination, the Ministry of Transport was obliged to examine circumstances under which the subsidy was supposed to be used. If the use of the subsidy eventually led to the segregation of a minority population, the legal conditions for providing the subsidy would not be fulfilled due to the conflict with the constitutional principles and international obligations of Slovakia.³⁷⁸ For more details see chapter 12.2 of this report.

To the author's best knowledge there are no cases of discrimination against migrants in housing pending before domestic courts.

³⁷⁵ The concept of social housing in Slovakia is defined in the Act on Subsidies for Housing Development and on Social Housing, 443/2010, Section 23. It is a model of housing that is acquired using public funds that aims to secure appropriate and dignified housing for people who are not able to secure such housing by themselves.

³⁷⁶ Response of the Ministry of Interior of 25 April 2018 to a request for information of 18 April 2018 (on file with the author).

³⁷⁷ Decision of the District Court in Prešov, No. 25 C 197/2007 – 585, 15 June 2009; Decision of the Regional Court in Prešov, No. 13 Co/44/2009 – 655, 13 May 2010; Decision of the Supreme Court of the Slovak Republic, No. 5 Cdo 257/2010, 22 February 2012; Decision of the District Court in Prešov, No. 25C 1/12 – 33, 22 October 2012. Decision of the Regional Court in Prešov, No. 2Co/11/2013-134, 11 March 2014.

³⁷⁸ Decision of the Supreme Court of the Slovak Republic, No 5 Cdo 18/2015 – 202, 19 April 2017.

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)

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 legitimate³⁷⁹ 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.

There is no case law on the issue.

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

³⁷⁹ A comma is missing between the words 'fundamental' and 'legitimate' in the act.

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.³⁸⁰

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 2001,³⁸¹ concerned a priest of the Roman Catholic Church, who had made a claim related to his employment rights (right to remuneration)³⁸² 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),³⁸³ 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.³⁸⁴ 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.³⁸⁵ 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.

³⁸⁰ Slovakia, Act on Freedom of Religious Belief and Status of Churches or Religious Societies, 308/1991, 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'.

³⁸¹ Decision of the Constitutional Court of the Slovak Republic, No III. ÚS 64/00-65, 31 January 2001.

³⁸² However, the decision of the Constitutional Court does not make it clear whether the original labour dispute was discrimination-related.

³⁸³ 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'.

³⁸⁴ Published in the Collection of Laws under No 394/2004.

³⁸⁵ Published in the Collection of Laws under No 395/2004.

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).

Section 4(1)(c) 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 training for the defence of the State by soldiers of voluntary military training, the training for the exercise of extraordinary service in the armed forces of the Slovak Republic, and the exercise of tasks of armed forces by reservists who are categorised as active reservists.'

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.³⁸⁶ 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.³⁸⁷

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, but is prohibited as mentioned above under the open-ended list of prohibited grounds of discrimination contained in the Anti-discrimination Act.

³⁸⁶ Slovakia, Act on the residence of foreigners, 404/2011 and Slovakia, Asylum Act 480/2002. Both of these acts regulate legal status, conditions for granting permission for business activities, employment, study and stay of foreigners and asylum seekers.

³⁸⁷ Slovakia, Anti-discrimination Act, 365/2004, Section 4(1)(a).

b) Relationship between nationality and 'race or ethnic origin'

The Slovak language and Slovak legislation draw a distinction between citizenship, nationality (*národnosť*) and ethnicity.

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. Discrimination against migrants/foreigners would come under the ground of nationality (as in citizenship) and/or race.

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).³⁸⁸ 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.

There is no case law on potentially discriminatory provision of family benefits with regard to marital and/or family status. The 'Action Plan for LGBTI People for 2016-2019' published by the Ministry of Justice in 2015 generally also aimed to address the barriers that unmarried couples face in realising their rights and its measures included a proposal for relevant legislative changes, if necessary. However, as of the end of 2017, the action plan has not yet been adopted (see chapter 9).

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.

³⁸⁸ Slovakia, Labour Code, 311/2001, Section 13.

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 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).³⁸⁹ 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)

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

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.

The Labour Code provides some extra protection to workers with disabilities, for example there are special conditions for employers when giving the notice to an employee with health disability and setting working time.³⁹⁰

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).

a) 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).

³⁸⁹ See Slovakia, Labour Code, 311/2001, Section 141(2)(b).

³⁹⁰ Slovakia, Labour Code, 311/2001, Sections 66, 68 (3), 87(3), 158 and 159.

b) 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 2007³⁹¹ (upheld by a judgment of the Regional Court Banská Bystrica of 27 March 2008),³⁹² 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

³⁹¹ District Court Banská Bystrica, No. 8C/119/2006 – 107, 20 November 2007.

³⁹² Regional Court Banská Bystrica, No. 12 Co/6/08, 27 March 2008. 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.

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, 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.

There are other similar cases in the Slovak legal system where an employment relationship must or may 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*³⁹³ is not applicable to Slovakia).

c) Fixing of ages for admission or entitlements to benefits of occupational pension schemes

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) of Directive 2000/78.

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.³⁹⁴ 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, the Fire and Rescue Service, voluntary military training, training for the exercise of extraordinary service in the armed forces, and the exercise of tasks of armed forces by reservists who are categorised as active reservists.³⁹⁵

³⁹³ CJEU, C-447/09 *Reinhard Prigge and Others v Deutsche Lufthansa AG*, judgment of 13 September 2011.

³⁹⁴ Slovakia, Anti-discrimination Act, 365/2004, Section 8(4).

³⁹⁵ Slovakia, Anti-discrimination Act, 365/2004, Sections 4(1)(b) and 4(1)(c).

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.³⁹⁶

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.³⁹⁷

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 employee³⁹⁸ 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

³⁹⁶ Slovakia, Labour Code, 311/2001, Sections 172 and 173.

³⁹⁷ Government Regulation No 286/2004 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*).

³⁹⁸ 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)).

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 acquired their first regularly paid job after completing the training.³⁹⁹

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 129.66 as of July 2017).⁴⁰⁰

The act also introduced a 'subsidy for the employment of a disadvantaged job seeker'.⁴⁰¹ An employer who creates a new workplace and employs a 'disadvantaged job seeker' is entitled to a subsidy of up to 40 % (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.

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).⁴⁰²

Other laws regulate, for example, the minimum age limit for a work assistant for a person with a disability (18 years),⁴⁰³ the minimum age of a prosecutor (25 years),⁴⁰⁴ the general

³⁹⁹ Slovakia, Employment Services Act, 5/2004, Section 8.

⁴⁰⁰ Slovakia, Employment Services Act, 5/2004, Section 51.

⁴⁰¹ Slovakia, Employment Services Act, 5/2004, Section 50.

⁴⁰² See Articles 74, 103, 134, 145 and 151a of the Constitution of the Slovak Republic.

⁴⁰³ Slovakia, Employment Services Act, 5/2004, Section 59(3).

⁴⁰⁴ Slovakia, Act No 154/2001 on Prosecutors and Prosecutor Candidates, as amended (*zákon č. 154/2001 Z. z. o prokurátoroch a právnych čakatel'och prokuratúry v znení neskorších predpisov*), Section 6.

prosecutor (40 years)⁴⁰⁵ and judges (30 years – see also section 4.7.1 above).⁴⁰⁶ The President may, upon a recommendation of the Judicial Council, withdraw a judge who has reached the age of 65.⁴⁰⁷ 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.⁴⁰⁸ 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).⁴⁰⁹

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.⁴¹⁰

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). Therefore, although a pension can be deferred in principle if an individual wish to work longer (since no-one can be compelled to collect their pension), pensions are not being deferred in practice because receiving income from a wage or salary and a pension simultaneously is allowed.

The age of entitlement to a state pension is fixed by law. Under the Social Insurance Act,⁴¹¹ 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).⁴¹²

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.

⁴⁰⁵ Slovakia, Act No. 153/2001 on Prosecution, as amended (*zákon č. 153/2001 Z. z. o prokuratúre v znení neskorších predpisov*), Section 7(3).

⁴⁰⁶ Slovakia, Act No 385/2000 on Judges and Lay Judges and on Amending and Supplementing Certain Acts, as amended (*zákon č. 385/2000 Z. z. o sudcoch a prísediacich a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*), Section 11.

⁴⁰⁷ Article 147(2)(b) of the Constitution of the Slovak Republic.

⁴⁰⁸ Slovakia, Labour Code, 311/2001, Section 11.

⁴⁰⁹ Slovakia, Small Business Act, 455/1991, Section 6.

⁴¹⁰ Slovakia, Employment Services Act, 5/2004, Section 51.

⁴¹¹ Slovakia, Social Insurance Act, 461/2003.

⁴¹² Slovakia, Social Insurance Act, 461/2003, Section 65.

In special circumstances an individual can start to collect their pension early.⁴¹³ 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).⁴¹⁴

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). Therefore, although a payment from an occupational pension scheme can be deferred in principle if an individual wishes to work longer (since no-one can be compelled to collect their occupational pension), in practice these payments are not being deferred because gaining income from a wage or salary and an occupational pension scheme simultaneously is allowed.

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.

The functioning of the occupational social security schemes in Slovakia is regulated by Act 650/2004 on Supplementary Pension Saving⁴¹⁵ (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.

⁴¹³ Slovakia, Social Insurance Act, 461/2003, Section 67. 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.

⁴¹⁴ See Slovakia, Social Insurance Act, 461/2003, Section 67(4), in conjunction with Section 4(1)(d).

⁴¹⁵ Slovakia, Act No 650/2004 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).

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.

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 65.⁴¹⁶

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.⁴¹⁷

There are otherwise no state-imposed mandatory retirement ages.

There is no case law on the issue.

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.

⁴¹⁶ See Article 147(2)(b) of the Constitution of the Slovak Republic, and Slovakia, Act on Judges and Lay-Judges, 385/2000, Section 18(2)(b) and Section 18(3).

⁴¹⁷ See Slovakia, Act on prosecutors and prosecutor candidates, 154/2001, Sections 14-17 for more detailed information.

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.⁴¹⁸

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 CJEU case law on age regarding compulsory retirement (e.g. *Palacios de la Villa*).⁴¹⁹ 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 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).⁴²⁰

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

⁴¹⁸ Slovakia, Anti-discrimination Act, 365/2004, Section 8(7)(a).

⁴¹⁹ CJEU, C-411/05 *Félix Palacios de la Villa v. Cortefiel Servicios SA*, judgment of 16 October 2007.

⁴²⁰ Slovakia, Labour Code, 311/2001, Section 76.

in the fixing of different age limits in such schemes for [different]⁴²¹ 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 below 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.⁴²²

⁴²¹ 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.

⁴²² Slovakia, Labour Code, 311/2001, Section 66. 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 permitted in national law. Positive action in respect of religion or belief and sexual orientation is not permitted 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.⁴²³ 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.'⁴²⁴

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'.⁴²⁵

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.⁴²⁶ The temporary equalising measures can only be adopted in the fields falling under the material scope of the Anti-discrimination Act⁴²⁷ (employment and occupation, social security and social advantages, healthcare, education and access to and provision of goods and services including housing).⁴²⁸ 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.⁴²⁹

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).⁴³⁰ According to the Centre, so far no body provided information about taking such measures, although in the most recent research published by the Centre in 2016, 8.93 % of the bodies that are entitled to adopt these measures that were questioned (the sample was 1 198 entities), informed the Centre that they are adopting or have

⁴²³ This provision gained its current shape after an amendment of the Anti-discrimination Act by Act No 32/2013 of 5 February 2013, effective from 1 April 2013.

⁴²⁴ Slovakia, Anti-discrimination Act, 365/2004, Section 8a (1), first sentence.

⁴²⁵ Slovakia, Anti-discrimination Act, 365/2004, Section 8a (1), second sentence.

⁴²⁶ Slovakia, Anti-discrimination Act, 365/2004, Section 8a (2).

⁴²⁷ Slovakia, Anti-discrimination Act, 365/2004, Section 8a (3), first sentence.

⁴²⁸ Slovakia, Anti-discrimination Act, 365/2004, Sections 3(1), 6 and 5.

⁴²⁹ Slovakia, Anti-discrimination Act, 365/2004, Section 8a (3), second sentence.

⁴³⁰ Slovakia, Anti-discrimination Act, 365/2004, Section 8a (4).

adopted temporary equalising measures in the past. Out of those questioned, as many as 55.18 % reported that they do not know the term 'temporary equalising measures' at all.⁴³¹

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:

'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.'⁴³²

The Constitutional Court decided in 2005 that the former Section 8(8) of the Anti-discrimination Act was not in compliance with the Constitution.⁴³³ 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) in cooperation with the Ministry of Justice initiated the formation of 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.⁴³⁴

⁴³¹ See Slovak National Centre for Human Rights (2016), *Monitorovanie a vyhodnocovanie účinnosti dočasných vyrovnávacích opatrení v podmienkach Slovenskej republiky* (Monitoring and Evaluation of the effectiveness of temporary equalizing measures in Slovakia 2016), available at: http://www.snslp.sk/CCMS/files/DVO_Vyskum_FINAL.pdf (accessed 25 January 2018).

⁴³² Slovakia, Anti-discrimination Act, 365/2004, Section 8(8), as adopted on 20 May 2004.

⁴³³ Decision of the Constitutional Court, PL. ÚS 8/04, 18 October 2005, <http://www.concourt.sk/> (accessed 25 January 2018).

⁴³⁴ Lajčáková, J. (2015) *Prijímanie dočasných vyrovnávacích opatrení na základe etnicity, národnosti, pohlavia alebo rodu na Slovensku: PRÍRÚČKA* (Adopting Temporary Equalising Measures with Regard to Ethnicity,

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 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 is 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' and for children who 'on reaching the age of six do not have the capacity for school attendance and come from socially disadvantaged backgrounds'. Although seemingly formulated 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 classes/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.

As a broad policy measure in the field of health, there is a programme of health mediators ('health awareness assistants') based in marginalised Roma communities. Currently this programme is being implemented with support from the European Social Fund through the operational programme: employment and social inclusion.

Currently the project employs 213 Roma health mediators working in 218 locations and 22 coordinators. Roma health mediators 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 health mediators cooperate with more than 750 doctors and 100 kindergartens and elementary schools).^{435 436}

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 employees⁴³⁷ 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

Nationality, Sex or Gender in Slovakia: GUIDELINES), Centrum pre výskum etnicity a kultúry, available at <http://cvek.sk/publikacie/> (accessed 25 January 2018).

