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# Country report

## Gender equality



Slovakia  
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# **Country report**

## **Gender equality**

How are EU rules transposed into  
national law?

## **Slovakia**

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Reporting period 1 January 2018 – 31 December 2018

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## **1 Introduction**

### **1.1 Basic structure of the national legal system**

The Slovak Republic is one of the two successor states (the other is Czech Republic) established after the political changes on 1 January 1993, based on Constitutional Act No. 542/1992 Coll. on the Dissolution of the Czech and Slovak Federal Republic. Slovakia is a unitary state, divided into eight regions.

The head of state is the President of the Republic, but the functions of the President are mostly ceremonial.

The Slovak political system is a parliamentary democracy and the legal system is continental with a statutory law system.

The Slovak Republic is a multiparty parliamentary democracy. The sole constitutional and legislative body is the National Council of the Slovak Republic (hereinafter the 'Parliament'). It consists of 150 Members of Parliament elected for a four-year period.

The supreme body of the executive is the Government of the Slovak Republic (hereinafter the 'Government'). It is composed of the Prime Minister, deputy prime ministers and ministers.

Judicial power is executed by general courts and a special court, which is the Constitutional Court.

The Constitutional Court of the Slovak Republic (hereinafter the 'Constitutional Court') is an independent judicial body with the role of protecting constitutionality. The Constitutional Court is composed of 13 judges appointed for a period of 12 years by the President upon a proposal from the Parliament. In addition to deciding on the conformity of lower legal norms with higher legal norms, the Constitutional Court also decides competence conflicts between the central bodies of state administration, unless the law stipulates that another state authority shall decide in these disputes. The Constitutional Court also rules on various complaints and interprets the Constitution or constitutional statutes in disputed issues.

The Slovak Republic has a two-level general court system, which is composed of the Supreme Court, eight regional courts (the appellate courts) and 54 district courts (first instance courts). District courts are competent to try proceedings in the first instance. Regional courts hear cases as appeal courts. The Supreme Court has the function of an appellate review court and, being the supreme judicial body, never acts as a first instance court. The courts decide in civil (including labour) and criminal cases, they also review the lawfulness of decisions by administrative bodies, in electoral and referendum matters, and matters related to political parties.<sup>1</sup> The courts also decide on other matters stated by law, the legally binding Act on the European Communities and European Union or international treaties to which the Slovak Republic is party.<sup>2</sup>

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<sup>1</sup> Article 2 Section 1(c) of Act No. 757/2004 Coll. on the Courts (*Zákon č. 757/2004 Z.z. o súdoch*).

<sup>2</sup> This is a literal wording of Article 2 Section 1(d) of Act No. 757/2004 Coll. on the courts, although the European Communities no longer exist.

According to the Anti-discrimination Act<sup>3</sup> all equal treatment proceedings are governed by the Civil Disputes Act<sup>4</sup> and cases are decided by the civil courts. There are no special labour courts for discrimination cases in the area of employment.<sup>5</sup>

## 1.2 List of main legislation transposing and implementing the directives

The transposition of the EU Directives in the field of gender equality has led to changes predominantly in the Labour Code<sup>6</sup> and other acts in the field of employment within specific areas (such as prosecutors, public services, military services, etc.) and to the adoption of the Anti-discrimination Act.<sup>7</sup>

The following is a list of the main relevant national legislation on gender equality/prohibition of sex discrimination which is transposing and implementing the gender equality directives, including the directives that have been repealed.

All of the following Acts are available at: <https://www.slov-lex.sk/pravne-predpisy>

- Act No. 2/1991 Coll. on Collective Bargaining (*Zákon č. 2/1991 Z.z. o kolektívnom vyjednávaní*);
- Act No. 455/1991 Coll. on Licensed Trades (Small Businesses Act) (*Zákon č. 455/1991 Z.z. o živnostenskom podnikaní (Živnostenský zákon)*);
- Act No. 460/1992 Coll. Constitution of the Slovak Republic (*Zákon č. 460/1992 Z.z. Ústava Slovenskej republiky*);
- 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*);
- Act No. 73/1998 Coll. on State Service Covering Members of the Police Force, Slovak Intelligence Service, Corps of Prison and Court Guard of the Slovak Republic and Railroad Police (*Zákon č. 73/1998 Z.z. o štátnej službe príslušníkov Policajného zboru, Slovenskej informačnej služby, Zboru väzenskej a justičnej stráže Slovenskej republiky a Železničnej polície*);
- Act No. 200/1998 Coll. on the State Service, Covering Customs Officers (*Zákon č. 200/1998 Z.z. o štátnej službe colníkov*);
- Act No. 311/2001 Coll. on the Labour Code (*Zákon č. 311/2001 Z.z. Zákonník práce*);
- Act No. 315/2001 Coll. on the Fire Fighting and Rescue Corps (*Zákon č. 315/2001 Z.z. o Hasičskom a záchrannom zbore*);
- Act No. 131/2002 Coll. on Higher Education (*Zákon č. 131/2002 Z.z. o vysokých školách*);
- Act No. 328/2002 Coll. on Social Security of Police Officers and Soldiers (*Zákon č. 328/2002 Z.z. o sociálnom zabezpečení policajtov a vojakov*);

<sup>3</sup> Slovak Republic, Article 11 Section 3 of Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection Amending and Supplementing Certain Other Laws 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)*), available in English at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>4</sup> Slovak Republic, Act No. 160/2015 Coll. Civil Disputes Act (*Zákon č. 160/2015 Z.z. Civilný sporový poriadok*).

<sup>5</sup> The Civil Disputes Act determines the competence of eight district courts across Slovakia for hearing individual labour disputes (plus matters connected to collective employment relationships and strikes at work) in such a way that each regional court is allocated one district court. This means that employment matters and disputes are no longer heard by any other district court not mentioned in this Act. According to this so-called causal jurisdiction, these courts are not specialised courts but are part of the general court system.

<sup>6</sup> Act No. 311/2001 Coll. Labour Code (*Zákon č. 311/2001 Z.z. Zákonník práce*) transposes the following directives into Slovak legislation: 92/85/EEC, 96/34/EC, 2000/43/EC, 2000/78/EC, 2006/54/EC 2010/18/EU.

<sup>7</sup> Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination Amending and Supplementing Certain Other Laws (the Anti-discrimination Act) transposes the following directives into Slovak legislation: 2000/43/EC, 2000/78/EC, 2004/113/EC and 2006/54/EC, available in English at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).



- Act No. 461/2003 Coll. on Social Insurance (*Zákon č. 461/2003 Z.z. o sociálnom poistení*);
- Act No. 552/2003 Coll. on Works Performed in the Public Interest (*Zákon č. 552/2003 Z.z. o výkone práce vo verejnom záujme*);
- Act No. 5/2004 Coll. on Employment Services (*Zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov*);
- Act No. 43/2004 Coll. on Old-Age Pension Savings (*Zákon č. 43/2004 Z.z. o starobnom dôchodkovom sporení*);
- Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination and on Amendment of Certain Acts (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)*);
- Act No. 576/2004 on Healthcare, Services Related to the Provision of Healthcare and on amending and supplementing certain acts (*Zákon č. 576/2004 Z.z. o zdravotnej starostlivosti, službách súvisiacich s poskytovaním zdravotnej starostlivosti a o zmene a doplnení niektorých zákonov*);
- Act No. 650/2004 Coll. on Additional Pension Savings (*Zákon č. 650/2004 Z.z. o doplnkovom dôchodkovom sporení*);
- Act No. 757/2004 Coll. on the Courts (*Zákon č. 757/2004 Z.z. o súdoch*);
- Act No. 124/2006 Coll. on Work Safety and Health (*Zákon č. 124/2006 Z.z. o bezpečnosti a ochrane zdravia pri práci*);
- Act No. 125/2006 Coll. on Labour Inspection (*Zákon č. 125/2006 Z.z. o inšpekcii práce*);
- Act No. 250/2007 Coll. Consumer Protection Act (*Zákon č. 250/2007 Z.z. o ochrane spotrebiteľa*);
- Act No. 245/2008 on Education (Schools Act) (*Zákon č. 245/2009 Z. z. o výchove a vzdelávaní (školský zákon)*);
- Act No. 448/2008 Coll. on Social Services (*Zákon č. 448/2008 Z. z. o sociálnych službách*);
- Act No. 317/2009 Coll. on teaching staff and vocational training employees (*Zákon č. 317/2009 Z.z. o pedagogických zamestnancoch a odborných zamestnancoch*);
- Act No. 571/2009 Coll. on Parental Allowance (*Zákon č. 571/2009 Z.z. o rodičovskom príspevku*);
- Act No. 39/2015 Coll. Insurance Act (*Zákon č. 39/2015 Z.z. o poisťovníctve*);
- Act No. 281/2015 Coll. on the Civil Service, Covering Professional Soldiers in the Armed Forces (*Zákon č. 281/2015 Z.z. o štátnej službe profesionálnych vojakov ozbrojených síl*);
- Act No. 160/2015 Coll. Civil Disputes Act (*Zákon č. 160/2015 Z.z. Civilný sporový poriadok*);
- Act No. 162/2015 Administrative Judicial Act (*Zákon č. 162/2015 Z.z. Správny súdny poriadok*);
- Act No. 55/2017 Coll. on the Civil Service (*Zákon č. 55/2017 Z.z. o štátnej službe*).