⁴³⁵ Some information about the project can be found in English at <http://www.zdravekomunity.sk/?q=en> (last accessed 21 February 2018).

⁴³⁶ See press release published by the Platform for Supporting the Health of Disadvantaged Communities available on the website of this programme from November 2016. Available at: <http://zdravekomunity.sk/sk/projekt-ktory-je-pre-ine-krajiny-prikladom-konci-kvoli-byrokratickym-prietahom> (accessed 10 March 2017).

⁴³⁷ Excluding some categories of employees such as members of the police, prison guards, firefighters etc.

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. The levy is a public revenue and is not redistributed further to e. g. support the employment of people with disabilities. According to the recent statistics on this special quota, covering the year 2016: 7 546 employers met their legal obligation in this regard by ensuring that at least 3.2 % of their workforce is made up of people with disabilities; 1 588 employers met the obligation by buying goods or services from a sheltered workshop or a sheltered workplace or a self-employed person with a disability; and 809 employers met the obligation by paying a levy to the labour office.⁴³⁸ The percentage of employers meeting this legal obligation by ensuring that at least 3.2 % of their workforce is made up of people with disabilities is similar to the previous year, 2015, (approximately 75 %). It is obvious that most employers met the obligation by actively hiring people with disabilities, which can be considered to be a positive development. The statistics for 2017 are not yet publicly available.

An innovative initiative has been pursued by the company Accenture, which supports equality in the workplace and implements an inclusion and diversity plan. Among other employers, Accenture has a policy of zero tolerance of hate against minorities. It created pride network to provide support to its LGBT employees. The company also introduced equality in family benefits for LGBT employees and provides them with, for example marriage allowance and childbirth allowance (which they are entitled to receive under the domestic legislation).⁴³⁹

There are no specific measures related to discrimination on the ground of religion and belief.

To the best knowledge of the author of this report there are no specific measures related to migrants (third-country nationals and stateless persons who are currently residing in Slovakia).

⁴³⁸ Response of the Central Office of Labour, Social Affairs and Family of 20 April 2018 to a request for information of 18 April 2018 (on file with the author). The statistics were provided on demand and are not available online.

⁴³⁹ See more details at <http://www.nadaciapontis.sk/clanok/tieto-firmy-postupili-do-finale-via-bona-slovakia/2600> (accessed 21 February 2018).

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.⁴⁴⁰ 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.

Civil judicial proceedings under the Anti-discrimination Act follow the Civil Dispute Act,⁴⁴¹ which contains some special provisions on anti-discrimination proceedings. The act is a general civil dispute procedural code, with deviations for, inter alia, proceedings concerning alleged violations of the principle of equal treatment. The act introduces the concept of 'Disputes with Protection of a Weaker Party' where it departs from some of the general rules contained in the act, with the aim of mitigating the power imbalance between the parties to such proceedings. Consumer disputes, anti-discrimination disputes, and individual labour disputes (including disputes connected to violations of the principle of equal treatment)⁴⁴² are the three types of disputes that incur protection of a weaker party.⁴⁴³ In the regulation of anti-discrimination disputes,⁴⁴⁴ the act refers to anti-discrimination legislation (in practice mainly the Anti-Discrimination Act),⁴⁴⁵ and stipulates that the procedural provisions contained in anti-discrimination legislation (e.g. on the burden of proof) take precedence over the Civil Dispute Act.⁴⁴⁶ Among the exemptions from the general procedural rules contained in the act that apply to anti-discrimination disputes are: a broader duty of the court to instruct the complainants on their rights;⁴⁴⁷ the ability of the court to seek evidence on its own initiative;⁴⁴⁸ the right of the complainant to submit evidence until the decision on the merits is delivered (as compared to other

⁴⁴⁰ Slovakia, Anti-discrimination Act, 365/2004, Section 9.

⁴⁴¹ Slovakia, Civil Dispute Act, 160/2015.

⁴⁴² Slovakia, Civil Dispute Act, 160/2015, Section 316(2).

⁴⁴³ Slovakia, Civil Dispute Act, 160/2015, Sections 290-323.

⁴⁴⁴ Slovakia, Civil Dispute Act, 160/2015, Sections 307-315.

⁴⁴⁵ Slovakia, Civil Dispute Act, 160/2015, Section 307.

⁴⁴⁶ Slovakia, Civil Dispute Act, 160/2015, Section 315(2).

⁴⁴⁷ Slovakia, Civil Dispute Act, 160/2015, Section 309.

⁴⁴⁸ Slovakia, Civil Dispute Act, 160/2015, Section 311.

proceedings where the period for submitting evidence is shorter);⁴⁴⁹ and the duty of courts to conduct hearings in all anti-discrimination proceedings (except for when the complainant agrees to omitting the hearing).⁴⁵⁰ The act also introduces a provision entitling NGOs and the Slovak National Centre for Human Rights to represent complainants when referring an extraordinary appeal to the Supreme Court (in disputes concerning violations of the principle of equal treatment).⁴⁵¹

- 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 (discrimination falls under such conduct).⁴⁵² 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. Furthermore, the facts stated in documents issued by public bodies within their powers and public documents are considered to be truthful, if the opposite has not been proved to be the case.⁴⁵³

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 and moreover, in most cases there is a lack of effective methodology for identifying discrimination (see section 6.3 of this report for more information).

In recent years, the Slovak Trade Inspectorate has made certain progress in effectively resolving complaints concerning discrimination. In some cases of discrimination against Roma in access to services, the Trade Inspectorate even used situation testing to uncover discrimination, in cooperation with the NGO, the Centre for Civil and Human Rights, which has experience in conducting situation testing. According to the statistics provided, in 2017, the Slovak Trade Inspectorate received 24 complaints concerning discrimination. In most of these cases, discrimination was not identified during the checks, but in at least two cases it identified racial discrimination against Roma in access to services and imposed fines of EUR 1 000 and EUR 1 200.⁴⁵⁴ Arguably, the amount of the fines for discrimination remains low and may not have a sufficient deterrent effect (for more details see also chapter 2.2.1 on situation testing).

The National Labour Inspectorate has not yet summarised the statistics on complaints concerning discrimination received in 2017. According to the most recent available data,

⁴⁴⁹ Slovakia, Civil Dispute Act, 160/2015, Section 312.

⁴⁵⁰ Slovakia, Civil Dispute Act, 160/2015, Section 314.

⁴⁵¹ Slovakia, Civil Dispute Act, 160/2015, Section 429(2)(b).

⁴⁵² Slovakia, Act No 9/2010 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.

⁴⁵³ Slovakia, Civil Dispute Act, Sections 193 and 205.

⁴⁵⁴ Response of the Slovak Trade Inspectorate of 1 March 2018 to a request for information of 23 February 2018 (on file with the author).

in 2016, the inspectorate received 129 complaints concerning discrimination in the area of employment, from which 27 complaints were found justified as a result of the checks conducted. The National Labour Inspectorate does not document statistics concerning the sanctions imposed specifically for discrimination.⁴⁵⁵

The decisions of inspectorates are 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.

- Mediation

The Anti-discrimination Act makes explicit reference to the right of people suffering breaches of the principle of equal treatment to mediation.⁴⁵⁶ The process of mediation is regulated by the Act on Mediation,⁴⁵⁷ 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.⁴⁵⁸ If the agreement is written in the form of notary minutes or approved by a court, it is also legally enforceable.⁴⁵⁹

- 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.⁴⁶⁰ 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 period.⁴⁶¹

⁴⁵⁵ Response of the National Labour Inspectorate of 19 February 2018 to a request for information of 9 February 2018 (on file with the author).

⁴⁵⁶ Slovakia, Anti-discrimination Act, 365/2004, Section 9(5).

⁴⁵⁷ Slovakia, Act No 420/2004 on Mediation and supplementing certain acts (*zákon č. 420/2004 Z. z. o mediácii a o doplnení niektorých zákonov*).

⁴⁵⁸ Slovakia, Mediation Act, 420/2004, Section 15(1).

⁴⁵⁹ Slovakia, Mediation Act, 420/2004, Section 15(2).

⁴⁶⁰ Meaning two months after the (invalidly terminated) employment relationship would have ended (as a consequence of the invalid termination). See Slovakia, Labour Code, 311/2001, Section 77.

⁴⁶¹ See the judgment of the Supreme Court of the Slovak Republic, No. 2 Cdo 278/2007, 1 November 2008.

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 an 'exemption can be granted if the situation of the party to the proceeding justifies it'.⁴⁶²

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.

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,⁴⁶³ 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.⁴⁶⁴ The threshold for entitlement to free legal aid or for legal aid with a symbolic financial contribution from the person affected is relatively low,⁴⁶⁵ 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).⁴⁶⁶

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 (for more details see chapter 7 of this report). Out of 70 complaints of discrimination received in 2017, the Centre found the breach of the principle of equal treatment in relation to nine complaints and provided legal representation before courts in only two new cases of discrimination (on the grounds of language in conjunction with other status).⁴⁶⁷

There is no obligatory legal representation in proceedings concerning discrimination (apart from proceedings before the Constitutional Court).

In 2012, the Centre for Civil and Human Rights, a Slovak NGO active in the field of non-discrimination, published a study of access barriers to efficient legal protection against

⁴⁶² Slovakia, Civil Dispute Act, 160/2015, Section 254.

⁴⁶³ Slovakia, Act No. 327/2005 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*).

⁴⁶⁴ Slovakia, Act on providing legal aid to persons in material need, 327/2005, Section 3(1).

⁴⁶⁵ Slovakia, Act on providing legal aid to persons in material need, 327/2005, Sections 6 and 6a.

⁴⁶⁶ 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.).

⁴⁶⁷ Response of the Centre of 21 January 2018 to a request for information of 10 January 2018 filed by the NGO Centre for Civil and Human Rights (the author cooperates with the NGO and holds the responses on file). In 2016, the Centre provided representation in case No. 7 Cpr/2/2014 pending before the Regional Court in Prešov, case No. 6 cpr/4/2015 pending before the District Court in Humenné and case No. 19 c 446/2015 currently pending before the Regional Court in Bratislava. In 2017 provided legal representation in two new additional cases pending before the courts.

discrimination.⁴⁶⁸ 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.'⁴⁶⁹

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 the numbers of cases of discrimination decided by Slovak courts and any corresponding statistics, the ministry presented data in relation to 10 (final) judicial decisions delivered by district courts in the first half of 2017. The information provided by the ministry included the name of the court, the file number, how the court decided the case (if the claim was dismissed or not) and a date when the decision became final. Out of 10 cases the court ruled in favour of claimant in only three cases and one case has been settled. In addition, the Ministry of Justice expressed its concerns about data collection by some courts, as it checked the data provided, some of which turned out to be inaccurate (the Ministry found that some courts identified some case as antidiscrimination disputes, but when the Ministry reviewed a file it turned out that the case does not concern discrimination). According to the ministry this practice of the courts hampers the development of an accurate case law database. The ministry now analyses the further possibilities how to improve data collection by the ordinary courts in this regard.⁴⁷⁰

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

⁴⁶⁸ 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 <https://www.poradna-prava.sk/sk/dokumenty/diskriminacia-na-slovensku-hladanie-barier-v-pristupe-k-ucinnej-pravnej-ochrane-pred-diskriminaciou/> (accessed 08 February 2018).

⁴⁶⁹ 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. 27-49 and p. 129.

⁴⁷⁰ Response from the Ministry of Justice of 19 February 2018 to a request for information of 8 February 2018 (on file with the author).

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 2004⁴⁷¹ and 31 January 2012, pursuant to the Anti-discrimination Act).⁴⁷² The Centre for Civil and Human Rights found that about 120 proceedings relating to discrimination had been concluded in the period covered.⁴⁷³ 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 courts⁴⁷⁴ (the ordinance does not cover the Supreme Court and the Constitutional Court where many discrimination cases end). The courts also register further criteria relevant from the perspective of discrimination such as the ground of discrimination, the field and the remedies sought. In practice, the courts do not record cases of discrimination properly in the registers, a fact that has been admitted by the Ministry of Justice. 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.⁴⁷⁵

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 relating to discrimination that are known to the author of this report are not available online and many of the decisions published in the online register do not appear in the statistics provided by the Ministry of Justice to the author of this report.⁴⁷⁶

⁴⁷¹ The date of the Anti-discrimination Act coming into force.

⁴⁷² 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. 69-104 and pp. 131-133.

⁴⁷³ 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.

⁴⁷⁴ Slovakia, Decree of the Ordinance of the Ministry of Justice of the Slovak Republic No 543/2005 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*) Section 148(4). The so-called Special Court and military courts are all criminal courts not relevant for this report.

⁴⁷⁵ See response of the Ministry of Justice of 19 February 2018 to a request for information of 8 February 2018 (on file with the author); 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, pp. 57-63. The publication is also available at <http://www.poradna-prava.sk/site/assets/files/1114/diskriminacia-na-slovensku.pdf>, accessed 25 January 2018.

⁴⁷⁶ The author of this report used the facility of a full text search in the online register published by the Ministry of Justice, using the term 'violation of principle of equal treatment'. Accordingly in 2017, 67 decisions were listed (including the decisions of the Supreme Court), although some of them are missing from the statistics provided by the Ministry of Justice in its response of 19 February 2018 to a request for information of 8 February 2018.

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 website.

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

a) Engaging 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.

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.⁴⁷⁷

According to the Section 308 of the Civil Dispute Act, the parties in anti-discrimination disputes can be represented by a person (or legal entity) authorised by anti-discrimination legislation.⁴⁷⁸

In all civil proceedings related to individual employment relations, a party to the proceedings can be represented by trade union organisation.

Associations can represent victims in civil proceedings before ordinary courts, but not before the Constitutional Court. The fact that NGOs cannot represent victims of discrimination before the Constitutional Court ultimately makes such representation in some cases inadequate and inefficient.

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'.⁴⁷⁹ 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. In proceedings before administrative courts concerning judicial review of administrative decisions, the NGOs, trade unions and some other legal entities can represent the party to the proceedings.⁴⁸⁰

⁴⁷⁷ Slovakia, Civil Dispute Act, 160/2015, Section 317.

⁴⁷⁸ Slovakia, Civil Dispute Act, 160/2015, Section 308.

⁴⁷⁹ Slovakia, Administrative Code, 71/1967, Section 17(1).

⁴⁸⁰ Slovakia, Administrative Judicial Act, 162/2015, Section 50.

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.⁴⁸¹ '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'.⁴⁸²

b) Engaging 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 95 of the Civil Dispute Act, 'the court can also without any proposal invite into the court proceeding a public body whose aim is protection of fundamental rights and freedoms or legal entity which is entitled to rights protection, to engage in proceedings, if the relevant party agrees.'⁴⁸³

These provisions make it possible for the Slovak National Centre for Human Rights and NGOs (and possibly also trade unions) to engage in support of victims of discrimination.

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 Rights⁴⁸⁴ 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).

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

⁴⁸¹ Slovakia, Criminal Procedure Code, 301/2005, Section 53.

⁴⁸² Slovakia, Act No 308/1993 on Establishing the Slovak National Centre for Human Rights (*zákon č. 308/1993 Z. z. o zriadení Slovenského národného strediska pre ľudské práva*), Section 1(2)(e).

⁴⁸³ Slovakia, Civil Dispute Act, 160/2015, Section 95.

⁴⁸⁴ 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. In 2017, the centre issued 22 expert opinions.

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 initiated proceedings by using *actio popularis* so far in cases of indirect discriminatory legal provision of the Childbirth Allowance Act and in cases of segregation of Roma children in education and Roma women in maternity wards. The Slovak National Centre for Human Rights has so far not initiated any *actio popularis* proceedings.

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.

According to Section 75 of the Civil Dispute Act, in cases where more than 10 subjects are party to the proceedings, the court can decide that only one subject should represent the group.⁴⁸⁵

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’. 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.

⁴⁸⁵ Slovakia, Civil Dispute Act, 160/2015, Section 75.

The Constitutional Court has provided this interpretation of the shift in the burden of proof:

'burden 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.'⁴⁸⁶

In 2015, the Constitutional Court provided some additional clarifications in relation to selected aspects of the burden of proof in anti-discrimination proceedings.⁴⁸⁷ The court emphasised the specificities of anti-discrimination proceedings, which are very demanding in terms of evidence assessment. It also pointed to the specific distribution of the burden of proof where the 'claimant is supposed to communicate to the court the facts which give rise to a reasonable assumption (i.e. not an unquestionable settlement) that a violation of the principle of equal treatment occurred',⁴⁸⁸ which establishes the shift of the burden of proof on to the defendant. Whether the burden of proof gets shifted or not depends on the quality of the assessment of the evidence available – from the point of view of whether the deciding court has thoroughly considered all facts that emerged in the proceedings.⁴⁸⁹ The Constitutional Court, referring to case law from the Czech Constitutional Court,⁴⁹⁰ also held that 'the requirement for the claimant to prove that their discrimination has taken place because of their racial (ethnic) origin and not for another reason can apparently not be fulfilled since proving the motivation (incentive) of the defendant is simply impossible, due to the nature of the issue itself'.⁴⁹¹ Thus, the Constitutional Court confirmed that the claimant does not have to establish the motivation/incentive (the Constitutional Court uses both of these words) of the defendant to discriminate.

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'. The Constitutional Court did not provide any comprehensive test on assessing the level of probability of discriminatory treatment. According to the author of this report, this practice is in violation of CJEU case law (for example *CHEZ Razpredelenie Bulgaria* C-83/14.).⁴⁹²

⁴⁸⁶ Finding of the Constitutional Court, No IV. ÚS 16/09, 30 April 2009, available at: https://www.ustavnysud.sk/documents/10182/992376/95_09a.pdf/13520fbb-1782-46cd-9402-76137529c669 (accessed 25 January 2018).

⁴⁸⁷ Finding of the Constitutional Court of the Slovak Republic, No III. ÚS 90/2015-40, 1 December 2015.

⁴⁸⁸ This wording (except for the words in the brackets) is contained in Section 11(2) of the Anti-discrimination Act.

⁴⁸⁹ Finding of the Constitutional Court of the Slovak Republic, No III. ÚS 90/2015-40, 1 December 2015, p. 15.

⁴⁹⁰ Finding of the Constitutional Court of the Czech Republic, No Pl. ÚS 37/04, 26 April 2006.

⁴⁹¹ Finding of the Constitutional Court of the Slovak Republic, No III. ÚS 90/2015-40, 1 December 2015, pp. 17-18.

⁴⁹² Finding of the Constitutional Court, No II. ÚS 383/2013-16, *V. S. v Primary School of Ivan Branislav Zoch in Revúca*, 10 July 2013. 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 implementation of this measure by Slovak courts is still problematic in practice. The UN Committee of the Elimination of Racial Discrimination in its decision against Slovakia concerning an individual case of discrimination against a Roma woman in accessing employment has also highlighted this fact and recommended that the State fully enforce its Anti-discrimination Act through the enhancement of available court proceedings for victims of racial discrimination by ensuring, inter alia, that the principle of shifted burden of proof is applied in line with Article 11 of the Anti-discrimination Act.⁴⁹³ The improper implementation of shifting the burden of proof has also been challenged by the decision of the UN Committee on the Elimination of Discrimination against Women, in its view adopted on 16 November 2016 of *D.S. v. Slovakia*, a case of discrimination against a woman in employment on the grounds of her family status and sex (illegal dismissal upon her return to workplace from parental leave).⁴⁹⁴

The Act on Labour Inspection⁴⁹⁵ does not contain any explicit and clear provisions on the burden of proof in relation to identifying breaches of the principle of equal treatment.

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.⁴⁹⁶ 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.⁴⁹⁷ The only procedural guarantee against victimisation is included in the Anti-discrimination

⁴⁹³ See CERD (2015), 'Opinion of the UN Committee on the Elimination of Racial Discrimination in the case of *V.S. v. Slovakia*', Communication no. 56/2014 from 16 December 2015, para 7.4. and 9, available at <https://www.poradna-prava.sk/en/documents/opinion-of-the-cerd-in-the-case-of-v-s/> (accessed 25 January 2018).

⁴⁹⁴ See CEDAW (2016), 'Views of the UN Committee on the Elimination of All Forms of Discrimination Against Women in *D.S. v. Slovakia*', Communication no. 66/2014, adopted on 21 November 2016, available at <https://www.poradna-prava.sk/en/documents/views-adopted-by-the-cedaw-committie-in-the-case-of-d-s/> (accessed 25 January 2018).

⁴⁹⁵ Slovakia, Act No 125/2006 on Labour Inspection and changing and supplementing Act No 82/2005 on Illegal Work and Illegal Employment and changing and supplementing certain laws, as amended (*zákon č. 125/2006 Z. z. o inšpekcií 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*).

⁴⁹⁶ Slovakia, Anti-discrimination Act, 365/2004, Section 2a (8).

⁴⁹⁷ Slovakia, Complaints Act, 9/2010, Sections 7 and 8. These sections stipulate 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. The other law is the Labour Code, Section 13(3), which states that no person may 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, Employment Services Act, Higher Education Act, the Schools Act and the Healthcare Act.

Act. A case of victimisation has recently been decided by domestic courts. The case concerned a Roma woman who claimed to be discriminated against in her workplace on the ground of her Roma ethnic origin. Among other forms of discrimination, she also pointed out that direct discrimination and harassment against her resulted in victimisation after she repeatedly complained to the employer about how she was treated. The district and regional courts dismissed this lawsuit. The case is now pending before the European Court of Human Rights in Strasbourg.⁴⁹⁸

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 claimed.⁴⁹⁹ There is no difference in the procedure, whether a public or private entity is being sued.

Since the list of possible claims is non-exhaustive, other possible claims include determining (by the court) that the principle of equal treatment has been violated, or declaring a job termination invalid.⁵⁰⁰

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 000⁵⁰¹ (and in some cases up to EUR 200 000)⁵⁰² 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.⁵⁰³ As for access to employment, the offices of labour, social affairs and family are entitled to investigate complaints regarding potentially discriminatory job announcements.⁵⁰⁴ If the labour office finds violation, it can impose a fine up to EUR 33 193.91. In practice, the labour offices face difficulties in identifying the entity which published the discriminatory announcement and that is why they cannot sanction the responsible person and/or company. The liability of advertising agency is not examined.⁵⁰⁵ In education, the competent body is the State

⁴⁹⁸ Decision of the District Court Košice II, No. 20C68/2012-350, 8 September 2015 and decision of the Regional Court in Košice, No. 2Co/657/2015 – 379, of 13 December 2016.

⁴⁹⁹ Slovakia, Anti-discrimination Act, 365/2004, Section 9.

⁵⁰⁰ The Slovak courts do not have a problem with declaring that the principle of equal treatment has been violated (and the Supreme Court confirmed the legitimacy of this claim in its decision of 22 February 2012, No. 5 Cdo 257/2010). With regard to invalidity of job termination (for the reason of discrimination) and the subsequent wage compensation, the Supreme Court held that these are possible claims (decision of the Supreme Court of Slovakia, No 5 Cdo 56/2014, 24 March 2015, p. 8).

⁵⁰¹ Slovakia, Labour Inspection Act, 125/2006, Section 19(1)(a).

⁵⁰² Slovakia, Labour Inspection Act, 125/2006, Section 19(2)(b)(1) in conjunction with Section 19(3)(c).

⁵⁰³ Slovakia, Labour Inspection Act, 125/2006, Section 19(1)(c).

⁵⁰⁴ Slovakia, Employment Act, 5/2004, Sections 12 and 13 in conjunction with Section 62 para 2

⁵⁰⁵ For example in some cases the announcement makes a statement such as 'Alcoholics, lazy people and Roma do not call!' but only a phone number is published and according to the domestic legislation the

School Inspectorate. If the liable employee of a school or a school facility fails to remove the deficiencies identified by the inspection, they will be fined up to EUR 331.50.⁵⁰⁶

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. In practice, fines for discrimination imposed by the Slovak Trade Inspectorate in 2017 were up to EUR 1 200. According to the assessment of the author of this report, most of the fines are about EUR 1 000 for the most common offences, such as not providing a bill to a customer, selling goods after their expiration period or not providing proper and visible information about selling goods. In this regard, it can be concluded that the Trade Inspectorate considers racial discrimination to be a somewhat more serious offence imposing fines over EUR 1 000. Nevertheless, the fines for discrimination have so far proven to be not effective or sufficiently dissuasive in practice.⁵⁰⁷

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, although the Supreme Court has already held that it is also applicable in anti-discrimination proceedings – see section 6.1 above). According to Section 79(2) of the Labour Code,

‘if 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.’

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 provided⁵⁰⁸ 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 study, published in 2012 by an NGO, the Centre for Civil and Human Rights,⁵⁰⁹ offers some information on the amounts of compensation for non-pecuniary damage that have been

mobile operator and police are not obliged to provide the labour office with the personal data of the phone holder.

⁵⁰⁶ Slovakia, Act No 596/2003 on State Administration of the School System and School Self-Governance, Section 37a(2)(b).

⁵⁰⁷ Response of the Slovak Trade Inspectorate of 1 March 2018 to a request for information of 23 February 2018 (on file with the author).

⁵⁰⁸ Response of the Ministry of Justice of 19 February 2018 to a request for information of 8 February 2018 (on file with the author).

⁵⁰⁹ 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://www.poradna-prava.sk/site/assets/files/1114/diskriminacia-na-slovensku.pdf>, (accessed 8 February 2017).

granted by courts in cases of discrimination to date.⁵¹⁰ 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.⁵¹¹

There are no more recent complex data on the amounts of compensation awarded. The Ministry of Justice in its reply of 19 February 2018 to the author of this report did not provide any information about the amount of compensation granted by courts in cases that were finalised by effective judgments in the first half of 2017.

In a case of discrimination against Roma in access to a local bar, the court ordered the bar owner to pay the discriminated Roma financial compensation to the amount of EUR 300 each and legal costs. This is one of the first final court decisions in Slovakia in which the court has awarded non-pecuniary damage for racial discrimination in access to services – the total amount the defendant had to pay is EUR 600 for non-pecuniary damage and approximately EUR 1 800 in legal costs.⁵¹² In a case of discrimination against a Roma woman in access to employment decided by the first instance court in 2017,⁵¹³ the court awarded the claimant the amount of EUR 2 500 out of EUR 5 000 requested. The claimant did not find this amount to be appropriate compensation for the discrimination she faced, so she appealed the decision and a case is now pending before the Regional Court in Košice.⁵¹⁴ For more information see chapter 12.2 of this report.

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.⁵¹⁵

⁵¹⁰ 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. 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 not yet final.

⁵¹¹ 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. 98.

⁵¹² Decision of the District Court in Spišská Nová Ves, No. 1C 118/2010- 175, 25 April 2014 reaffirmed by the decision of the Regional Court in Košice, No. 6 Co 833/2014 – 223, 28 June 2016. More information on the case is available at <https://www.poradna-prava.sk/en/documents/press-release-the-slovak-court-ordered-a-bar-owner-to-pay-compensation-for-discrimination/> (accessed 25 January 2018).

⁵¹³ Decision of the District Court in Spišská Nová Ves, No 8 C 268/2016 – 523, 23 March 2017.

⁵¹⁴ After the cut-off date of this report, the Regional Court in Košice by its decision of 7 February 2018 (ref. No. 9Co 259/2017) upheld the decision of the District Court in Spišská Nová Ves, so it became final.

⁵¹⁵ 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.⁵¹⁶ 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.⁵¹⁷

The issue about the effectiveness, proportionality and dissuasiveness of sanctions remains relevant in respect to trade and labour inspectorates (see chapter 6.1).

⁵¹⁶ 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) reaffirmed by the decision of the Regional Court in Košice, No 6 Co 833/2014 – 223 from 28 June 2016, 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'.

⁵¹⁷ 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

On 1 July 2004, by the adoption of Anti-discrimination Act,⁵¹⁸ 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, Act 308/1993 on Establishing the Slovak National Centre for Human Rights ('Act on the Centre') was amended.⁵¹⁹

According to the Act on the Centre, the centre is an independent, non-judicial body, subsidised by the state. According to Section 1 of the Act on the Centre, the centre fulfils tasks in the field of fundamental rights and freedoms. 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;
- 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;
- carries out independent inquiries concerning discrimination.