### 1.3 Sources of law

The Constitution of the Slovak Republic<sup>8</sup> is the fundamental human rights legislation of the legal order of Slovakia. This system of human rights legislation is complemented by international treaties to which Slovakia is a party.

Slovakia is a party to virtually all basic international treaties regulating human rights and fundamental freedoms in the UN system and at the regional level in the Council of Europe. According to Article 1 Section 2 of the Constitution, 'The Slovak Republic recognises and honours general rules of international law, international treaties by which it is bound and its other international obligations.'

<sup>8</sup> Slovak Republic, Act No. 460/1992 Coll. Constitution of the Slovak Republic (*Ústava Slovenskej republiky*), available at: <https://www.ustavnysud.sk/ustava-slovenskej-republiky>. Also available in English.

The principle of the precedence of ratified human rights treaties over national laws is laid down in Article 7 of the Constitution, which states in Section 5, 'International treaties on human rights and fundamental freedoms, international treaties whose execution does not require a law and international treaties which directly establish rights or obligations of natural persons or legal persons and which were ratified and promulgated in a manner laid down by law shall have primacy over the laws.' (This wording came into effect on 1 July 2001.)<sup>9</sup>

The legal basis regulating the ratification of human rights treaties is a provision of Article 7, Section 4 of the Constitution. This provision states that prior to the ratification of international treaties on human rights and fundamental freedoms, the approval of the Parliament is required.

Having ratified human rights treaties, Slovakia has agreed to respect the findings of the European Court of Human Rights (hereinafter the 'ECtHR') and findings of quasi-judicial bodies empowered to monitor the observance of human rights at the international level.

According to point 101 of the findings of the Constitutional Court of the Slovak Republic PL. ÚS 8/2016 of 12 December 2018, 'The Constitutional Court has repeatedly ruled that fundamental rights and freedoms under the Constitution must be interpreted and applied in the sense and spirit of international treaties on human rights and fundamental freedoms (PL. ÚS 5/93, PL. ÚS 15/98, PL. US 17/00, US 10/2014, US 24/2014). Thus, in defining the content of the fundamental rights and freedoms laid down in the Constitution, the Constitutional Court has always taken into account the wording of these treaties and the relevant case-law relating to them (II. ÚS 55/98, PL. ÚS 10/2010, PL. ÚS 24/2014).'<sup>10</sup>

In point 102 the Constitutional Court notes that: 'The Constitutional Court has already stated that, even though the EU Charter has not been adopted in the form of an international treaty, the Constitution recognises in the legal order of the Slovak Republic the status of an international treaty on human rights and fundamental freedoms under Article 7, Section 5 of the Constitution (PL. ÚS 10/2014, points 69- 73; PL. ÚS 2/2016, point 54). The obligation of Member States to interpret and apply the relevant provisions of the Constitution in the sense and spirit of the EU Charter, as well as the case-law of the Court of Justice of the European Union relating thereto, where a national measure falls within the scope of Union law within the meaning of Article 51, para. 1 of the EU Charter, also follows from the principle of sincere cooperation enshrined in Article 4 para. 3 Ú. in. EU C 202 (2016) which, inter alia, requires Member States to take all measures of a general or specific nature to ensure compliance with the obligations arising from the Treaties [Treaty on European Union and the Treaty on the Functioning of the European Union] Union (PL. US 10/2014, point 75; PL. US 2/2016, point 54).'<sup>11</sup>

Stricto sensu judgments are not regarded as a formally binding source of law in Slovakia. Nevertheless, some scholars do attribute to case law of higher courts the term 'quasi-precedents'. Judges of lower courts and legal practitioners often refer to case law when solving legal problems. Higher courts also often cite<sup>12</sup> previous cases in their decisions.

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<sup>9</sup> The principle of precedence is also contained in Article 154c of the Constitution in Section 1 which states, 'International treaties on human rights and fundamental freedoms that were ratified by the Slovak Republic and promulgated in a manner laid down by law before this constitutional law comes into effect are a part of its legal order and have primacy over the law, if they provide greater scope of constitutional rights and freedoms.' and Section 2, 'Other international treaties which were ratified by the Slovak Republic and promulgated as required by law before this constitutional law comes into effect are a part of its legal order, if so laid down by law.'

<sup>10</sup> Decision in Slovak is available at: <http://merit.slv.cz/PL.US8/2016>.

<sup>11</sup> Decision in Slovak is available at: <http://merit.slv.cz/PL.US8/2016>.

<sup>12</sup> There is no generally accepted system of citation for case law and most judges, practitioners and scholars cite according to the court docket number and the date of decision. Cases from lower courts are generally not cited.

This applies particularly to important decisions of the Constitutional Court and the Supreme Court and also the judgments of the ECtHR and CJEU.

The Civil Disputes Act in Article 3, Section 1<sup>13</sup> 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 and with case law of the ECtHR and CJEU.

In general the Slovak courts also use as the basis the case law of the Constitutional Court and general courts of the Czech Republic. The reason for this is the fact that at the time of the common Czechoslovak state the same legislation applied throughout. Another reason is that the Czech Republic acceded to the European Union at the same time as Slovakia, so the two states had to transpose the European legislation into national law during the same period.

Neither legal doctrine is regarded as a formal source of law in the Slovak legal system. Nevertheless, scholarly interpretations of legal sources and, in particular, commentaries to acts play an important role in legal practice and legal argumentation.

Although the obligation of the equality body (the Slovak National Centre for Human Rights)<sup>14</sup> is also to prepare expert opinions and recommendations on compliance with the principle of equal treatment, they are not binding for parties or private and public bodies and they are not regarded as a formal source of law.

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<sup>13</sup> Slovak Republic, Act No. 160/2015 Coll., available in Slovak at: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/160/20181212.html>.

<sup>14</sup> Website of the equality body in English is available at: <http://www.snsip.sk/?locale=en>.

## 2 General legal framework

### 2.1 Constitution

#### 2.1.1 Constitutional ban on sex discrimination

The principle of equality and the prohibition of discrimination was regulated first by Article 3 of the Slovak Charter of Fundamental rights and Freedoms<sup>15</sup> and then by Article 12 of the Constitution,<sup>16</sup> which states in Section 1, that 'people are free and equal in dignity and rights' and in Section 2 that, 'fundamental rights and freedoms are guaranteed to everyone in the territory of the Slovak Republic regardless of sex, race, colour of skin, language, faith and religion, political or other thoughts, national or social origin, nationality or ethnic origin, property, descent [*rod* in Slovak] or other status. No one may be harmed, preferred or discriminated against on these grounds.'<sup>17</sup>

According to the findings of the Constitutional Court of the Slovak Republic PL. ÚS 37/95 of 12 September 1996,<sup>18</sup> 'Article 12 Section 2 of the Constitution is often described as a provision establishing the prohibition of discrimination and, on the other hand, the prohibition of the provision of advantages in a specific fundamental right and freedom to anyone entitled to this right.'

#### 2.1.2 Other constitutional protection of equality between men and women

On the other hand, the Constitution contains articles that derogate from the above-mentioned prohibitions, thereby permitting special protection and preferential treatment for certain groups – women, minors, and disabled people.

These include Chapter Five (economic, social and cultural rights), Article 38, Section 1 and Section 2 of which guarantees to women, minors and the disabled an increased level of health protection at work and special working conditions, and to minors and the disabled the right to special protection in labour relations and to assistance in vocational training. Article 41, Section 2 guarantees to pregnant women special treatment, protection in labour relations and corresponding working conditions.

Another constitutional provision having the character of a provision allowing preferential treatment of individuals determined on the basis of group characteristics (*national minorities or ethnic groups*) is Article 34.

In point 13 of the findings PL. ÚS 8/04-202 of October 2005, the Constitutional Court stated: 'The basic aim of Article 12 Section 1 and 2 of the Constitution is protection of persons (both legal and natural) against discrimination from the side of public authorities. This article of the Constitution does not have direct horizontal effect, which means that it will not apply in relations between persons of private law.'<sup>19</sup>

<sup>15</sup> Constitutional Act no. 23/1991 Coll. introducing the Charter of Fundamental Rights and Freedoms. According to Article 3, 'everyone is guaranteed the enjoyment of her fundamental rights and basic freedoms without regard to sex, race, colour of skin, language, faith and religion, political or other conviction, national or social origin, membership of a national or ethnic minority, property, birth, or other status'.

<sup>16</sup> Slovak Republic, Act No. 460/1992 Coll. Constitution of the Slovak Republic.

<sup>17</sup> The translation comes from the website of the Constitutional Court of the Slovak Republic (<https://www.ustavnysud.sk/ustava-slovenskej-republiky>) and the same translation is also on the website of the Public Defender of Rights (<http://www.vop.gov.sk/constitution-of-the-slovak-republic>).