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,⁵²⁰ and the board, which consists of nine independent members. 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.

- b) Political, economic and social context for the designated body

The position of the Government in relation to the National Centre for Human Rights can be generally characterised by two approaches, which resulted from the different political composition of the Government in respective election periods. The Government either gave no attention to the functioning and independence of the centre and possible deficiencies in this area or recognised the need to evaluate the setting up and functioning of the centre.

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*.⁵²¹ This report was the first of its kind ever produced by the Slovak Government and, more generally, the first attempt that has

⁵¹⁸ Slovakia, Act No. 365/2004 on Equal Treatment in Certain Areas and Protection against Discrimination and on amending and supplementing certain other laws as amended.

⁵¹⁹ Slovakia, Act No 308/1993 on Establishing the Slovak National Centre for Human Rights, as amended (zákon č. 308/1993 o zriadení Slovenského národného strediska pre ľudské práva v znení neskorších predpisov).

⁵²⁰ Slovakia, Act on the Centre, 308/1993, Section 3b(1) and (2).

⁵²¹ The report can be found at www.rokovania.sk/File.aspx/ViewDocumentHtml/Mater-Dokum-133077?prefixFile=m (accessed 25 January 2018).

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 regulations, 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.

Based on the findings of the report, the previous 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 to the Act on the Centre.

In November 2016, the Ministry of Justice under the new Government announced that it was already working on an amendment to the Act on the Centre, which would secure the compliance of the centre with the Paris principles that set international standards regarding the functioning of national human rights institutions. According to the most recent information, up to 31 March 2018, the Ministry of Justice is responsible for submitting the proposal for the institutional changes concerning the centre. The realisation of this task has been extended by the Prime Minister of the Slovak Government as representatives of the NGOs at the Government Council of the Slovak Republic for Human Rights, National Minorities and Gender Equity requested that the Ministry of Justice also propose a review of institutional safeguards on the protection and promotion of human rights in Slovakia.⁵²²

In the last three years the annual budget of the centre has been steady without any significant decrease or increase. The funding of the centre is fully covered from the state budget and the centre has no additional income from other sources:⁵²³

The overall budget of the centre in 2015: EUR 518 242; in 2016: EUR 548 242 (including income of EUR 30 000 specifically allocated for renewing internal database environment); and in 2017: EUR 553 242.

For 2018 the centre was granted EUR 565 356 from the state budget for all its expenses.

The centre does not consider its current financing from the state budget to be sufficient and stresses the importance of increasing its budget and personnel capacity so that it is able to fulfil all its tasks effectively. In this regard, it emphasises the recommendations of the international human rights bodies that highlight the insufficient financing and personnel of the centre.⁵²⁴ In particular, the recommendations of several UN treaty monitoring bodies from previous recent years address this issue.⁵²⁵

⁵²² Response of the Ministry of Justice of 22 January 2018 to a request for information of 10 January 2018 (on file with the author).

⁵²³ Response of the centre of 22 January 2018 to a request for information of 10 January 2018 (on file with the author).

⁵²⁴ Response of the centre of 22 January 2018 to a request for information of 10 January 2018 (on file with the author).

⁵²⁵ In its recent concluding observations from November 2016, the UN Human Rights Committee (HRC) noted with concern that the centre has a limited mandate and lacks independence, that there is a lack of transparency surrounding its recruitment procedures and the diversity of its members and staff, and that it has not been provided with adequate resources to carry out its functions. The Committee on the Elimination of Racial Discrimination (CERD) in its recent concluding observations from January 2018 noted with concern the lack of adequate resources for the centre and recommended that the Slovak Government provide it with adequate human, financial and technical resources to enable it to discharge its mandate effectively and independently. UN Human Rights Committee (2016), *Concluding Observations of the Human Rights Committee from October 2016*, (CCPR/C/SVK/CO/4), para. 8-9. Available at

The existing mechanism of financing the centre may arguably have a negative impact on its independence. As it is the Government that introduces the Act on the State Budget on an annual basis and the Parliament that approves the act, 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.

On a long-term and continuing basis, the centre is subject to criticism by NGOs, international human rights bodies and others who are active in the field of human rights particularly for its insufficient functioning and independence.⁵²⁶ In the last years these objections have been repeatedly highlighted in recommendations of the UN treaty monitoring bodies and other international human rights institutions.

c) Institutional architecture

The centre is a body with multiple mandates. Apart from its mandate as a body for the promotion of equal treatment, the centre has a mandate as the national human rights institution (NHRI). It was given this mandate by its establishment on 1 January 1994 following the Treaty on the Establishment of the Slovak National Centre for Human Rights between the Government of the Slovak Republic and United Nations.⁵²⁷ The centre is currently not in full compliance with the principles relating to the status of national human rights institutions for the promotion and protection of human rights (the Paris principles) and continues to be accredited with 'B' status. Its lack of compliance with these principles was most recently addressed in the concluding observations of the UN Committee on the Elimination of Racial Discrimination.⁵²⁸

There is no specific structure within the centre to address its equality and non-discrimination mandate. The centre has 16 employees in total (as of January 2018). Its multiple mandate as the body responsible for the promotion of equal treatment and as the national human rights institution (NHRI) is not structurally divided within the centre and according to working contracts, all employees of the centre carry out both mandates simultaneously. The centre notes that the ongoing lack of sufficient personnel does not

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSVK%2fCO%2f4&Lang=en (accessed 8 February 2018). UN Committee on the Elimination of Racial Discrimination (2018), *Concluding Observations of the Committee on the Elimination of Racial Discrimination from January 2018*, (CERD/C/SVK/CO/11/12), para. 7-8. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fSVK%2fCO%2f11-12&Lang=en (accessed 08 February 2018).

⁵²⁶ 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. Available at <https://www.poradna-prava.sk/sk/dokumenty/diskriminacia-na-slovensku-hladanie-barier-v-pristupe-k-ucinnej-pravnej-ochrane-pred-diskriminaciou/> (accessed 8 February 2018); 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. Available at <https://www.poradna-prava.sk/en/documents/written-comments-to-the-committee-on-the-elimination-of-racial-discrimination/> (accessed 8 February 2018); UN Human Rights Committee (2016), *Concluding Observations of the Human Rights Committee from October 2016*, (CCPR/C/SVK/CO/4), para. 8-9. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSVK%2fCO%2f4&Lang=en (accessed 8 February 2018). UN Committee on the Elimination of Racial Discrimination (2018), *Concluding Observations of the Committee on the Elimination of Racial Discrimination from January 2018*, (CERD/C/SVK/CO/11/12), para. 7-8. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fSVK%2fCO%2f11-12&Lang=en (accessed 08 February 2018).

⁵²⁷ Notice of the Ministry of Foreign Affairs of the Slovak Republic no. 29/1995.

⁵²⁸ UN Committee on the Elimination of Racial Discrimination (2018), *Concluding Observations of the Committee on the Elimination of Racial Discrimination from January 2018*, CERD/C/SVK/CO/11/12, para. 8-9.

allow for employees to specialize in only one mandate. The centre does not document any information concerning the percentage of the staff resources and budget dedicated to its equality mandate.⁵²⁹

According to the assessment of the author of this report, the centre carries out its equality mandate through different activities in accordance with the Act on the Centre, but the realisation of these activities is generally limited and insufficient. The centre is particularly inadequate in representing victims of discrimination in court proceedings. Its research and awareness-raising activities related to the equality mandate can also be considered to be insufficient, which may arguably result from its limited institutional capacity and staff. However, even considering the current institutional capacity and staff levels (16 employees), the overall fulfilment of the centre's equality mandate appears to be undersized and insufficient. In particular, the centre falls short of fulfilling its unique and valuable legal competences and specifically providing legal representation in anti-discrimination court proceedings. There are constant gaps in the implementation of domestic antidiscrimination legislation by courts in Slovakia and victims of discrimination face various barriers in access to justice. Addressing specific cases of discrimination by legal means is thus necessary for advancing the situation and it is likely that the centre may not sufficiently recognise this fact.

When assessing the limited number of discrimination cases in which the centre provided legal representation, it is clear that they largely target alleged discrimination in employment on the ground of 'other status' (within the open-ended grounds of discrimination given by the Anti-discrimination Act) at the expense of addressing pressing and widely documented discrimination in Slovak society especially on the grounds of gender and ethnicity.

So far the centre has completely ignored its legal competence to initiate public interest lawsuits on its own behalf (without the need for an individual complainant) with the aim of challenging structural discrimination affecting disadvantaged groups in Slovak society.

Since the centre does not document the staff capacity and time dedicated to fulfilling each element of its multiple mandate, it is not possible to assess the level of attention that it gives to the equality mandate. Furthermore, in its annual reports, the centre does not clearly structure activities carried out within its multiple mandate.

According to the professional assessment of the author of this report, the public visibility of the equality mandate of the centre remains generally low. The centre inadequately promotes its responsibilities as the equality body to the public. It lacks visibility in the Slovak media and is not sufficiently active in public discussion about human rights and equality issues, given its mandates. The centre also continues to be deficient in working with social media and visual content, which has also a negative impact on its overall public visibility.

d) Status of the designated body/bodies – general independence

i) Status of the body

The centre has separate legal status established by the Act on the Centre. According to the Act on the Centre, the centre is an independent, non-judicial body, subsidised by the state. 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,⁵³⁰ and the board, which consists of nine independent members. One member is appointed by the President of the Slovak

⁵²⁹ Response of the centre of 22 January 2018 to a request for information of 10 January 2018 (on file with the author).

⁵³⁰ Slovakia, Act on the Centre, 308/1993, Section 2(1) and (2).

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). Membership of the board is voluntary and the board members are only entitled to reimbursements of their cash expenses (see Section 3a(3) of the Act on the Centre).

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.

As regards the financing of the centre, according to the Treaty on the Establishment of the Slovak National Centre for Human Rights between the Government of the Slovak Republic and United Nations, 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.

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.)⁵³¹ 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 provision contained in the Act on the Centre that would set up mechanisms for implementing this accountability and/or controlling it).

ii) Independence of the body

Section 2(1) of the Act on the Centre stipulates that the centre is an independent legal entity. However, the factual independence of the centre in practice has been questioned by NGOs and international human rights bodies.⁵³²

e) Grounds covered by the designated body/bodies

The centre has a mandate to deal with all grounds covered by national law, i.e. 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, contained in Section 2(1) of the Anti-discrimination Act as well as some other grounds contained in other acts (unfavourable state of health, duties to family, membership of or involvement in a political party or political movement, a trade union or other association).

⁵³¹ See Slovakia, Act on the Centre, 308/1993, Section 3b(4), for more details.

⁵³² UN Human Rights Committee (2016), *Concluding Observations of the Human Rights Committee from October 2016*, (CCPR/C/SVK/CO/4), para. 8-9. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSVK%2fCO%2f4&Lang=en (accessed 8 February 2018). UN Committee on the Elimination of Racial Discrimination (2018), *Concluding Observations of the Committee on the Elimination of Racial Discrimination from January 2018*, (CERD/C/SVK/CO/11/12), para. 7-8. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fSVK%2fCO%2f11-12&Lang=en (accessed 08 February 2018).

The centre formally gives the same attention to all covered grounds within its work. According to the centre, due to its limited capacities, it is unable to give increased attention to any particular ground.⁵³³

According to the assessment of the author of this report, the centre does not prioritise any of the covered grounds; a significant number of cases in which the centre provided legal representation before courts or on which it issued legal opinions relate to discrimination in employment on the ground of 'other status' (mostly harassment against an employee by his or her supervising manager) and it is a failure of the centre that it has not sufficiently addressed pressing and widely documented discrimination in Slovak society on the grounds of ethnicity and gender. Given the limited staff and institutional capacity of the centre, prioritisation in dealing with the grounds of discrimination is necessary. However, this is not reflected in the centre's approach.

Although migrants, as a social group with certain characteristics, are not listed as a protected ground in the Anti-discrimination Act, the list of grounds included is not exhaustive and the protection of migrants from discrimination is covered by the Anti-discrimination Act. As such, protection of migrants from discrimination is also included in the centre's mandate.

The centre gave attention to the issue of discrimination against migrants in its report on the observance of human rights including the observance of the principle of equal treatment for the year 2015,⁵³⁴ which included recommendations for the state authorities to protect migrants from discrimination. Between 2015 and 2017 the centre carried out educational events for police officers on the protection of rights and the prevention of discrimination against migrants. In 2017, the centre did not receive any complaints concerning migrants.⁵³⁵ In general, the centre does not treat migrants as a priority issue.

- f) Competences of the designated body/bodies – and their independent and effective exercise
 - i) Independent assistance to victims

The centre has a competence to provide independent assistance to victims. It receives claims from individuals by post, e-mail and by electronic form as well as in person and generally provides claimants with free legal counselling by assessing whether they were subjected to discrimination based on the received information and providing them with advice about available legal options to address discrimination. The centre can also provide victims with free legal representation in a court proceeding concerning discrimination.

- Independence
The author of this report is unable to assess whether this competence is exercised in an independent manner.
- Effectiveness
According to the assessment of the author of this report, the centre falls short of providing legal representation for victims of discrimination in court proceedings, which is arguably influenced by the insufficient

⁵³³ Response of the centre of 22 January 2018 to a request for information of 10 January 2018 (on file with the author).

⁵³⁴ Slovak National Centre for Human Rights (2016), *Report on the observance of human rights including the observance of the principle of equal treatment in the Slovak republic for the year 2015*, see 'Chapter 4: Application of the Rights to Asylum in Slovak Republic', pp. 52-29. Available at http://www.snsip.sk/CCMS/files/2015_Report_on_the_observance_of_human_rights_including_the_principle_of_equal_treatment.pdf (accessed 8 February 2018).

⁵³⁵ Response of the centre of 22 January 2018 to a request for information of 10 January 2018 (on file with the author).

institutional and staff capacities of the centre. The centre notes that current financing and staff capacity does not enable it to adequately fulfil all its tasks.⁵³⁶ In addition, the international human rights bodies find the current institutional capacity of the centre to be insufficient. However, even within its current institutional and staff capacity, the provision of legal representation to discriminated victims in court proceedings clearly appears to at a low level.

Providing assistance to victims is based on private communication between the centre and victims of discrimination and as this information is not publicly available, its effectiveness has not been assessed. However, it can be reasonably assumed that the insufficient institutional and staff capacity of the centre may have a negative impact on performing this duty.

- Resources
According to the assessment of the author of this report, the level and quality of resources, staff and finances for providing assistance to victims is insufficient.

ii) Independent surveys and reports

The centre has a duty to conduct independent surveys and publish independent reports. In practice, it ranges from publishing an annual report on the observance of human rights including the principle of equal treatment, publishing various analytical materials and conducting surveys concerning discrimination to submitting alternative reports to the international bodies.

- Independence
In recent years, the centre has submitted several alternative reports to the international human rights bodies, particularly to the UN Treaty monitoring bodies addressing relevant issues concerning the protection of human rights and protection against discrimination in Slovakia. The report reflects critically on information provided in the Government periodic reports and according to the assessment of the author of this report can be considered to be independent.⁵³⁷

Besides publishing the reports, the centre is able to carry out independent inquiries concerning discrimination. In 2017, the centre carried out four independent inquiries.

- Effectiveness
According to the assessment of the author of this report, the centre falls short of conducting independent surveys and publishing independent reports and they are inconsistent in terms of contextual and analytical quality, which is influenced by the inadequate institutional and staff capacity of the centre. The centre notes that current financing and staff

⁵³⁶ Response of the centre of 22 January 2018 to a request for information of 10 January 2018 (on file with the author).

⁵³⁷ See e.g. Slovak National Centre for Human Rights (2017), *Observations of the Slovak National Centre for Human Rights on the Combined Eleventh and Twelfth Periodic Reports of the Slovak Republic to the UN Committee on the Elimination of All Forms of Racial Discrimination*. Available at http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/SVK/INT_CERD_IFN_SVK_29346_E.pdf (accessed 8 February 2018) Slovak National Centre for Human Rights (2016), *Observations of the Slovak National Centre for Human Rights on the Fourth Periodic Report of the Slovak Republic to the UN Human Rights Committee*. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fIFL%2fSVK%2f22553&Lang=en (accessed 8 February 2018).

capacity does not enable it to adequately fulfil all its tasks. In addition, the international human rights bodies find the current institutional capacity of the centre to be inadequate. However, even within its current institutional and staff capacity, the amount of independent surveys and independent reports conducted and published by the centre appears to be low.

- **Resources**
According to the assessment of the author of this report, the level and quality of resources, staff and finances for providing assistance to victims is insufficient.

iii) **Independent recommendations**

The centre is competent to issue independent recommendations on discrimination issues. In practice, the centre issues the recommendations in its annual reports on the observance of human rights, including the principle of equal treatment, in Slovakia. In addition, it regularly includes recommendations in its reports on surveys, analytical reports or alternative reports for international human rights bodies. Recommendations are primarily addressed to the Government, Government institutions or other state institutions.

- **Independence**
The author of this report is unable to assess whether this competence is exercised in an independent manner. The centre has recently formulated and included independent recommendations in its reports submitted to the international human rights bodies as well as in its annual reports on the observance of human rights, including the principle of equal treatment, in Slovakia. In 2017, the centre published an analysis of the need for amendments to the domestic Anti-discrimination Act.⁵³⁸ According to the assessment of the author of this report, the centre generally addresses relevant issues concerning the protection against discrimination in Slovakia and as such can be considered to be independent.
- **Effectiveness**
According to the assessment of the author of this report, the centre falls short of issuing independent recommendations and they are inconsistent in terms of contextual and analytical quality, which is probably as a result of the insufficient institutional and staff capacity of the centre. The centre notes that the current financing and staff capacity do not enable it to adequately fulfil all its tasks. In addition, the international human rights bodies find the current institutional capacity of the centre to be insufficient. However, even within its current institutional and personal capacity, the amount of independent recommendations issued by the centre appears to be low.

⁵³⁸ Slovak National Human Rights Centre (2017), *Medzery antidiskriminačného zákona: analýza potreby novelizácie antidiskriminačného zákona a súvisiacich právnych predpisov* (Gaps of the Antidiscrimination Act: analysis of the need for an amendment of Antidiscrimination Act and related legal provisions). The analysis includes a summary in English and is available at http://www.snsip.sk/CCMS/files/1Medzery_antidiskriminacneho_zakona.pdf (accessed on 13 February 2018).

- Resources
According to the assessment of the author of this report, the level and quality of resources, staff and finances for providing assistance to victims is insufficient.

iv) Other competences

- Monitors and evaluates the observance of the equal treatment principle and the Antidiscrimination Act;
- Gathers and provides information upon request on racism, xenophobia and anti-Semitism in the Slovak Republic;
- Prepares educational activities and participates in information campaigns aimed at increasing tolerance in the society;
- Issues expert opinions on the observance of the equal treatment principle under the Antidiscrimination Act, upon requests from natural persons or legal entities or on its own initiative;
- In 2017, the centre issued 22 expert opinions, which are published on the centre's website. According to the assessment of the author of this report, based on a concise contextual review, the expert opinions of the centre can be considered to be independent. The author of this report is unable to assess whether the remaining responsibilities of the centre are exercised in an independent manner.

v) Positive duties

The domestic legislation includes positive duties in relation to promoting equality and preventing discrimination.

Non-discrimination law in Slovakia generally imposes duties to promote equality and prevent discrimination on every private person or public subject in respect of specified areas of public relations. In particular, the Anti-discrimination Act establishes that:

Everyone is obliged to adhere to the principle of equal treatment in the field of employment and similar legal relations, social security, healthcare, and the provision of goods and services and education.⁵³⁹

Adherence to the principle of equal treatment shall also rest in adoption of measures for the protection against discrimination.⁵⁴⁰

Given that failure to meet the positive duty to promote equality and prevent discrimination amounts to a violation of the principle of equal treatment, under its mandate, the centre is able to provide legal assistance to persons claiming a breach of the obligation to meet positive duties; carry out monitoring and evaluation; issue expert opinions; perform independent inquiries and publish reports and recommendations on the issue.

According to the Act on the Centre, the responsibilities of the centre clearly includes positive duties of the centre itself in relation to promoting equality and preventing discrimination, in particular the centre prepares educational activities and participates in information campaigns aimed at increasing tolerance in the society. The centre is also given specific tasks within its mandate, resulting from action plans related to human rights adopted by the

⁵³⁹ Anti-discrimination Act, 365/2004, Section 3(1).

⁵⁴⁰ Anti-discrimination Act, 365/2004, Section 2(3).

Slovak Government. These tasks include activities to promote equality and prevent discrimination.⁵⁴¹

vi) Further competences/activities

The centre exercise further competences as a national human rights institution (NHRI):

- Monitors and evaluates the observance of human rights;
- Gathers and provides upon request information on racism, xenophobia and anti-Semitism in the Slovak Republic;
- Conducts researches and surveys to provide data in the area of human rights, gathers and distributes information in this area;
- Provides library services, and;
- Provides services in the area of human rights.

g) Legal standing of the designated body/bodies

In Slovakia, the designated body – the Slovak National Centre for Human Rights – has legal standing to bring discrimination complaints (on behalf or not of identified victim(s)) and to join civil court proceedings in legal cases concerning discrimination as an intervening 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. The clients are represented by centre's staff lawyers. In 2017, the centre employed five lawyers (one of whom was a part-time employee and one who only worked during two months of the year). In such cases the people represented by the centre do not pay for the legal representation it provides. However, the centre cannot represent victims of discrimination in proceedings before the Constitutional Court. The centre can intervene in legal cases concerning discrimination, such as *amicus curiae*. The centre does not have any litigation strategy; according to the centre, it has a duty as the equality body to treat every client equally and does not give strategic preference to any cases due to their potential impact on society. According to the information provided by the centre the salary of the staff lawyers is 16 % of the total budget of the centre.⁵⁴²

In 2017, the centre received 70 discrimination complaints and in nine cases found a violation of antidiscrimination legislation. In 2017, the centre started to provide legal representation to two victims of discrimination who were new clients. Overall, in 2017, the centre has provided legal representation to five victims of discrimination. The courts issued decisions in two cases litigated by the centre. The first was a final decision of the regional court and the second was the first instance decision of the district court.⁵⁴³ In 2017, the centre changed its methodology of documenting the complaints received and only provided information about the number of complaints received that the centre finds relevant in terms of the legal definition of discrimination, and it deals with those complaints in detail. Apart from these complaints, the centre also receives complaints that do not obviously relate to discrimination and fall outside its mandate as the equality body.⁵⁴⁴

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.

⁵⁴¹ See for example, Ministry of Justice and Ministry of Labour, Social Affairs and Family (2015), *Akčný plán na predchádzanie všetkých foriem rasovej diskriminácie na roky 2016 - 2019*. Available at: http://www.gender.gov.sk/diskriminacia/files/2016/09/AP_ADZ-.pdf.

⁵⁴² Response of the centre of 30 April 2018 to a request for information of 19 April 2018 (on file with the author).

⁵⁴³ Response of the centre of 22 January 2018 to a request for information of 10 January 2018 (on file with the author).

⁵⁴⁴ Response of the centre of 13 February 2018 to a request for information of 5 February 2018 (on file with the author).

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 name. By the end of 2017, the centre had not filed an *actio popularis* in its own name.

The centre continues to provide legal representation to only a small number of persons who have been discriminated against and it is not sufficiently active in improving access to justice for discriminated persons. According to the assessment of the author of this report, a significant number of the limited amount of cases in which the centre provided legal representation before courts or on which it issued legal opinions, relate to discrimination in employment on the ground of 'other status' (mostly harassment conducted by an employee's supervising manager) and did not sufficiently address the pressing and widely documented discrimination in Slovak society on the grounds of ethnicity and gender. From this perspective, the case law produced by the centre appears to fall short of its particular strategic relevance in terms of advancing the implementation of anti-discrimination legislation in domestic courts, spurring public discussion on the most pressing human rights issues or addressing issues that need legal interpretation.

h) Quasi-judicial competences

In Slovakia, the equality body – the Slovak National Centre for Human Rights – is not a quasi-judicial institution. It has a responsibility to deal with claims of individuals and reach findings on discrimination in individual cases. But the centre's conclusions in these cases are not legally binding and can only serve as a relevant opinion, which can be presented, for instance, in court proceedings when victims decide to take additional legal steps.

i) Registration by the body/bodies of complaints and decisions

In Slovakia, the body registers the number of inquiries received, complaints of discrimination made.

These data are available to the public.

The centre registers the number of discrimination complaints received, including information about the ground and field of discrimination being claimed. These data are published in annual reports on the activities of the centre, which are publicly available on the centre's website.⁵⁴⁵ As such, these data are easily accessible.

In 2017, the centre received 70 discrimination complaints. Out of this total, the centre found a violation of anti-discrimination legislation in only nine complaints. In 2017, the centre started to provide legal representation to two victims of discrimination, who were new clients. Overall, it has provided legal representation to five victims of discrimination. In 2017, the courts issued decisions in two cases litigated by the centre.

In 2017, the centre changed its methodology of registering the complaints received and provided information only about the number of complaints received that the centre considers relevant in terms of the legal definition of discrimination. It deals with those complaints in detail. Apart from these complaints, the centre also receives complaints that

⁵⁴⁵ The 2017 annual report on the activities of the Slovak National Centre for Human Rights for the Year 2017 has been recently released. Slovak National Centre for Human Rights (2018), *Ročná záverečná správa o činnosti Slovenského národného strediska pre ľudské práva za rok 2017*. It is currently available on the website of the centre in Slovak language at: http://www.snslp.sk/CCMS/files/Ro%C4%8Dn%C3%A1_z%C3%A1vere%C4%8Dn%C3%A1_spr%C3%A1v_a_o_%C4%8Dinosti_SNS%C4%BDP_za_rok_2017_FINAL_po_schv%C3%A1len%C3%AD_SR.pdf.

do not obviously relate to discrimination and fall outside its mandate as the equality body.⁵⁴⁶

Given the change in the methodology in registering complaints, available data from 2017 cannot be compared effectively with the data from previous years.

In 2016, the centre received 524 complaints on the possible violation of the principle of equal treatment, out of which 45 concerned age, 26 race, 24 gender, 276 other status, 55 disability, 73 nationality/ethnic origin, 1 sexual orientation, 11 family status, 9 language and 4 on reporting criminality or other anti-social activity.⁵⁴⁷

In 2015, the centre received 822 complaints on the possible violation of the principle of equal treatment, but in its annual report did not provide exact data about the ground of discrimination being claimed and only generally stated that most complaints concerned 'other status', followed by disability and age.⁵⁴⁸

j) Planning

The centre does not have a strategic plan and did not conduct any recent evaluation of such a plan.

The centre prepares annual work plans that are adopted by the board and published on the centre's website.⁵⁴⁹ An annual work plan for 2018 is currently being prepared.

The centre is required to release annual reports on the activities of the Slovak National Centre for Human Rights, which are adopted by its board.⁵⁵⁰ The centre translates the reports into English.

According to the assessment of the author of this report, the centre currently falls short in its overall strategic planning since it does not prepare strategic plans at all.

k) Stakeholder engagement

According to the recently available annual report for the year 2016, the centre collaborated with a wide range of public stakeholders including civil society organisations, public bodies, local government entities, trade unions or employee associations and other bodies (e.g. international organisations, universities and schools).⁵⁵¹ It has not reported any specific collaborations with businesses, employers or service provider networks and organisations or local government bodies.

As regards international stakeholders, the centre collaborated with selected international human rights bodies (e.g. the European Union Agency for Fundamental Rights (FRA), and

⁵⁴⁶ Response of the centre of 13 February 2018 to a request for information of 5 February 2018 (on file with the author).

⁵⁴⁷ Response of the Slovak National Centre for Human Rights of 21 February 2017 to a request for information of 17 February 2017 (on file with the author).

⁵⁴⁸ Slovak National Centre for Human Rights (2017), *Annual Report on the Activities of the Slovak National Centre for Human Rights for the Year 2016*, pp. 24 - 25. Available at: http://www.snsip.sk/CCMS/files/2015_Report_on_the_Activities_of_the_Slovak_National_Centre_for_Human_Rights.pdf.

⁵⁴⁹ An annual plan for the centre for 2017 is available at: http://www.snsip.sk/CCMS/files/PI%C3%A1nu_%C4%8Dinnosti_na_rok_2017.pdf (accessed on 8 February 2018).