<sup>18</sup> <http://merit.slv.cz/PL.US37/1995>.

<sup>19</sup> <http://merit.slv.cz/PL.US8/04>. Also available in English at: [http://www.google.sk/url?url=http://miris.eurac.edu/mugs2/do/blob.doc%3Ftype%3Ddoc%26serial%3D1148459524821&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKewi-oKaN\\_b3LAhWEqnIKHRhOAKAQFggTMAA&sig2=7VCpSpdcjvkLD0ayKh2MCw&usq=AFQjCNGzjt3tC2x3T7u6HffYJmF9wFIJdg](http://www.google.sk/url?url=http://miris.eurac.edu/mugs2/do/blob.doc%3Ftype%3Ddoc%26serial%3D1148459524821&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKewi-oKaN_b3LAhWEqnIKHRhOAKAQFggTMAA&sig2=7VCpSpdcjvkLD0ayKh2MCw&usq=AFQjCNGzjt3tC2x3T7u6HffYJmF9wFIJdg), p. 11.

## 2.2 Equal treatment legislation

During the accession process part of the European anti-discrimination legislation, including the prohibition of discrimination on the ground of sex, gradually became part of Slovak labour legislation. An important milestone was the adoption of the so-called 'Euro-Amendment' to the Labour Code<sup>20</sup> in 2003. The amendment<sup>21</sup> introduced the definitions of direct and indirect discrimination and harassment in Section 13.

The Anti-discrimination Act<sup>22</sup> is a general act on equal treatment in public and private relationships and protection against discrimination. Article 2 Section 1 of the Anti-discrimination Act prohibits discrimination on the following grounds: sex, religion or belief, race, nationality or ethnic origin, disability, age, sexual orientation, marital or family status, colour, language, political affiliation or other conviction, national or social origin, property, lineage ['rod' in Slovak] or any other status or on grounds of reporting of crime or any other wrongdoing.<sup>23</sup>

The Anti-discrimination Act applies to employment relations, social security, healthcare, provision of goods and services and education. The area of employment relations includes access to employment, occupation, or other for-profit activities or functions, including requirements for admission to employment and the conditions and method of selection for employment, employment and conditions of work, including employment remuneration, promotion and dismissal, access to vocational training, advanced vocational training and participation in active labour market measures, including access to job counselling services or membership of and activity in employee organisations and organisations bringing together professionals in various fields, including the benefits that these organisations provide to their members.

Following the adoption of the Anti-discrimination Act the terminology in the Labour Code was changed. The 'prohibition of discrimination' was replaced by the 'principle of equal treatment'. The legal definitions of indirect and direct discrimination and harassment were removed from the Labour Code, because they are now contained in the provisions of the Anti-discrimination Act.

The Labour Code, in Article 1 of the Fundamental principles and Article 13 Section 2, prohibits discrimination on the grounds of sex, marital status and family status, sexual orientation, race, colour of skin, language, age, unfavourable state of health or disability, genetic features, belief and religion, political or other conviction, trade union activity, national or social origin, national or ethnic group affiliation, property, lineage ['rod' in Slovak], or other status.<sup>24</sup>

The legislation concerning the public sector also contains a general clause on equal treatment for men and women in access to work and working conditions as contained in Anti-discrimination Act. All other acts<sup>25</sup> in the field of employment within specific areas (such as prosecutors, public services, military services, etc.) and in the area of education prohibit discrimination on the grounds of sex.

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<sup>20</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, effective from 1 April 2002.

<sup>21</sup> Slovak Republic, Act No. 210/2003 Coll. on amendment of the Labour Code.

<sup>22</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination and on amendment of certain Acts (Anti-discrimination Act).

<sup>23</sup> The translation comes from the website of the Slovak National Centre for Human Rights, which is the equality body, [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>24</sup> The translation comes from the website of the Ministry of Labour, Social Affairs and Family, <http://www.employment.gov.sk/files/slovensky/uvod/legislativa/pracovna-legislativa/zakonnik-prace-anglicka-verzia-labour-code-full-wording-2013.pdf>.

<sup>25</sup> Amended by the Anti-discrimination Act along with the Labour Code.

Although the National Gender Equality Strategy for the years 2009-2013<sup>26</sup> declared the aim to adopt a gender equality law, the legislative aim of this has not been developed to date and the work had not even started at the time of writing.

Likewise, a special act on the elimination of gender-based violence against women has not been adopted yet in Slovakia, although a draft of the act, which was based on the Istanbul Convention, was prepared by the Ministry of Labour during 2015.

In 2017 a new Victims' Act<sup>27</sup> was adopted, but gender as a form of discrimination is missing from it, so victims of gender-based violence and victims of crimes perpetrated because of their gender identity or expression are not included as 'vulnerable victims'. Although the author of the report has pointed out that the Victims' Act does not adequately transpose the Victims' Directive, no amendments to this Act have yet been adopted.<sup>28</sup>

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<sup>26</sup> Available in English at:  
[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/SVK/INT\\_CEDAW\\_ADR\\_SVK\\_17642\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/SVK/INT_CEDAW_ADR_SVK_17642_E.pdf).

<sup>27</sup> Slovak Republic, Act No. 274/2017 Coll. on Victims of Criminal Offences (*Zákon č. 274/2017 Z.z. o obetiach trestných činov a o zmene a doplnení niektorých zákonov*).

<sup>28</sup> See: Magurová, Z., Magurová, H.: 'Ochrana obetí rodovo podmieneného násillia páchaného na ženách' ('Protection of victims of gender-based violence against women') in *Právny obzor*, 2017, roč. 100, č. 6, p. 622-635.

### 3 Implementation of central concepts

#### 3.1 General (legal) context

##### 3.1.1 Surveys on the definition, implementation and limits of central concepts of gender equality law

The concept of equality and non-discrimination started to develop particularly under the influence of the EU accession process and the process of transposing the Anti-discrimination Directives.

No extensive survey or publication is available which deals with the definition, implementation and limits of the central concepts of gender equality law.

The issues of equality and discrimination are dealt with in a few specialised articles and publications. The author is not aware of any studies specifically aimed at the issues of formal and material equality or direct and indirect discrimination. Most publications are very general and descriptive, focusing on the regulation contained in the EC anti-discrimination directives and rulings of the CJEU.

Some authors have pointed out the incorrect translation of the term 'principle of equal treatment' into Slovak as 'principle of same treatment'. The Slovak legislation uses the term 'same' meaning identical, rather than the term 'equal' in the meaning of fair and non-discriminatory. In practice, this leads to people misunderstanding the concept of this principle.<sup>29</sup>

##### 3.1.2 Other issues

The reason for the lack of publications is due to the fact that only a small number of court decisions is known (most articles appeared after the publication of the decision by the Constitutional Court concerning the unconstitutional character of the regulation of positive measures in the Anti-discrimination Act). The court decisions which are known do not contain a more extensive analysis and clarification of the concepts of equality and direct and indirect discrimination, so the basis for expert polemics and discussion is missing.

##### 3.1.3 General overview of national acts

The Anti-discrimination Act<sup>30</sup> regulates direct discrimination, indirect discrimination, harassment, instruction to discriminate, incitement to discriminate and victimisation and, after the second amendment, in effect since April 2008, also sexual harassment.

The provisions of the Anti-discrimination Act reflect the concept of formal equality as well as the concept of substantive equality.

##### 3.1.4 Political and societal debate and pending legislative proposals

There has been no political and/or societal debate or pending legislative proposals on the central concepts of gender equality in 2018.

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<sup>29</sup> See Čunderlík, L., Pavlíčková, Z. and Rišianová, S. (2017) *Medzery antidiskriminačného zákona analýza. Potreby novelizácie antidiskriminačného zákona súvisiacich právnych predpisov* (Gaps in Anti-Discrimination Act. Analysis of the demand to amend anti-discrimination law and related legislation), Bratislava, ISBN 978-80-89016-88-4, p.8, available in Slovak only at: [http://www.snslp.sk/CCMS/files/1Medzery\\_antidiskriminacneho\\_zakona.pdf](http://www.snslp.sk/CCMS/files/1Medzery_antidiskriminacneho_zakona.pdf).

<sup>30</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).



The only point of note is the debate on gender and so-called 'gender ideology' which continued to be linked to the process of the ratification of the Istanbul Convention.<sup>31</sup>

## 3.2 Sex/gender/transgender

### 3.2.1 Definition of 'gender' and 'sex'

The terms sex and gender are not defined in national legislation. Neither the Anti-discrimination Act<sup>32</sup> nor the Labour Code<sup>33</sup> defines any of the prohibited grounds of discrimination listed in it.

The term 'gender' is translated into Slovak as 'rod'. The Slovak term 'rod' is also used as the translation of 'descent'<sup>34</sup> and 'lineage'.<sup>35</sup>

Some institutions translate the Slovak term 'rod' as 'gender' and as a result identify not only sex, but also gender, understood as socially constructed differences between sexes, as a ground of prohibited discrimination that is expressly stated in the Constitution and other laws.<sup>36</sup>

For example, the translation of the Anti-discrimination Act<sup>37</sup> uses the term 'lineage' in Article 2, Section 1,<sup>38</sup> and also the term 'gender' in Article 2a, Section 11<sup>39</sup> and Article 8a, Section 1 to translate the Slovak term 'rod'.<sup>40</sup>

Article 2, Section 5(c) of the initial draft of the Victims' Act<sup>41</sup> defined the group of particularly vulnerable victims as those who are victims of criminal offences 'on the ground of sex, gender, sexual orientation, nationality, race, ethnicity or religion of the group'. The term gender was omitted from the draft of the Act during the comment procedure. The legislator was content with the introduction of the term 'domestic violence', although the Victims' Directive<sup>42</sup> contains a definition of gender-based violence as well (Rec. 8).

The omission of the term gender from the provisions of the Victims' Act will not contribute to enhanced protection of women who are exposed to gender-based violence much more than men. In addition, victims of crimes based on gender identity and gender expression

<sup>31</sup> See also: Sections 3.2.1, 10.1 and 10.2.

<sup>32</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), [http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>33</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

<sup>34</sup> The translation comes from the website of the Constitutional Court of the Slovak Republic <https://www.ustavnysud.sk/ustava-slovenskej-republiky> and the same translation is also on the website of the Public Defender of Rights, <http://www.vop.gov.sk/constitution-of-the-slovak-republic>.

<sup>35</sup> The translation comes from the website of the Slovak National Centre for Human Rights, which is the equality body, [http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>36</sup> See: Debrecéniová, J. (2008) *Antidiskriminačný zákon. Komentár* (Anti-discrimination Act - Commentary), Občan a demokracia, Bratislava, pp. 11-12, National Strategy for Human Rights Protection and Promotion in Slovakia p. 6, available at: <http://www.coe.int/t/commissioner/source/NAP/Slovakia-National-Action-Plan-on-Human-Rights.pdf>.

<sup>37</sup> The translation comes from the website of the Slovak National Centre for Human Rights, which is the equality body, [http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>38</sup> Article 2, Section 1 prohibits discrimination on the following grounds: sex, religion or belief, race, nationality or ethnic origin, disability, age, sexual orientation, marital or family status, colour, language, political affiliation or other conviction, national or social origin, property, lineage ('rod' in Slovak) or any other status or on grounds of reporting a crime or any other wrongdoing.

<sup>39</sup> According to Article 2a, Section 11/a discrimination due to sex shall also mean discrimination due to pregnancy or motherhood and discrimination due to sex or gender ('rod' in Slovak) identification.

<sup>40</sup> Article 8a, Section 1 allows the adoption of temporary equalising measures to eliminate disadvantages, including on the grounds of gender ('rod' in Slovak) or sex.

<sup>41</sup> Slovak Republic, Act No. 274/2017 Coll. on Victims of Criminal Offences.

<sup>42</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012L0029>.



were excluded from the group of particularly vulnerable victims, which means the Act breaches the condition of non-discrimination and insufficiently transposed the Victims' Directive.

The issue of gender and of so-called 'gender ideology' was discussed during the preparation of the Strategy on Promoting Human Rights in Slovakia.<sup>43</sup> Several MPs, religious organisations and supporters of traditional family and pro-life organisations criticised the relevant ministries for furthering LGBTI rights and mainstreaming gender ideology.<sup>44</sup> These groups repeatedly labelled efforts to promote gender equality and women's and LGBTI rights as 'the culture of death' and same-sex marriage as 'sodomitic mockery'.<sup>45</sup> Advocates of the 'traditional family' organised a petition against the ratification of the Istanbul Convention and against the adoption of the National Gender Equality Strategy for the years 2014-2019, the National Action Plan on Gender Equality 2014-2019 and the National action plan to prevent and eliminate violence against women as well.

The religious supporters of the traditional family and pro-life organisations succeeded in triggering a referendum on marriage, civil partnership for LGBTI people, the possibility of adoption for LGBTI people and sex education in schools (with the support of the Catholic Church they collected 400 000 signatures in favour of the initiative). Although the President of the Slovak Republic considered that the questions for the referendum might be unconstitutional,<sup>46</sup> the Constitutional Court ruled that it would not be unconstitutional to hold a referendum with three questions regarding marriage as an exclusive institution for one man and one woman, the possibility of adoption for LGBTI people and sex education.

The referendum was held on 7 February 2015.<sup>47</sup> The organisers repeatedly used almost the same argumentation: the danger of 'sexualisation' of children, motivating youngsters to change their sex, erasing the natural differences between men and women and subverting their biological complementarities etc.<sup>48</sup>

The referendum was unsuccessful due to a low turnout, since only 21.41 % of eligible voters participated. The majority of voters answered all three referendum questions in the affirmative (first question 94.5 %, second question 92.43 % and the last question 90.32 %).<sup>49</sup> In total, 78.59 % of eligible voters did not vote in the referendum.<sup>50</sup>

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<sup>43</sup> The process started in 2011 and the Government approved the proposal of the Strategy on 18 February 2015, several days after referendum on the family was held.  
<https://www.coe.int/t/commissioner/source/NAP/Slovakia-National-Action-Plan-on-Human-Rights.pdf>,  
<https://spectator.sme.sk/c/20048815/ngos-back-human-rights-strategy.html>, in English.

<sup>44</sup> <https://spectator.sme.sk/c/20056204/government-adopts-human-rights-strategy.html>, in English,  
<https://www.topky.sk/cl/10/1457551/Vlada-schvalila-strategiu-ludskych-prav--Adoptovanie-deti-gejmi--tvrdi-cirkev--SNS-a-aliancia->, in Slovak.

<sup>45</sup> [http://spectator.sme.sk/articles/view/52518/10/criminal\\_complaint\\_over\\_pastoral\\_letter\\_filed.html](http://spectator.sme.sk/articles/view/52518/10/criminal_complaint_over_pastoral_letter_filed.html) in English.

<sup>46</sup> The Slovak Constitution prohibits holding a referendum on human rights.

<sup>47</sup> [https://en.wikipedia.org/wiki/2015\\_Slovak\\_same-sex\\_marriage\\_referendum](https://en.wikipedia.org/wiki/2015_Slovak_same-sex_marriage_referendum), in English.

<sup>48</sup> [Report on the Observance of Human Rights Including the Observance of the Principle of Equal Treatment and Rights of the Child in the Slovak Republic for the Year 2014](http://www.snslp.sk/CCMS/files/komplet_prekald_spravy_AJ_final.pdf), pp. 35-39.  
[http://www.snslp.sk/CCMS/files/komplet\\_prekald\\_spravy\\_AJ\\_final.pdf](http://www.snslp.sk/CCMS/files/komplet_prekald_spravy_AJ_final.pdf), in English.

<sup>49</sup> The wording of the referendum questions was:

1. Do you agree that any other cohabitation of persons except for the union between one man and one woman shall not be called marriage?
2. Do you agree that same-sex couples or groups shall not be allowed to adopt children and to subsequently raise them?
3. Do you agree that schools cannot require the participation of children in classes dedicated to sexual behaviour or euthanasia if their parents or the children themselves do not agree with the content of the lesson?

<sup>50</sup> The official results of the referendum are available on the website of the Statistical Office of Slovakia:  
<http://volby.statistics.sk/ref/ref2015/sk/data.html>, in Slovak.

### 3.2.2 Protection of transgender, intersex and non-binary persons

The Slovak legal system does not explicitly recognise trans, intersex and non-binary people as a special group which should be granted specific protection. In Slovakia prohibition of discrimination on the ground of sex became the subject of universal as well as special regulation. In constitutional law prohibition of discrimination was regulated first by Article 3 of the Charter of Fundamental Rights and Freedoms<sup>51</sup> and then by Article 12, Paragraph 2 of the Constitution of the SR.<sup>52</sup> Even in the Charter and in the Constitution, gender identity and sexual orientation are not explicitly mentioned as a ground of discrimination, but they can be included under the term 'other status', which was first used by the Slovak Constitutional Court in a ruling in 2005.<sup>53</sup>

Special acts regulating prohibition of discrimination on the grounds of sex and sexual orientation were gradually completed by the Act on Employment Services,<sup>54</sup> the Labour Code,<sup>55</sup> the Act on Health Care<sup>56</sup> and, in particular, the Anti-discrimination Act.<sup>57</sup>

The Anti-discrimination Act prohibits, among other things, discrimination based on sex in the area of employment and similar legal relationships, social security and social advantages, healthcare and the supply of goods and services, including housing and education. It also grants protection against discrimination based on sex to trans people: 'Discrimination on grounds of pregnancy or maternity, and discrimination based on sexual or gender identification, shall be also deemed to constitute discrimination based on sex.'<sup>58</sup>

Slovak legislation does not permit individuals to obtain legal acknowledgement of a non-binary preferred gender. Applicants must request either a 'male' or 'female' gender option.