⁵⁵⁰ In accordance with the Act on the Centre, 308/1993, Section 3(b).

⁵⁵¹ For detailed information about the scope of this collaboration with particular stakeholders see Slovak National Centre for Human Rights (2017), *Annual Report on the Activities of the Slovak National Centre for Human Rights for the Year 2016*, pp. 25 - 38. The annual report includes additional information about the nature of particular cooperation. Available at http://www.snsip.sk/CCMS/files/2016_Annual_Activity_Report_of_the_Slovak_National_Centre_for_Human_Rights.pdf (accessed on 8 February 2018).

the European Commission against Racism and Intolerance (ECRI)). In addition, it was engaged with the European Network of Equality Bodies and the European Network of National Human Rights Institutions. In particular, such collaboration entailed providing these institutions with information on the observance of human rights in Slovakia, within the mandate of the centre.

As regards domestic stakeholders, in 2016, the centre cooperated with several domestic NGOs active in the area of equal treatment and human rights. This cooperation included joint research activities, providing consultations and the exchange of information. The centre also cooperated with ministries in activities concerning, for example, the fulfilment of relevant action plans and preparation of implementation reports for treaty bodies, monitoring bodies and the Centre for Legal Aid.

As regards organising or co-organising educational activities and training in human rights including the rights of the child and the principle of equal treatment, in 2016 the centre collaborated with: elementary school pupils; high school and university students; policemen and policewomen at the department of criminal police within regional directorates of the Police Force (fight against extremism units, Office of Criminal Police, Extremism and Spectator Violence Unit); marginalised Roma communities; employees of several Government ministries; the Council of Basic Organisations of the Trade Union of Workers in Education and Science of Slovakia; Basic Organisations of the Trade Union of Workers in Education and Science of Slovakia; the Government Office of the Slovak Republic; the Magistrate of the Capital City of Bratislava; the rail workers trade union; the National Culture Centre; and school psychologists in the Methodical and Pedagogical Centre in Bratislava.

According to the assessment of the expert, the centre cooperates with a relatively wide range of stakeholders, but it is unable to assess the practical results of these collaborations, which are key for assessing their effectiveness.

I) Accessibility

The designated body does conduct outreach activities in local areas or communities to some extent.

The designated body does have procedures in place to identify and respond to the access needs of specific complainants (e.g. people with disabilities, people with caring responsibilities, people speaking different languages, people with literacy issues etc) to some extent.

The centre does have an accessible and publicly visible central office in Bratislava. It also has three regional offices in Žilina, Banská Bystrica and Košice.

According to the response of the centre to the author of this report, it fulfils all its tasks in a complex manner in the whole area of Slovakia and for all persons facing discrimination within its equality mandate. It provides legal assistance and advice to anyone that approaches it, including people speaking different languages and people with literacy issues. Its employees are able to adapt to the needs of the clients in respect of the time of consultations and are able to meet with clients outside the centre's working hours, on demand. They also provide ad hoc legal assistance, without setting an appointment. The employees are also able to travel within Slovakia to meet the clients if necessary. The central office in Bratislava and the regional offices in Banská Bystrica and Žilina are barrier-free for disabled persons. The regional office in Košice is currently not barrier-free and as a result the centre is looking for another building for the office in the future.⁵⁵²

⁵⁵² Response of the centre of 29 January 2018 to a request for information of 24 January 2018 (on file with the author).

According to the assessment of the author of this report the centre takes practical steps to respond to and accommodate these access needs, but is unable to assess to what extent these needs are accommodated.

m) Roma and Travellers

The centre does not treat Roma as a priority issue. The issue of discrimination against the Roma minority in Slovakia is reportedly a part of all the centre's educational activity concerning protection against discrimination. In 2014–2017, the centre realised a number of educational activities on raising awareness about the social disadvantage of Roma, discrimination and activities that dealt with discrimination against Roma minority in Slovakia for various target groups (particularly state institutions and schools). The centre has also regularly addressed issues concerning discrimination against the Roma minority in its alternative reports submitted to the UN treaty monitoring bodies in recent years.⁵⁵³ However, the centre does not treat Roma as a priority issue and its activities on the prevention of discrimination against the Roma minority do not include litigation of cases of discrimination against Roma, despite its ongoing prevalence in Slovakia. In recent years, the centre has provided legal representation in very few cases of discrimination against the Roma minority and has not made use of its competence to initiate public interest lawsuits to challenge structural discrimination of the marginalised Roma minority in education, housing or healthcare. The centre generally does not publicly address or comment on any cases of discrimination against Roma litigated by NGOs and publicly presented in media.

⁵⁵³ Response of the centre of 29 January 2018 to a request for information of 24 January 2018 (on file with the author).

8 IMPLEMENTATION ISSUES

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

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

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). The Ministry of Labour, Social Affairs and Family runs a website that provides a wider range of information concerning the protection from discrimination for the general public (e.g. an overview of anti-discrimination legislation, forms and grounds of discrimination, instructions on protection against discrimination). The website also includes information on how to combat discrimination.⁵⁵⁴

In November 2017, the Ministry of Justice, which is responsible for the coordination of the fulfilment of tasks in the field of human rights,⁵⁵⁵ announced a call for proposals in order to financially support NGOs and other legal entities in promoting human rights and freedoms including the elimination of all forms of discrimination. The ministry will allocate an overall amount of EUR 763 500 to support such projects.

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

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.⁵⁵⁶ 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.⁵⁵⁷ The Council has 40 members⁵⁵⁸ 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.⁵⁵⁹

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, representatives of local and regional bodies, human rights institutions and other stakeholders involved in the protection of human rights including non-discrimination. On

⁵⁵⁴ The website is available in Slovak at <http://www.gender.gov.sk/diskriminacia/>.

⁵⁵⁵ Slovakia, Act No 575/2001 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 by the Act No 335/2014 (*zákon č. 575/2001 Z. z. o organizácii činnosti vlády a organizácii ústrednej štátnej správy v znení zákona č. 335/2014 Z. z.*), Section 14(3). As of 1 September 2015, this task is undertaken by the Ministry of Justice (by the amendment to the Act on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration No 172/2015).

⁵⁵⁶ Slovakia, Act on the organisation of the activities of the Government and on the organisation of the central state administration, 575/2001, Section 2(3). The website of the Council of the Government: www.radavladyp.gov.sk/ (accessed 08 February 2018).

⁵⁵⁷ Article 2 of the statute of the Council of the Government of the Slovak Republic for Human Rights, National Minorities and Gender Equality. The statute is available at <http://www.radavladyp.gov.sk/dokumenty-rady/> (accessed on 8 February 2018).

⁵⁵⁸ 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 8 February 2018).

⁵⁵⁹ See Article 6, paragraphs 1 and 2 of the statute.

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.

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

Upon an official request by the author of this report for information on measures that the Slovak Republic carried out in 2016-2017 in relation to social partners with the aim of implementing the principle of equal treatment pursuant to EU directives, the Ministry of Labour, Social Affairs and Family informed the author that since 2016, the implementation agency of the Ministry has coordinated the 'National Project Centre of Social Dialogue' in collaboration with several social partners (trade unions). The project aims to deepen the practical experience and skills of people working in the organisational structures of social partners in regard to collective negotiation and creating social partnerships within social dialogue on all levels, through education and building expert capacity. The project supports dialogue between social partners and the public administration and provides space to transfer good practice and know-how in this area from abroad.⁵⁶⁰ The project is being implemented until July 2021 and for the time being, no information regarding its impact is available.

- d) 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).⁵⁶¹ The action plan, based on Slovakia's obligations under the Decade of Roma Inclusion,⁵⁶² 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.⁵⁶³

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

⁵⁶⁰ Response of the Ministry of Labour, Social Affairs and Family of 20 February 2018 to a request for information of 9 February 2018 (on file with the author).

⁵⁶¹ 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 8 February 2018).

⁵⁶² 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.

⁵⁶³ 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: <http://cvek.sk/wp-content/uploads/2015/12/32011-sk.pdf> (accessed 08 February 2018).

for Roma Integration to 2020', adopted on 11 January 2012 (the strategy).⁵⁶⁴ 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.⁵⁶⁵ The document explicitly targets Roma as a national minority, Roma communities and marginalised Roma communities.

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.⁵⁶⁶

In October 2014, the Office of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities (see below) started the process of revising the strategy and updating/drafting its action plans for the next three years. This process focuses on four priority fields (education, employment, housing and health) and on three other crosscutting fields (financial inclusion, non-discrimination and approaches to the Slovakian majority). The whole process has been on-going in 2015 and 2016 and, in the author's view, its excessive length could be influenced by the parliamentary elections in March 2016 and overall institutional developments in the Office of the Plenipotentiary, including the change in the person holding the position of Roma Plenipotentiary that took place in April 2016. The whole process was intensified in the second part of 2016 and on 22 February 2017 the Slovak Government finally adopted the updated action plans concerning the areas of education, employment, health, housing and a new action plan in the area of financial inclusion.⁵⁶⁷ On 13 September 2017, an additional two updated action plans concerning the areas of non-discrimination and approaches towards majority society were adopted.⁵⁶⁸

⁵⁶⁴ The document was adopted by Government Resolution No 1/2012 and can be accessed at www.rokovania.sk/Rokovanie.aspx/GetUznesenia/?idRokovanie=622 (accessed 8 February 2018).

⁵⁶⁵ See p. 2 of the strategy.

⁵⁶⁶ 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.issuelab.org/resource/civil_society_monitoring_report_on_the_implementation_of_the_national_roma_integration_strategy_and_decade_action_plan_in_2012_in_slovakia, (accessed 8 February 2018).

⁵⁶⁷ *Aktualizované akčné plány stratégie Slovenskej Republiky pre integráciu Rómov do roku 2020 na roky 2016-2018 pre oblasti: D.2.1 Oblasť vzdelávania, D.2.2 Oblasť zamestnanosti, D.2.3 Oblasť zdravia, D.2.4 Oblasť bývania a nový akčný plan D.2.5 pre oblasť finančného začlenenia* (Updated action plans of the Strategy of the Slovak republic for Integration of Roma up to 2020 for years 2016-2018 for the areas of: D.2.1 Area of education, D.2.2 Area of employment, D.2.3 Area of health, D.2.4 Area of housing and a new action plan D.2.5 for the area of financial inclusion), Available at <http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=26278> (accessed on 8 February 2018).

⁵⁶⁸ *Akčné plány Stratégie Slovenskej republiky pre integráciu Rómov do roku 2020 na roky 2017 - 2020 pre oblasti: D.2.6 Oblasť nediskriminácie a D.2.7 Oblasť prístupov smerom k väčšinovej spoločnosti – Iniciatíva integrácie Rómov prostredníctvom komunikácie* (Updated action plans of the Strategy of the Slovak republic for Integration of Roma up to 2020 for years 2016-2018 for areas of D.2.6 Area of non-discrimination and D.2.7 Area of approached towards majority society – Initiative of integration of Roma through communication), Available at <http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=26857>, (accessed 8 February 2018).

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'.⁵⁶⁹ 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'.⁵⁷⁰ At the same time, the Office of the Plenipotentiary also moved to the Ministry of Interior.⁵⁷¹ 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.

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, particularly in relation to social security, 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); Section 4(3) of Act 571/2009 on Parental Care Allowance; Section 12a of Act 600/2003 on Child Allowance; and 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 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

⁵⁶⁹ See www.minv.sk/?vznik_uradu (accessed 8 February 2018). The original statutes are not available.

⁵⁷⁰ 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 8 February 2018).

⁵⁷¹ See Article 3(4) of the Statutes. The link to the website of the current Plenipotentiary is www.minv.sk/?romske-komunita-uvod (accessed 8 February 2018).

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,⁵⁷² 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'.⁵⁷³

Since 1 September 2015, the Ministry of Justice has been responsible for coordinating the fulfilment of human rights tasks and provides for the development and implementation of state policies in the field of human rights.⁵⁷⁴

Following the adoption of the 'National Strategy for the Protection and Promotion of Human Rights in the Slovak Republic' in 2015,⁵⁷⁵ on 13 January 2016, the Slovak Government adopted the 'Action Plan to Prevent All Forms of Discrimination 2016-2019'.⁵⁷⁶ On the same day, the Government also adopted the 'Action Plan to Prevent and Eliminate All Forms of Racism, Xenophobia, Anti-Semitism and Other Forms of Intolerance 2016-2018'.⁵⁷⁷ In 2015, the draft 'Action Plan for LGBTI People for 2016-2019' was also prepared by the Ministry of Justice in collaboration with the LGBTI activist community.⁵⁷⁸ However this action plan had not been adopted by the end of 2017. On 26 October 2016, the Government adopted the 'Action Plan on the Protection of Persons Belonging to the National Minorities and Ethnic Groups 2016 – 2020'.⁵⁷⁹

The purpose of migration policy in Slovakia is to build on several principles, including the prohibition of discrimination meaning that all foreigners/migrants residing in the territory of the Slovak republic should have equal opportunities.⁵⁸⁰ In 2011 the Slovak Government adopted the 'Migration Policy of the Slovak Republic Perspective until 2020'.⁵⁸¹

⁵⁷² Slovakia, Act on the organisation of the activities of the Government and on the organisation of the central state administration, 575/2001.

⁵⁷³ Slovakia, Act on the organisation of the activities of the Government and on the organisation of the central state administration, 575/2001, Section 15(1)(h).

⁵⁷⁴ By the amendment to the Act on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration No 172/2015.

⁵⁷⁵ Available at <http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=24253> (accessed 8 February 2018).

⁵⁷⁶ *Akčný plán predchádzania všetkým formám diskriminácie na roky 2016-2019*, available at: http://www.gender.gov.sk/diskriminacia/files/2016/09/AP_ADZ-.pdf (accessed 8 February 2018).

⁵⁷⁷ *Akčný plán predchádzania a eliminácie rasizmu, xenofóbie, antisemitizmu a ostatných foriem intolerancie na roky 2016 -2018*, available at: <http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=25250> (accessed 8 February 2018).

⁵⁷⁸ *Akčný plán pre LGBTI ľudí na roky 2016-2019*, available at: <https://lt.justice.gov.sk/Material/MaterialHome.aspx?instEID=1138&matEID=8567&langEID=1> (accessed 25 January 2018).