In 2017 a new Victims' Act<sup>59</sup> was adopted, but the act is missing gender as a ground of discrimination, so the victims of crimes committed because of their gender identity or expression are not included as 'vulnerable victims'.

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<sup>51</sup> Slovak Republic, Constitutional Act No. 23/1991 Coll. Introducing the Charter of Fundamental Rights and Freedoms. According to Article 3: 'Everyone is guaranteed the enjoyment of her fundamental rights and basic freedoms without regard to sex, race, colour of skin, language, faith and religion, political or other conviction, national or social origin, membership in a national or ethnic minority, property, birth, or other status.'

<sup>52</sup> Slovak Republic, Act No. 460/1992 Coll. Constitution of the Slovak Republic. Paragraph 2 of Article 12 states that, 'Fundamental rights and freedoms are guaranteed in the territory of the Slovak Republic to every person regardless of sex, race, skin colour, language, belief, religion, political affiliation or conviction, national or social origin, nationality or ethnic origin, property, lineage or any other status. No person shall be harmed, favoured or discriminated against on any of these grounds.'

<sup>53</sup> Slovak Republic, Constitutional Court, PL. ÚS 8/04-202 of 18 October 2005, p. 8: Article 12, Section 2 of the Constitution provides that, 'Fundamental rights and freedoms shall be guaranteed to everyone regardless of differences in their person and status.'

<sup>54</sup> Slovak Republic, Act No. 5/2004 Coll. on Employment Services and on amendments to certain acts, provides that an employer selecting an employee must not require information about his or her sexual orientation, but it does not explicitly mention gender identity.

<sup>55</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, which in Article 1 and Article 13 also prohibits discrimination against employees based on sex (i.e. also gender identity) and sexual orientation.

<sup>56</sup> Slovak Republic, Act No. 576/2004 Coll. on Healthcare also prohibits discrimination based on 'other status', under which sexual orientation and gender identity can be subsumed.

<sup>57</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination (Anti-discrimination Act), available at: [http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>58</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), Article 2a, Section 11.

<sup>59</sup> Slovak Republic, Act No. 274/2017 Coll. on Victims of Criminal Offences and on Amendments and Supplements to certain Acts.

### 3.2.3 Specific requirements

According to surveys conducted in Europe<sup>60</sup> and Slovakia,<sup>61</sup> of all LGBTI groups, trans people are most frequently victims of violent crimes.

The Slovak legal system does not recognise the terms 'transsexual person' 'transgender person' or 'transition – gender reassignment'; it only recognises the term 'change of sex', but its definition is not contained in any valid law.

The term 'change of sex' appears in the Act on Name and Surname,<sup>62</sup> which in Article 6, Section 6 regulates permission to use a neutral name and surname at the request of an individual and the certificate issued by the medical facility in which treatment for the sex change is provided to him or her. In Article 7, Section 2(f) and Article 7, Section 3 the act regulates the change of name and surname on the ground of the sex change and requires the submission of a medical statement. Trans people thus often go through up to three phases of official name – their birth-assigned name, a neutral name and the name that they choose when they change sex.

The condition requiring the submission of a medical statement on an individual's sex change in order to change the birth registration number is also enshrined in the Act on Identification Number.<sup>63</sup> According to this act, each person born in Slovakia must acquire an identification number. Each number is unique and contains different elements for males and females. The Ministry of the Interior changes the identification number of a trans person upon receipt of a relevant medical statement. Subsequently, due to the changed identification number, trans people must change their birth certificate and travel document, and change information in other public registers (social insurance register, health insurance register, etc.).

The term 'change of sex' is contained in other legislation as well. The Act on National Service<sup>64</sup> (in Article 5, Section 6, Article 7, Section 13 and Article 11, Section 11) imposes on citizens of the Slovak Republic an obligation in relation to a change of sex, on which the beginning and termination of their national service depended, to prove this change to the district authority in the respective region by presenting the original or a certified copy of their birth certificate within 60 calendar days of the change of their official identity. An amendment<sup>65</sup> to the Decree of the Ministry of Interior of Slovak Republic implementing certain provisions of the Act on Registries with effect from 1 January 2018 amends Article 25, Section 2 in the sense that column 6 serves for recording changes in registered information on the basis of public deeds and other official documents or written notices, including the sex change.

The laws do not contain any more detailed specification of 'healthcare facility in which treatment for the sex change is provided', 'medical statement', or even regulation of the sex-change process. By such (failure of) regulation the state transferred its responsibility for decisions relating to the change of name and surname in case of sex change to medical professionals, but without further detailed legal or implementing regulation. The fate of trans people who decide to change sex thus lies in the hands of the medical professionals,

<sup>60</sup> EU LGBT survey, available at <http://fra.europa.eu/en/survey/2012/eu-lgbt-survey>.

<sup>61</sup> Transgender subgroups, Slovakia. Available at [http://fra.europa.eu/en/publications-and-resources/data-and-maps/survey-data-explorer-lgbt-survey-2012?locale=EN&dataSource=LGBT&media=png&width=740&plot=inCountry&topic=3.+Violence+and+harassment&question=f1\\_a&superSubset=1&subset=a3\\_1&country=SK](http://fra.europa.eu/en/publications-and-resources/data-and-maps/survey-data-explorer-lgbt-survey-2012?locale=EN&dataSource=LGBT&media=png&width=740&plot=inCountry&topic=3.+Violence+and+harassment&question=f1_a&superSubset=1&subset=a3_1&country=SK).

<sup>62</sup> Slovak Republic, Act no. 300/1993 Coll. on Name and Surname (*Zákon č. 300/1993 Z.z. o mene a priezvisku*).

<sup>63</sup> Slovak Republic, Act No. 301/1995 Coll. on Identification Number (*Zákon č. 301/1995 Z.z. o rodnom čísle*).

<sup>64</sup> Slovak Republic, Act No. 570/2005 Coll. on National Service and on amendments to certain acts (*Zákon č. 570/2005 Z.z. o brannej povinnosti a o zmene a doplnení niektorých zákonov*).

<sup>65</sup> Slovak Republic, Decree No. 159/2006 Coll. Decree of the Ministry of Interior of the Slovak Republic on amendments to the Decree of the Ministry of Interior of the Slovak Republic no. 302/1994 Coll., implementing certain provisions of the Act on Registries.

who perform this change in contradiction of the law, making reference to the 'socialist' communication from the Ministry of Health of the Slovak Socialist Republic no. 3–4 from 1981: 'Therapeutic interventions performed on intersexuals, transsexuals and sexual deviants and procedure for the issue of medical statement for entry in the registry of transsexual persons'. This communication concerns sexual deviants, which is unrelated to this issue.<sup>66</sup>

It is also insensitive, because it relates the medical issues of trans people to therapeutic interventions. The medical statement is issued by a sexual outpatient clinic following surgical intervention on the body of a trans person, performed with the aim of removing his or her reproductive organs, i.e. coerced castration/sterilisation. Moreover, no legislation provides that a trans person is obliged to undergo this type of surgery. Only the 'List of cross-border healthcare services' that are subject to prior approval from the respective health insurance company for the purposes of reimbursement, set out in the annex to a Decree of the Ministry of Health of the Slovak Republic,<sup>67</sup> contains the items 'surgery for the change of a woman to a man and vice versa' and 'sterilisation of a woman or a man'.

However, in practice, medical professionals make decisions not only in relation to coerced castration, but also on the coerced divorce of a trans person who wishes to obtain a medical statement before the legal recognition of their gender reassignment, although such requirement is not embodied in any law.

The Act on Family<sup>68</sup> does not regulate the legal situation of trans people or even the situation where a trans person who is married decides to undergo a sex change. It does not provide whether the sex change automatically means the termination of the marriage of a trans person by operation of the law or whether it is necessary to submit an application for divorce, about which the court decides.

If medical professionals refuse to provide healthcare to a trans person or require him or her to divorce before performing a sex change, they discriminate against such an individual on the ground of family status, according to the Anti-discrimination Act.<sup>69</sup>

### 3.3 Direct sex discrimination

#### 3.3.1 Explicit prohibition

Definitions of direct and indirect discrimination were introduced into Slovak legislation for the first time in 2003 by the so-called 'Euro-Amendment' (Harmonisation Amendment) to the Labour Code in Section 13. The legal definitions of indirect and direct discrimination were subsequently removed from the Labour Code and, after the adoption of the Anti-discrimination Act,<sup>70</sup> incorporated into its provisions. The definitions of direct and indirect

<sup>66</sup> Rights of lesbian, gay, bisexual, transgender and intersex people. Basic information for the National Strategy of Protection and Support of Human Rights in the Slovak Republic, p. 44. [https://www.mzv.sk/documents/10182/184563/08\\_strategia\\_prava\\_LGBTI.pdf](https://www.mzv.sk/documents/10182/184563/08_strategia_prava_LGBTI.pdf).

<sup>67</sup> Slovak Republic, Decree of the Ministry of Health of the SR no. 341/2013 Coll. Determining Cross-border Healthcare that is subject to prior authorisation by the respective health insurance company for the purposes of its reimbursement.

<sup>68</sup> Slovak Republic, Act No. 36/2005 Coll. on Family and on amendments to certain acts.

<sup>69</sup> Magurová, Z. *Trans ľudia - vybrané právne aspekty* (Trans people - Selected legal aspects). In: Faculty of Law, Masaryk University (2018) *Jedenáctý ročník mezinárodní konference pořádané Právnickou fakultou Masarykovy univerzity, Sborníky příspěvků, Spisy Právnické fakulty Masarykovy univerzity, řada teoretická, Svazek č. 617, Dny práva 2017, Část VI., Trans lidé nejen v rodinném právu* (11th International Conference organised by the Faculty of Law of Masaryk University, Proceedings, Days of Law 2017, Part VI, Trans people in family and other law), Masarykova univerzita, Brno, pp. 15-46, <https://www.law.muni.cz/dokumenty/44678>, available in Slovak.

<sup>70</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), available at: [http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

discrimination were later amended by the second fundamental amendment to the Anti-discrimination Act<sup>71</sup> that entered into force on 1 April 2008.

Direct discrimination is prohibited in Article 2, Section 1 and Article 2a, Section 2 of the Anti-discrimination Act.<sup>72</sup>

According to Article 2a, Section 2 of the Anti-discrimination Act, 'Direct discrimination shall mean any action or omission where one person is treated less favourably than another person is, has been or would be treated in a comparable situation.'

The definition of direct discrimination is in compliance with and almost identical to the definition taken from the Directive. Direct discrimination is defined not only as an action but also an omission that causes one person to be treated less favourably than another is, has been or would be treated in a comparable situation.

### 3.3.2 Prohibition of pregnancy and maternity discrimination

In connection with the prohibited grounds mentioned in Article 2, Section 1 of the Anti-discrimination Act,<sup>73</sup> according to Article 2a, Section 11/a, discrimination due to sex shall also mean discrimination on grounds of pregnancy or motherhood and on grounds of sex or gender identification.

The provision complies with Article 2(2)(c) of Directive 2006/54/EC. Article 2a, Section 1 of the Anti-discrimination Act stipulates that discrimination shall also mean not only an instruction to discriminate but also an incitement to discrimination.

### 3.3.3 Specific difficulties

There are no available statistics on the number and types of cases concerning direct sex discrimination brought before national courts.

There were no cases concerning direct sex discrimination reported either by the Slovak National Centre for Human Rights (equality body) or by the Slovak National Labour Inspectorate.

There is one known case which was decided by the District Court in: *Zvolen V. Petrášová v National Forestry Centre (NLC)*, of 17 March 2017, No. 7C 11/2010-818.

The District Court in Zvolen issued its verdict in the case of a senior researcher and court expert in forestry, V. Petrášová, who has sued her previous employer, the National Forestry Centre (NLC). She was represented by the NGO Citizen, Democracy and Accountability (OaDZ).

The court decided that the notice she received in 2009 was invalid, due to discrimination. However, the verdict is not yet final as the NLC is appealing it. Once the verdict becomes final, the court will also decide on other claims the applicant made in the proceedings, namely about wage compensation and compensation for non-pecuniary damages.

The dispute goes back to 2008 when V. Petrášová prepared two project ideas for projects approved by the Agricultural Paying Agency (APA). She subsequently carried out both

<sup>71</sup> Slovak Republic, Act No. 85/2008 Coll. amending Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination.

<sup>72</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), available at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>73</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), available at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

projects which were worth more than SLK 4 million (almost EUR 140 000) altogether. After she completed them, the NLC simply did not submit them to the APA.

This happened shortly after a new head of the NLC was appointed. He was a man whom Petrášová had substituted for at the forestry department at the Agriculture Ministry in 1999. Nobody explained to V. Petrášová why the projects had not been submitted.

Moreover, the NLC repeatedly changed the reasons it gave for not submitting her projects during the court proceedings. Rather than V. Petrášová's projects, the NLC submitted a project from her male colleague who had a lower level of education and less experience in the field.

Nevertheless, V. Petrášová continued preparing further project proposals in order to fully cover her working capacities at the NLC. However, the NLC had no internal rules in place for the submission of project proposals and it did not choose for implementation any of the additional projects proposed by the applicant.

Following other incidents, the NLC suggested changing V. Petrášová's work contract, explaining that she did not have any projects to coordinate. This change would mean her salary would drop and her career progress would be restricted.

V. Petrášová considered the change to be discriminatory and refused to sign the new contract. She was subsequently dismissed, with her employer claiming that, due to organisational changes, she was made redundant. This happened despite the fact that the NLC's collective agreement stipulates that, in case of organisational changes, employees are considered based on their experience and results. V. Petrášová had excellent results.

The District Court of Zvolen (first instance court) had already issued a verdict making the notice invalid in 2012,<sup>74</sup> but refused to state discrimination as the reason. The Banská Bystrica Regional Court (appellate court) confirmed the ruling in 2013.<sup>75</sup>

However, it was dismissed by the Supreme Court in 2015,<sup>76</sup> which returned the case to the Regional Court and ordered it to deal with the complaint that the notice was discriminatory. The Regional Court returned the case to the District Court of Zvolen.

In its verdict of 17 March 2017, the District Court of Zvolen<sup>77</sup> finally held that the dismissal was invalid for the reasons identified in earlier decisions, but also for being discriminatory in several ways. For example, the court held that the applicant had been subject to direct discrimination when her projects were not submitted to the APA, even though a similar project prepared by her aforementioned, less-qualified male colleague was submitted. The circumstances under which the applicant's projects had not been submitted to the APA were also described as harassment by the court, which is a form of discrimination and which included demeaning and humiliating the applicant and restricting her freedom to conduct scientific research.

The court also noted the gender-based discriminatory nature of the NLC's conduct in that the discriminatory treatment of the applicant had been initiated by its director general, a man replaced by the applicant in the position of director general of the forestry section at the Slovak Agricultural Ministry several years earlier, and who alone made the decision regarding her redundancy dismissal – despite not being in any direct employment relationship with her and despite the fact that, pursuant to the NLC's applicable organisational rules, a written proposal for a redundancy dismissal of a particular employee

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<sup>74</sup> Zvolen District Court, Decision No. 7C/11/2010-353 of 3 December 2012.

<sup>75</sup> Banská Bystrica Regional Court, Decision No. 16CoPr/2/2013-400 of 20 June 2013.

<sup>76</sup> Supreme Court, Decision No. 5 Cdo 56/2014 of 24 March 2015, <https://www.nsud.sk/data/att/48199.pdf>, available in Slovak.

<sup>77</sup> Zvolen District Court, Decision No. 7C/11/2010-818 of 17 March 2017.



should have been presented by other senior employees in the NLC management. However, their testimonies show they never proposed to dismiss the applicant.

The decision is ground-breaking because, despite anti-discrimination legislation being in place in Slovakia since 2004, there are still precious few cases where courts have ruled that discrimination has been perpetrated against women on grounds of sex and gender.

### **3.4 Indirect sex discrimination**

#### **3.4.1 Explicit prohibition**

Indirect discrimination is prohibited in Article 2a, Section 3 of the Anti-discrimination Act.<sup>78</sup>

According to Article 2a, Section 3 'Indirect discrimination shall mean an apparently neutral provision, decision, instruction or practice which put or could put a person at a disadvantage compared with the other person; indirect discrimination shall not mean provision, decision, instruction or practice objectively justified by a legitimate aim if such provision, decision, instruction or practice is appropriate and necessary for achieving of such aim.'

The Anti-discrimination Act applies an individual rather than a collective principle to the definition of indirect discrimination. According to Article 2a, Section 3, indirect discrimination shall mean an apparently neutral provision, decision, instruction or practice which puts a 'person' at a disadvantage compared with 'the other person', in comparison with Recast Directive 2006/54/EC, which contains the plural – 'persons'. In comparison with the Directive, the Anti-discrimination Act only requires a 'disadvantage' not a 'particular disadvantage', so the judicial interpretation could be easier.

#### **3.4.2 Statistical evidence**

The individual principle may allow more favourable conditions for proving indirect discrimination. The legislation does not regulate statistical evidence as a condition for proving indirect discrimination.

There are no available judgments concerning the application of statistical evidence in indirect sex discrimination. This tool is used very occasionally by NGOs representing cases of discrimination on the ground of race.

#### **3.4.3 Application of the objective justification test**

There are no available statistics on the number and types of cases concerning indirect sex discrimination brought before national courts. There are no available judgments containing a judicial interpretation.

#### **3.4.4 Specific difficulties**

There is no available case law, thus no information on the application of the concept of indirect sex discrimination.

There were no cases concerning indirect sex discrimination reported either by the Slovak National Centre for Human Rights (equality body) or by the Slovak National Labour Inspectorate.

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<sup>78</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), available at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

### 3.5 Multiple discrimination and intersectional discrimination<sup>79</sup>

#### 3.5.1 Definition and explicit prohibition

There is no legislation explicitly defining the term 'multiple discrimination', which refers to a situation when a person is discriminated against either on various grounds in various areas (cumulative multiple discrimination) or on several grounds (intersectional multiple discrimination). The Anti-discrimination Act<sup>80</sup> stipulates the different grounds of discrimination, but it does not exclude the application of the definition in cases where several grounds are accumulated.