⁵⁷⁹ *Akčný plán ochrany práv osôb patriacich k národnostným menšinám a etnickým skupinám na roky 2016 – 2020*. Available at: <http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=26018> (accessed 25 January 2018).

⁵⁸⁰ See Ministry of Interior of the Slovak republic: 'Purposes of the migration policy', available at <http://www.minv.sk/?zamer-migracnej-politiky-slovenskej-republiky> (accessed 25 January 2018).

⁵⁸¹ 'Migration Policy of the Slovak Republic Perspective until 2020', available at <http://www.minv.sk/?zamer-migracnej-politiky-slovenskej-republiky&subor=153759> (accessed 25 January 2018).

10 CURRENT BEST PRACTICES

A programme of health mediators based in marginalised Roma communities, entitled 'Healthy Communities' is aimed at improving the access of marginalised Roma communities to healthcare and employs 213 health mediators mostly of Roma origin in 218 Roma communities (the mediators mostly 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 2017, the Office of Public Defender of Rights gave attention to the issue of registered partnerships for same sex partners. In September 2017, she issued her opinion on the right of same sex partners' partnership to be acknowledged in domestic legislation. In her opinion she refers to the ECtHR case law and concludes that the non-existence of same sex partnership in Slovak domestic legislation leads to a violation of the human rights obligations of the Slovak republic.⁵⁸²

In 2017, the Slovak equality body – the Slovak National Centre for Human Rights - issued an analysis of gaps in domestic anti-discrimination legislation recommending that it be amended in this regard. The centre presents several recommendations to improve the Slovak anti-discrimination legislation in order to secure stronger protection from discrimination and facilitate access to justice by the victims. The very first issue pointed out by the centre is a problem with the incorrect translation of the term 'principle of equal treatment' into Slovak. The Slovak legislation uses the term 'same' meaning identical, rather than the term 'equal' in the meaning of fair and non-discriminatory. According to the centre, this causes people difficulties in understanding the concept of this principle. The centre recommends, in line with recommendations of various UN Treaty Bodies, that Slovakia introduce multiple and intersectional discrimination in its legislation. According to the centre, these concepts should be defined in the Antidiscrimination Act and together with specific sanctions and remedies reflecting their aggravating nature of the violation of the right to equal treatment. Another shortcoming is that the current wording of the Anti-discrimination Act conditions the observance of the principle of equal treatment by a violation of a subjective right established in a special act. According to the centre, this causes an unnecessary practical complication in claiming rights of victims of discrimination, which itself is a difficult process, since not every right is explicitly regulated in a specific act. The centre also finds it problematic that Slovak legislation precludes the application of the anti-discrimination legislation in relation to non-business entities. The centre also recommends reducing the court fees in anti-discrimination proceedings and legislative changes as regards to awarding non-pecuniary damages. Most of the centre's proposals are in line with potential breaches of anti-discrimination legislation listed in sections 11.1 and 11.2 of this report (below). The analysis has a summary in English.⁵⁸³

The company *Whirlpool Slovakia* operates its factory in the neighborhood of a socially disadvantaged Roma community, in the village Veľká Lomnica. Since 2014, it has made efforts to recruit Roma employees. Roma account for approximately 20 % of all employees and they work not only in blue-collar positions, but also in specialised positions. The company managed to train and qualify these employees continuously. It actively communicated with Roma workers to remove possible barriers between employer and

⁵⁸² Slovak Public Defender of Rights (2017), 'Stanovisko verejnej ochránkyne práv k verejnej ochrankyne práv problematike práva párov rovnakého pohlavia na uznanie ich vzťahu v právnom poriadku SR'. Available at <http://www.vop.gov.sk/stanovisko-verejnej-ochrankyne-prav-k-problematike-prava-parov-rovnakeho-pohlavia-na-uznanie-ich-vztahu-v-pravnom-poriadku-sr>.

⁵⁸³ Čunderlík Ľ, Pavlíčková Z., Rišianová S. (2017), *Medzery antidiskriminačného zákona, Analýza potreby novelizácie antidiskriminačného zákona a súvisiacich právnych predpisov*, Slovenské národné stredisko pre ľudské práva. Available at http://www.snslp.sk/CCMS/files/1Medzery_antidiskriminacneho_zakona.pdf (access on 22 February 2018).

employees. A very important part of the process was that the employer paid attention to employee's families, especially to children, their education, and free-time activities.⁵⁸⁴

⁵⁸⁴ *Zodpovedné podnikanie* (Responsible Business). Bulletin of the association Business Leaders Forum administred by Pontis Foundation published in April 2017. Available at http://www.blf.sk/article/romovia-ako-sanca-pre-regiony/2303?lang=en_US (accessed 01 March 2018).

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 judicial interpretation of indirect discrimination is not in compliance with interpretation given by the CJEU case law. See section 2.3 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*.⁵⁸⁵ 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 discriminatory towards Roma women. See section 3.2.7 for more details.
- Section 4 (3) of Act 571/2009 on Laws on Parental Care Allowance and Article 12a of Act 600/2003 on Child Allowance appear to be discriminatory towards Roma. 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.
- 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.

⁵⁸⁵ CJEU, Joined Cases C-335/11 and C-337/11, *HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab* (C-335/11), and *HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S, in liquidation* (C-337/11), judgment of 11 April 2013.

- Organisations and the Slovak National Centre for Human Rights can represent persons affected by discrimination in civil proceedings, but cannot represent them before the Constitutional Court. 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;
- the application of reversed burden of proof by domestic courts in anti-discrimination court proceedings continues to fall short of a legal consistency and is often not in compliance with CJEU case law;
- extreme reluctance of domestic courts to award financial compensation for non-pecuniary damages; if compensation is awarded, it is generally symbolic;
- courts' interpretation of the necessity only for individuals to submit claims, which undermines the standing of *actio popularis*;
- existence of racial prejudices among judges influencing their decision making in cases of racial discrimination and lack of programmes to increase their sensitivity to the issues involved;
- lack of case law;
- deficiencies in the registration of cases and decisions on discrimination by courts, with statistics thus 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;
- no effective policies providing for the transition from a segregated to an inclusive educational system and a lack of material, financial and human resources for mainstream schools to ensure inclusive education;
- increased public support for far-right policies; accession of the far-right extremist party National Party – Our Slovakia to the Slovak parliament after the elections in March 2016;

- increased public support for extremist ideas and policy regimes disregarding democratic values including the protection of human rights, particularly among young people; inability of the school system to sufficiently address these issues;
- racist political discourse among politicians against ethnic minorities, particularly Roma, Muslims and non-citizens.

12 LATEST DEVELOPMENTS IN 2017

12.1 Legislative amendments

There has been no amendment of anti-discrimination law in 2017.

12.2 Case law

Name of the court: The District Court in Spišská Nová Ves

Date of decision: 23 March 2017

Name of the parties: *V.P. v. Town of Spišská Nová Ves*

Reference number: 8 C 268/2016 – 523

Address of the webpage:

<https://www.poradna-prava.sk/sk/dokumenty/nepravoplatny-rozsudok-okresneho-sudu-v-pripade-diskriminacie-romskej-zeny-v-pristupe-k-zamestnaniu/>

Brief summary: The case decided by the district court in its decision of 23 March 2017 concerned discrimination against a Roma woman in access to employment.

In 2011, the claimant sued the town of Spišská Nová Ves ("the town") for discriminating against her by not selecting her for one of three vacant positions of terrain social workers, financed by the Social Development Fund. When compared with the claimant, the persons selected for the positions were less qualified, had less experience with terrain social work and less training, did not speak the Roma language, and were of non-Roma origin. Experience with terrain social work, speaking Roma language and being of Roma origin were deemed to be advantages in the selection process (although the latter two were listed as advantages by the Social Development Fund only). She also pointed out that during the job interview other employees who were not members of the selection commission interfered, for example, to ask her questions.

In 2012, the District Court in Spišská Nová Ves dismissed the complaint as manifestly ill-founded and its decision was confirmed in 2013 by the Regional Court in Košice. The claimant subsequently lodged a complaint to the Constitutional Court. On 1 December 2015, the Constitutional Court ruled that the regional court had violated the complainant's right to a fair trial as well as her right to an effective remedy. It quashed the regional court decision and ordered the national general courts to deal with the case again. By its decision of 24 August 2016, the Regional Court in Košice subsequently quashed the first instance court decision from 18 April 2012, so the case returned before the District Court in Spišská Nová Ves again.

The district court decided the case again and it ruled that the respondent discriminated against the claimant on the ground of her Roma ethnic origin, and ordered the respondent to send her a written apology, to pay non-pecuniary damages to the amount of EUR 2 500 and to refund 50 % of her legal costs. The court partially dismissed the claim for non-pecuniary damage, as the claimant had requested a total amount of EUR 5 000 and accordingly also reduced the amount of legal costs to be refunded. It concluded that the claimant met its burden of proof and established a prima facie case of discrimination, so the burden of proof shifted to the respondent. According to the district court, the respondent did not submit any evidence proving that it did not discriminate against the claimant. In addition, it did not provide any reasonable arguments why the advantages listed by the Social Development Fund - speaking the Roma language and being of Roma origin - were not included in the selection process set by the respondent. Finally, the respondent did not provide any reasonable explanation on the selection of the other applicants who were less qualified and had less experience with terrain social work and less training compared to the claimant and did not explain the interference of other employees who were not members of the selection commission in the selection process (such as asking questions during the job interview).

Taking into account the circumstances of the case, the court was of the opinion that there is a ground to provide the claimant with non-pecuniary redress in the form of a written apology and also non-pecuniary damages in the amount of EUR 2 500. In this regard, the court concluded that discrimination as such interferes with the victim's human dignity, and also pointed out a preventive function of the financial compensation towards future potential discriminatory treatment. The court found the amount of EUR 2 500 to be adequate financial compensation in this case, so it partially dismissed a claim for non-pecuniary damages. The court decision is not final as the claimant and respondent filed an appeal. The legal representation of the claimant was supported by the Slovak NGO Centre for Civil and Human Rights (Poradna) within its strategic litigation programme.⁵⁸⁶

Name of the court: The Supreme Court of the Slovak Republic

Date of decision: 19 April 2017

Name of the parties: *B.C. and others v. Town of Sabinov and the Ministry of Transport and Construction of the Slovak Republic*

Reference number: 5 Cdo 18/2015 - 202

Address of the webpage: not yet published, on the file of the author of this report

Brief summary: The claimants of a Roma ethnic minority sued the town of Sabinov for being illegally moved out of rental apartments owned by the town in a central area to new rental apartments of a lower standard, built by the town outside the built-up areas and far from town infrastructure. The claimants pointed out that the town had only moved to the apartments of lower standard tenants of Roma ethnic origin, which led to their segregation. They simultaneously sued the Ministry of Transport and Construction of the Slovak Republic ("the Ministry of Transport") for subsidising this town building project, despite its discriminatory nature, and for not preventing the segregation of Roma tenants. The claimants filed the lawsuits with the District Court in Prešov in 2007, which in 2009 ruled that the defendants 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 and awarded to each claimant financial compensation of EUR 1 000 (dismissing the rest of their claims). However, following an appeal by the defendants, the claimants' case was fully dismissed by the Regional Court in Prešov in May 2010. 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. In October 2012, the court of first instance (the District Court in Prešov) issued a new decision and confirmed its original decision, in which it basically reiterated all of its original argumentation. 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 again dismissing their complaint. Following the appeal of the claimants, the Supreme Court adjudicated the case for a second time.

The Supreme Court emphasised the importance of considering this case in the broader context of the situation of the Roma minority in Slovak society and its vulnerable position, referring to the relevant decisions of the ECtHR. Since only Roma tenants were moved to the apartments of lower standard outside the town, the Supreme Court found it reasonable to conclude they were treated differently from the other inhabitants. It stated that the claimants had been entitled to claim their rights protected by the anti-discrimination laws, even though they did not claim that the termination of their rental agreements by the town was illegal and did not object to illegal termination of their rental agreements by the town by the applicable legislation (the Civil Code). According to the Supreme Court it was premature for the regional court to legally assess the fact that the claimants had agreed to move to new rental apartments and voluntarily signed the new rental agreements before having determined whether discrimination was proven. However, in this regard it added that even if the claimants agreed with their discrimination, such consent would be relevant

⁵⁸⁶ After the cut-off date of this report, the Regional Court in Košice by its decision of 7 February 2018 (ref.No. 9Co 259/2017) upheld the decision of the District Court in Spišská Nová Ves, so it became final.

only if it had been informed. It further stated that even though the town fulfilled all conditions for receiving the subsidy for building the apartment buildings from the Ministry of Transport, the principles of equal treatment stemming from the Constitution and international treaties must be prioritised and respected.

On the responsibility of the Ministry of Transport, the Supreme Court stressed that although the relevant directive of the ministry on providing subsidies for building projects can appear to be legally neutral, the ministry is obliged to consider the compliance of this provision with the principle of equal treatment when applying it in specific cases and it is obliged to take positive measures if it finds out that the application of the given provision may imply possible discrimination. In this regard, when the request of the town for the subsidy contained facts implying possible discrimination, the Ministry of Transport was obliged to examine the circumstances under which the subsidy was supposed to be used. If using of the subsidy eventually led to the segregation of a minority population, the legal conditions for providing the subsidy would not be fulfilled due to the contradiction with constitutional principles and international obligations of Slovakia. The Supreme Court again overturned the regional court's decision and returned the case to the same regional court for further proceeding.

Name of the court: The Supreme Court of the Slovak Republic

Date of decision: 20 June 2017

Name of the parties: *M.P and M.S. v. the Municipality Office Prešov, department of construction and housing policy*

Reference number: 10Sžo/53/2016

Address of the webpage:

<https://obcan.justice.sk/infosud/-/infosud/i-detail/rozhodnutie/6fa2ca6a-f186-4283-88d8-8dfbdfc1188%3Aa0068537-3f57-4d6b-9468-6a764c13d829>

Brief summary: The case decided by the Supreme Court in its decision of 20 June 2017 pointing out the obligation of the state authorities to consider public interest in a building permit proceeding includes the impact of a potential building on the segregation of racial minorities.