During the preparation of the amendment to the Anti-discrimination Act of 2008, the NGO representative proposed that an explicit definition of multiple discrimination should be included in the amended act, but the Government rejected this proposal. No specialist discussion devoted to the issues of multiple discrimination has yet taken place.

There are no specific strategies aimed at multiple discrimination, at the level of either the ministries or the Slovak National Centre for Human Rights as the equality body. The concept is sometimes mentioned in policy documents but its use is more often theoretical rather than relating to the proposal and implementation of specific measures.

Only one study aimed at cases of multiple discrimination has been implemented in Slovakia. During the project 'Increasing awareness about discrimination and human rights among public actors working with disadvantaged groups',<sup>81</sup> which was realised between March 2009 and February 2010 by an NGO – (the Institute for Public Affairs) seminars were organised,<sup>82</sup> research conducted and analytical activities focused on deeper understanding of multiple discrimination. Research published in 2010 and entitled 'Discrimination and multiple discrimination. The public view of discrimination, equality and equal treatment'<sup>83</sup> showed that the interaction between gender, age and ethnicity constitutes an essential predisposition for disadvantages in society and discriminatory practices. Research has identified the particular cross-cutting nature of gender and age, which means impaired status and the threat of discrimination especially for mothers with small children or for older women. The combination of ethnicity and gender, particularly in the Roma minority, has proved to be a significant disadvantage.

In 2015 the equality body reported in its observations on the periodic reports of the Slovak Republic to the UN Human Rights Committee and the UN CEDAW Committee that the problem of multiple discrimination often arises on grounds of *gender* and *age*.<sup>84</sup> It identified, in particular, multiple discrimination against young women, in relation to the

<sup>79</sup> See for more information Fredman, S. (2016), *Intersectional discrimination in EU gender equality and non-discrimination law*, European network of legal experts in gender equality and non-discrimination, available at: <https://www.equalitylaw.eu/downloads/3850-intersectional-discrimination-in-eu-gender-equality-and-non-discrimination-law-pdf-731-kb>.

<sup>80</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), available at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>81</sup> Institute for Public Affairs, 'Increasing awareness about discrimination and human rights among public actors working with disadvantaged groups', see: <http://www.ivo.sk/5654/en/projects/increasing-awareness-about-discrimination-and-human-rights-among-the-public-actors-working-with-disadvantaged-groups>.

<sup>82</sup> Institute for Public Affairs, seminars: <http://www.ivo.sk/6150/en/news/a-seminar-on-multiple-discrimination->.

<sup>83</sup> Gyárfášová, O. and Sekulová, M. (2010) *Diskriminácia a viacnásobná diskriminácia* (Discrimination and multiple discrimination', available (in Slovak) at: <http://www.ivo.sk/6116/sk/publikacie/diskriminacia-a-viacnasobna-diskriminacia>.

<sup>84</sup> Observations of the Slovak National Centre for Human Rights on the Fifth and Sixth Periodic Reports of the Slovak Republic to the UN Committee on the Elimination of all Forms of Discrimination against Women, p. 4 [http://www.snslp.sk/CCMS/files/NHRI\\_Report\\_SNCHR.pdf](http://www.snslp.sk/CCMS/files/NHRI_Report_SNCHR.pdf). Observations of the Slovak National Centre for Human Rights on the Fourth Periodic Report of the Slovak Republic to the UN Human Rights Committee p. 6 [http://www.snslp.sk/CCMS/files/NHRI\\_Report\\_ICCPR\\_SNCHR.pdf](http://www.snslp.sk/CCMS/files/NHRI_Report_ICCPR_SNCHR.pdf).



suitable age to raise children, and against older women. In addition, the Equality Body reported that multiple discrimination on grounds of *ethnicity* and *gender* is a problem that is faced, in particular, by Roma women.

In 2017 the equality body criticised the absence of a legal regulation on multiple discrimination as a form of discrimination and recommended that the necessary legislative measures be adopted in order to sanction multiple discrimination.<sup>85</sup>

### 3.5.2 Case law and judicial recognition

At present, only a small number of court decisions concerning cases of gender discrimination is known.<sup>86</sup> Only a few of these include multiple discrimination. In some cases during 2009,<sup>87</sup> the equality body represented the injured parties – Roma women who had been discriminated against at work on the grounds of both their gender and ethnic origin. However, in all cases it based the formulation of the action for breach of the principle of equal treatment on the racial ground only.

Most of the court decisions concern cases involving discrimination on the ground of race, particularly in the area of supply of services and access to employment. The citizens' association *Poradňa*,<sup>88</sup> which specialises in litigation and has represented clients in many such cases, provides legal representation to women in cases of racial discrimination as well as multiple discrimination (on grounds of race and gender). These cases have targeted discrimination against Roma women in access to social housing, employment and social benefits, as well as segregation of Roma children (including girls) in education. In 2012 *Poradňa* also collected court judgments concerning discrimination that had been issued in earlier years and comprehensively analysed the Slovak courts' decision-making work in cases of discrimination since the adoption of the Anti-discrimination Act in 2004.<sup>89</sup> Based on their analysis as well as their own legal experience in the courts, *Poradňa* states that the implementation of the provisions of the Anti-discrimination Act by the courts in cases of gender and multiple discrimination remains inconsistent and often flawed.<sup>90</sup>

Romani women in Slovakia face multiple discrimination, especially when it comes to their security, healthcare, education, employment and housing. Although Slovakia has had access to extraordinary resources from the European Union and other donor agencies to address the issue of the appalling living conditions of the Roma, the Slovak authorities

<sup>85</sup> Čunderlík, L., Pavličková, Z. and Rišianová, S. (2017) *Medzery antidiskriminačného zákona analýza. Potreby novelizácie antidiskriminačného zákona súvisiacich právnych predpisov* (Gaps in the Anti-Discrimination Act. Analysis of the demand to amend the Anti-discrimination Act and related legislation), Bratislava 2017, ISBN 978-80-89016-88-4 pp. 13,14,21,22, available in Slovak only at: [http://www.snslp.sk/CCMS/files/1Medzery\\_antidiskriminacneho\\_zakona.pdf](http://www.snslp.sk/CCMS/files/1Medzery_antidiskriminacneho_zakona.pdf).

<sup>86</sup> According to the *Annual report on the activities of the Slovak National Centre for Human Rights for the year 2017*, in 2017 the Centre filed two legal actions concerning violations of the prohibition of discrimination. Both cases addressed discrimination in the area of employment on the ground of other status. Available in English at: [http://www.snslp.sk/CCMS/files/SNCHR\\_Activity\\_Report\\_2017.pdf](http://www.snslp.sk/CCMS/files/SNCHR_Activity_Report_2017.pdf) p. 19-20. According to the *Annual report on the activities of the Slovak National Centre for Human Rights for the year 2016*, all of the three anti-discrimination disputes being dealt with by the Centre were closed with a final ruling in 2016. Not one of these cases was on the ground of sex/gender. Available in English at: [http://www.snslp.sk/CCMS/files/2016\\_Annual\\_Activity\\_Report\\_of\\_the\\_Slovak\\_National\\_Centre\\_for\\_Human\\_Rights.pdf](http://www.snslp.sk/CCMS/files/2016_Annual_Activity_Report_of_the_Slovak_National_Centre_for_Human_Rights.pdf) pp. 17-21.

<sup>87</sup> <http://www.snslp.sk/files/report-observance-hr-2009-en.pdf> p. 146.

<sup>88</sup> *Poradňa pre občianske a ľudské práva* (Centre for Civil and Human Rights).

<sup>89</sup> Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Diskriminácia na Slovensku: Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou* (Discrimination in Slovakia: Research into barriers in access to legal means of protection from discrimination); available in Slovak, but with a summary of all the relevant findings in English at pp. 130 -136. Košice: *Poradňa pre občianske a ľudské práva*, available at: <http://www.poradna-prava.sk/sk/dokumenty/diskriminacia-na-slovensku-hladanie-barrier-v-pristupe-k-ucinnej-pravnej-ochrane-pred-diskriminaciou/>.

<sup>90</sup> Written comments concerning Slovakia to the Committee on the Elimination of Discrimination against Women (CEDAW) for consideration at its 62th session in November 2015, available in English: <http://www.poradna-prava.sk/en/documents/written-comments-for-the-un-committee-on-the-elimination-of-discrimination-against-women/>.

have failed to use them effectively for this purpose. Romani women living in rural areas are particularly marginalised. The poor housing situation in segregated Roma settlements has a number of particular gendered effects, e.g. higher vulnerability to gender-based violence, including domestic violence, limited access to education (Romani girls represent the biggest group of early school leavers), early marriages and early pregnancies etc. Romani women and girls from marginalised Romani communities are particularly vulnerable to human trafficking and sexual exploitation.