Due to insufficient capacity, the city of Stara Lubovna and the Ministry of Education decided to expand the capacity of the primary school in Stara Lubovna, Podsadek, by adding a new modular building - a low-cost annexe to the school made out of metal containers. The school has been attended for a long time solely by Roma children from a nearby socially disadvantaged Roma community. The claimants in this case were local residents who owned land and property just beside the land where the new school building was supposed to be built. During the building permit proceeding, in 2014 they went to the building office and raised objections against the planned school building while pointing at the segregation of Roma children that the building would prompt, which is contrary to public interest. The local building office in the village of Nova Ľubovňa dismissed their objections and in August 2014 a construction permit was issued for the new school building. Acting as an appeal administrative body, the department of building and apartment policy of the District Office in Prešov dismissed their appeal and upheld this decision in October 2014.

As a result, the claimants challenged the administrative decision of the District Office in Presov before the Regional Court in Presov. They requested the administrative court to cancel the administrative decision as illegal. In December 2014, the regional court upheld the administrative decision, by which the new school building was permitted and the claimants turned to the Supreme Court, contesting the regional court's decision. They argued that the legal obligation to consider the public interest when processing a building permit proceeding also necessarily includes considering the impact of a potential building on segregation of racial minorities. Notably, omitting to consider the potential discriminatory impact of a new building within a building permit proceeding is contrary to the domestic and international anti-discrimination legislation embracing a positive obligation to prevent discrimination.

The Supreme Court, as appeal court, upheld the decision of the regional court and fully confirmed its reasoning. It stated that a building office is not eligible to consider within an administrative proceeding the potential discriminatory impact of the construction of a building, specifically the issues concerning segregation of the Roma minority. In this regard, it found the interpretation of the definition of 'public interest' provided by the claimants in the context of the Building Act unreasonably broad. Further, it stated that the claimants were not entitled to submit such an administrative claim to the court as their individual rights were not violated, as they are not parents of Roma children who attended the segregated school. The Supreme Court also disregarded the request of the claimants to interrupt the court proceeding and refer the case to the CJEU for preliminary ruling as it found it groundless in respect to the legal issues in the given proceeding.

Name of the court: The Regional Court in Bratislava

Date of decision: 26 September 2017

Name of the parties: *Poradňa pre občianske a ľudské práva (Centre for Civil and Human Rights) v. the Slovak Republic represented by the National Council of the Slovak Republic*

Reference number: 14Co/552/2014 - 180

Address of the webpage: <https://www.poradna-prava.sk/en/documents/rozsudok-krajskeho-sudu-v-pripade-verejnej-zaloby-poradne-tykajúcej-sa-právneho-ustanovenia-s-diskriminacnym-dopadom-na-romske/>

Brief summary: The case decided by the regional court on 26 September 2017 concerned discriminatory legislation on childbirth allowance challenged by an actio popularis claim submitted by a Slovak NGO.

Act No. 383/2013 on Birth Allowance and Multiple Children Birth Allowance and previous legislation setting the conditions for providing birth allowance and multiple children birth allowance in Slovakia established the conditions under which these allowances are provided to eligible persons. It stipulates that eligible persons were not entitled to receive these allowances if they leave the hospital after childbirth without prior approval of their attending doctor.

The claimant argues that the legislation has a disproportionate impact on Roma women and children from socially disadvantaged environments, while limiting their ability to obtain the social allowance and thereby constitutes indirect discrimination. It argued that the legislation negatively impacts, almost solely, Roma women, who tend to leave hospitals after the birth without the approval of the doctor. It also provided some statistical data in order to support its arguments. The claimant further argued that the relevant provision of the act cannot be objectively justified by the legitimate aim (to motivate women to stay in the hospitals) and that the means of achieving this aim are not appropriate and necessary. The provision does not address or mitigate the documented reasons why some Roma women may choose to leave the hospital earlier than recommended after the birth, which includes the widespread degrading and abusive treatment they face in hospitals due to their ethnicity. In addition to claiming racial discrimination, the claimant also argued discrimination on the ground of sex/gender as the discrimination is constituted solely in the situation of giving birth. Also the Slovak equality body has concluded that the relevant provision constituted indirect discrimination.

In May 2014, the first instance court dismissed the lawsuit and the regional court in Bratislava in its decision of September 2017 fully confirmed its reasoning. The regional court confirmed that civil courts in Slovakia are competent to adjudicate on the conformity of legal provisions of equal legal force, because there is no other state authority to which the lawsuit can be referred. In respect to the merits of the case, the regional court considered the actio popularis lawsuit to be based on hypothetical assumptions and unspecified cases of alleged discrimination against Roma mothers, while stating that the alleged indirect discrimination could be claimed before court only directly by affected individuals. This would enable the court to thoroughly assess whether specific persons were discriminated against by the challenged legal provision, undermining also the principle of

actio popularis. Further, the court did not consider the legal provision to be discriminatory as the state is eligible to set conditions for providing social benefits with regard to the fact that parents of newborn children have not only rights to receive the benefits, but also duties to take care of their newborn children. In this respect, it referred to the opinion of the Defender of Public Rights from 2007, stating that there are medical and psychological reasons why the mother should not leave the hospital after a childbirth without the approval of the doctor, which the challenged legal provision reflects. It could thus not be considered discriminatory. The case is now pending before the Slovak Supreme Court.

Trends and patterns in 2017 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, 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). Some information about pending cases is available from the Centre for Civil and Human Rights, an NGO active in the field, which is either providing legal representation, or is the claimant itself (in cases initiated by *actio popularis* – e. g. on segregation of Roma children in education, or on segregation of Roma women in maternity wards).

In the author's view, the general trends and patterns for cases brought by Roma (in the majority of the cases represented by the Centre for Civil and Human Rights) in 2017 (but also in the previous years) have not been changed in 2017 and remain 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, the application of reversed burden of proof continues to fall short of a legal consistency, extreme reluctance to award financial compensation for non-pecuniary damages; if compensation is awarded, it is generally symbolic.
- The courts tend to downplay the seriousness of discrimination, overlooking or not understanding its prima facie impact on human dignity. In some instances there remains a certain bias or preoccupation of courts, particularly when dealing with cases of discrimination against the Roma minority.
- 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.⁵⁸⁷

In contrast, and to some extent paradoxically, the fact that there are so many barriers in access to judicial (but also other) remedies with regard to the right to non-discrimination in general (i.e. also with regard to grounds other than ethnicity) and cases brought to courts are so scarce, means that the decided cases on ethnic discrimination – the majority of the cases initiated and represented/assisted by the Centre for Civil and Human Rights – represent a very significant source of interpretation of the existing legislation.

⁵⁸⁷ For more information on the current situation regarding access to justice in cases of discrimination see also Centre for Civil and Human Rights (2016), *Written comments for the UN Human Rights Committee concerning the fourth periodic report of Slovak republic*, September 2016, pp. 4-6. Available at <https://www.poradna-prava.sk/en/documents/we-submitted-the-written-comments-to-the-un-human-rights-committee/> (accessed 8 February 2018). Centre for Civil and Human Rights (2017), *Alternative report concerning eleventh and twelfth periodic report of Slovakia for the UN Committee on the Elimination of Racial Discrimination*, October 2017, pp. 6-8. Available at <https://www.poradna-prava.sk/en/documents/the-report-for-the-un-committee-on-the-elimination-of-racial-discrimination/> (accessed on 8 February 2018).

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

The **main transposition and anti-discrimination legislation** at both federal and federated/provincial level.

Country: Slovakia
Date: 1 January 2018

Anti-discrimination Act	<p>Title of the law: Act No. 365/2004 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: 12.11.2015 (No. 378/2015)</p> <p>Entry into force: 01.07.2004</p> <p>Web link: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/365/20160102?ucinnost=31.12.2017; 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> <p>Civil/administrative/criminal law: civil and to some extent also administrative</p> <p>Material scope: employment and occupation, social security, social advantages, healthcare, provision of goods and services including housing and education</p> <p>Principal content: the basic act transposing the directives</p>
Labour Code	<p>Title of the law: Labour Code No. 311/2001 (<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: 30.11.2017 (No. 335/2017)</p> <p>Entry into force: 01.04.2002</p> <p>Web link: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2001/311/20171230?ucinnost=31.12.2017; http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61871/60966/F-506442866/SVK61871.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> <p>Civil/administrative/criminal law: civil</p> <p>Material scope: employment</p>

	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 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: 23.11.2016 (No. 340/2016)</p> <p>Entry into force: 01.11.2009</p> <p>Effective till: 31.12.2017</p> <p>Web link https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2009/400/20170101</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> <p>Civil/administrative/criminal law: civil, administrative</p> <p>Material scope: employment</p> <p>Principal content: labour relations in public service</p>
Act on Civil Service	<p>Title of the law: Act No. 55/2017 on Civil Service, as amended (<i>zákon č. 55/2017 Z. z. o štátnej službe a o zmene a doplnení niektorých zákonov</i>)</p> <p>Abbreviation:</p> <p>Date of adoption: 01.02.2017</p> <p>Latest amendments: n/a</p> <p>Entry into force: 01.01.2018</p> <p>Web link https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2017/55/20180101?ucinnost=31.12.2017</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> <p>Civil/administrative/criminal law: civil, administrative</p> <p>Material scope: employment</p> <p>Principal content: labour relations in public service</p>
Act on Education (Schools Act)	<p>Title of the law: Act No. 245/2008 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: 20.06.2017 (No. 182/2017)</p> <p>Entry into force: 01.09.2008</p> <p>Web link: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2008/245/20170901?ucinnost=31.12.2017</p> <p>Grounds covered: all grounds covered by the Anti-discrimination Act as well as social disadvantage</p> <p>Civil/administrative/criminal law: administrative</p> <p>Material scope: education</p> <p>Principal content: legal relations in pre-school, primary and secondary education</p>
Act on Higher Education	<p>Title of the law: Act No 131/2002 on Higher Education, as amended</p> <p>Abbreviation:</p> <p>Date of adoption: 21.02.2002</p> <p>Latest amendments: 25.11.2015 (No 422/2015)</p> <p>Entry into force: 01.04.2002</p>

	<p>Web link: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2002/131/20160101?ucinnost=31.12.2017</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> <p>Civil/administrative/criminal law: administrative</p> <p>Material scope: education</p> <p>Principal content: legal relations in university education</p>
Act on Healthcare	<p>Title of the law: Act No. 576/2004 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: 21.12.2017 (No. 351/2017)</p> <p>Entry into force: 01.01.2005</p> <p>Web link: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/576/20180101?ucinnost=31.12.2017</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> <p>Civil/administrative/criminal law: administrative</p> <p>Material scope: healthcare</p> <p>Principal content: legal relations in providing healthcare</p>
Act on Social Insurance	<p>Title of the law: Act No. 461/2003 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: 12.10.2017 (No. 279/2017)</p> <p>Entry into force: 01.01.2004</p> <p>Web link: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2003/461/20180101?ucinnost=31.12.2017</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> <p>Civil/administrative/criminal law: administrative</p> <p>Material scope: social security</p> <p>Principal content: legal relations in state social insurance</p>
Act on Old-Age Pension Saving	<p>Title of the law: Act No. 43/2004 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 Latest amendments: 12.10.2017 (No. 279/2017) Entry into force: 01.01.2004 Web link: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/43/20180201?ucinnost=31.12.2017 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> <p>Civil/administrative/criminal law: civil, administrative</p> <p>Material scope: social security</p> <p>Principal content: old-age pension saving</p>
Act on Supplementary Pension Saving	<p>Title of the law: Act No. 650/2004 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>) Abbreviation: Date of adoption: 26.10.2014 Latest amendments: 12.10.2017 (No. 279/2017) Entry into force: 01.01.2005 Web link: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/650/20180101?ucinnost=31.12.2017 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> <p>Civil/administrative/criminal law: civil, administrative</p> <p>Material scope: social security</p> <p>Principal content: supplementary pension saving (incl. occupational pensions)</p>
Act on Social Services	<p>Title of the law: Act No. 448/2008 on Social Services and on amending and supplementing Act No. 455/1991 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>) Abbreviation: Date of adoption: 30.10.2008 Latest amendments: 21.12.2017 (No. 351/2017) Entry into force: 01.01.2009 Web link: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2008/448/20180101?ucinnost=31.12.2017 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> <p>Civil/administrative/criminal law: administrative</p> <p>Material scope: social security</p>

	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 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: 22.12.2016 (No. 355/2016)</p> <p>Entry into force: 01.01.2009</p> <p>Web link: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2008/447/20170101?ucinnost=31.12.2017</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> <p>Civil/administrative/criminal law: administrative</p> <p>Material scope: social security</p> <p>Principal content: legal rules for providing benefits for compensation of serious disability</p>
Act on Establishing the Slovak National Centre for Human Rights	<p>Title of the law: Act No. 308/1993 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>)</p> <p>Abbreviation:</p> <p>Date of adoption: 15.12.1993</p> <p>Latest amendments: 25.06.2015 (No. 176/2015)</p> <p>Entry into force: 01.01.1994</p> <p>Web link: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1993/308/20150901?ucinnost=31.12.2017</p> <p>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)</p> <p>Civil/administrative/criminal law: administrative</p> <p>Material scope: employment and occupation, social security, social advantages, healthcare, provision of goods and services including housing and education</p> <p>Principal content: rules on obligations and the functioning of the equality body</p>
Civil Dispute Act	<p>Title of the law: Act No. 160/2015 Civil Dispute Act (<i>zákon č. 160/2015 Z. z. Civilný sporový poriadok</i>)</p> <p>Abbreviation: CSP (<i>Civilný sporový poriadok</i>)</p> <p>Date of adoption: 21.05.2015</p> <p>Latest amendments: 28.03.2017 (No. 87/2017)</p> <p>Entry into force: 01.07.2016</p> <p>Web link: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/160/20170501?ucinnost=31.12.2017</p>

	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)
	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 dispute proceedings before courts
Administrative Judicial Act	<p>Title of the law: Act No. 162/2015 Administrative Judicial Act (<i>zákon č. 162/2015 Z. z. Správny súdny poriadok</i>)</p> <p>Abbreviation: SSP (<i>Správny súdny poriadok</i>)</p> <p>Date of adoption: 21.05.2015</p> <p>Latest amendments: 28.03.2017 (No.88/2017)</p> <p>Entry into force: 01.07.2016</p> <p>Web link: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/162/20170501?ucinnost=31.12.2017</p> <p>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)</p>
	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 in administrative matters before courts

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Slovakia
Date: 1 January 2018

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	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?
of Racial 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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