### 3.6 Positive action

#### 3.6.1 Definition and explicit prohibition

There are no other specific provisions on positive action in Slovak legislation apart from Article 8a of the Anti-discrimination Act,<sup>91</sup> which regulates temporary balancing measures (*dočasné vyrovnávacie opatrenia* in Slovak).

Article 8a of the Anti-discrimination Act reads:

‘(1) The adoption of temporary balancing measures by state administrative bodies or other legal persons targeted to eliminate disadvantages imposed on the grounds of racial or ethnic origin, belonging to national minority or ethnic group, gender or sex, age or disability, which aim is to ensure equal opportunities in practice, is not considered as discrimination. Such temporary balancing measures, in particular, are measures

a) aimed at elimination of social or economic disadvantages, by which members of disadvantaged groups are disproportionately affected,  
b) consisting in encouraging the interest of members of disadvantaged groups in employment, education, culture, health care and services,  
c) aimed at creation of equal access to employment, education, healthcare and housing, especially through targeted training programmes for members of disadvantaged groups or by spreading information on these programmes or on possibilities to apply for jobs or jobs in the education system.

(2) Temporary balancing measures provided for in section 1 may be adopted if

a) obvious inequality exists;  
b) the aim of such measures is to decrease or eliminate this inequality;  
c) temporary balancing measures are appropriate and essential to achieving the aim set.

(3) Temporary balancing measures may be adopted only in the areas provided for in this act. Such measures shall terminate once the inequality, which led to the adoption of these measures, is eliminated. The bodies pursuant to section 1 shall be obliged to terminate the performance of these measures after achieving the established aim.

(4) The bodies pursuant to section 1 are obliged to continuously monitor, assess and publish adopted temporary balancing measures with the aim of re-evaluating the eligibility of their further continuation and to submit reports to the Slovak National Centre for Human Rights on these facts.’

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<sup>91</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), available in English at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

### 3.6.2 Conceptual distinctions between 'equal opportunities' and 'positive action' in national law

The Anti-discrimination Act regulates the use of temporary balancing measures which are an exception from the principle of non-discrimination<sup>92</sup> and the aim of which is to ensure equal opportunities in practice.<sup>93</sup>

The non-discrimination principle and the principle of equality are laid down in Article 12 of the Constitution, which states in Section 1 that 'people are free and equal in dignity and rights' and in Section 2 that 'fundamental rights and freedoms are guaranteed to everyone in the territory of the Slovak Republic regardless of sex, race, colour of skin, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, descent [*'rod'* in Slovak] or other status. No one may be harmed, preferred or discriminated against on these grounds.'<sup>94</sup>

The general basis for a constitutional interpretation of equality depends on the interpretation and application of Article 12(2) of the Constitution.<sup>95</sup> It reads as follows:

'The fundamental rights and basic freedoms are guaranteed in the territory of the Slovak Republic to everyone regardless of sex, race, colour of skin, language, creed and religion, political or other beliefs, national or social origin, affiliation to a nation or ethnic group, property, descent, or another status. No one must be harmed, preferred, or discriminated against on these grounds.'

According to the finding of the Constitutional Court of the Slovak Republic Ref. PL. ÚS 37/95 of 12 September 1996,<sup>96</sup> 'Article 12 (2) of the Constitution is often described as a provision establishing the prohibition of discrimination and, on the other hand, the prohibition of the provision of advantages in a specific fundamental right and freedom to anyone entitled to this right.'

At the same time, the Constitution contains articles that derogate from the above-mentioned prohibitions, thereby permitting special protection and preferential treatment for certain groups, and these articles, under certain circumstances and in some cases, may be regarded as provisions allowing for positive action.

These include Chapter Five (economic, social and cultural rights), Article 38(1) and (2) of which guarantees to women, minors and the disabled an increased level of health protection at work and special working conditions, and to minors and the disabled the right to special protection in labour relations and to assistance in vocational training.

Another constitutional provision with the character of a provision allowing for positive action towards individuals determined on the basis of group characteristics (*national minorities or ethnic groups*) is Article 34.

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<sup>92</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), Article 8a(1), first sentence, available in English at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>93</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), Article 8a(1), first sentence, available in English at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>94</sup> Slovak Republic, Act No. 460/1992 Coll. Constitution of the Slovak Republic, available in English at: <https://www.ustavnysud.sk/ustava-slovenskej-republiky>.

<sup>95</sup> Slovak Republic, Act No. 460/1992 Coll. Constitution of the Slovak Republic, available in English at: <https://www.ustavnysud.sk/ustava-slovenskej-republiky>.

<sup>96</sup> Published in the Collection of Laws of the Slovak Republic under No. 286/1996 Coll.

### 3.6.3 Specific difficulties

The discussion relating to positive action measures started intensively with the adoption of the Anti-discrimination Act in 2004,<sup>97</sup> soon after Slovakia joined the EU. Temporary balancing measures on the grounds of race and ethnicity were introduced into the Anti-discrimination Act in Article 8(8), entitled 'permissible differential treatment',<sup>98</sup> as a result of the implementation of the Racial Equality Directive. This section was not included in the Government's initial draft of the act. It was added later to the draft by deputies during the discussion of the Anti-discrimination Act in Parliament.

This provision resulted in perhaps the most serious controversies in relation to the concept of equality in Slovakia and aroused turbulent political discussions. Immediately after the adoption of the Anti-discrimination Act, in October 2004, the Ministry of Justice initiated proceedings before the Constitutional Court to establish whether this provision was in conformity with the Constitution. The submission of the said petition to the Court created a rather peculiar situation, because only a few months earlier the same Government had adopted a set of affirmative measures aimed at achieving equality and integration among the Roma minority.<sup>99</sup>

In its petition, the Government alleged that the purpose of temporary balancing measures was not clear; the conditions under which temporary balancing measures may be adopted were not clearly defined; the addressees authorised to adopt temporary balancing measures were not clearly defined; their scope and content were not clear; as well as the overall ambiguity and incomprehensibility of the provision.

The Constitutional Court granted the Government's petition and in its judgement of 18 October 2005<sup>100</sup> it rejected temporary balancing measures as unconstitutional due to the fact that:

- '- the adoption of special positive action, including temporary balancing measures, constituted more favourable treatment (so-called positive discrimination) for persons related to race or ethnic origin;
- the provision itself failed to address the subject and content of measures as well as the criteria for adopting such measures and therefore it violated legal certainty in legal relations;
- the omission of the temporary character of measures as a main factor could result in so-called 'inverted discrimination' against other groups without a legally justifiable basis.'

This judgment was adopted by a majority of eight judges. Five judges voted against and added their different opinions on it, in which they argued in favour of the special measures. These should, in their opinion, ensure equal opportunities at the beginning for those who

<sup>97</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), available in English at: [http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>98</sup> It read 'With the purpose of achieving equal opportunities in practice and following the equal treatment principle, temporary balancing measures aiming to prevent disadvantages linked with racial or ethnic ground might be adopted.'

<sup>99</sup> 'The Main Thesis of the Policy of the Slovak Republic in the Integration of the Roma Community', adopted in 2003 as the Decree of the Government of the Slovak Republic No. 278/2003 of 23 April 2003. The document was based on the policy of positive action or compensatory measures in the areas of education, employment, social security, housing and healthcare and it is aimed at members of the Roma community with the purpose being to attain equality of opportunities.

<sup>100</sup> Finding of the Constitutional Court of the Slovak Republic PL.ÚS 8/04-202 published in the Collection of Laws of the Slovak Republic under No. 539/2005 Coll.: [http://merit.slv.cz/PL\\_US8/04](http://merit.slv.cz/PL_US8/04), [http://www.google.sk/url?url=http://miris.eurac.edu/mugs2/do/blob.doc%3Ftype%3Ddoc%26serial%3D1148459524821&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKewi-oKaN\\_b3LAhWEqnIKHRhOAKAQFggTMAA&sig2=7VCpSpdcjvkLD0ayKh2MCw&usq=AFQjCNGzjt3tC2x3T7u6HfyJmF9wFIJdg](http://www.google.sk/url?url=http://miris.eurac.edu/mugs2/do/blob.doc%3Ftype%3Ddoc%26serial%3D1148459524821&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKewi-oKaN_b3LAhWEqnIKHRhOAKAQFggTMAA&sig2=7VCpSpdcjvkLD0ayKh2MCw&usq=AFQjCNGzjt3tC2x3T7u6HfyJmF9wFIJdg), available in English.

do not start, for certain reasons, from the same position as most people in the population. Through the special measures the state should overcome the existing disadvantages experienced by certain groups so that they can fully and equally exercise the rights to which everyone is entitled.

In support of its conformity with the Constitution and legality of temporary balancing measures in favour of racially and ethnically defined population groups, these judges also observed that by signing and ratifying the CERD, ICCPR and other international treaties, Slovakia had incorporated its provisions into its own legal order.

In its judgment the Court cited two cases from the CJEU (*Johnston and Kreil*), but did not mention the CJEU case law on positive action (*Kalanke, Marschall, Badeck, Abrahamsson, Lommers and Briheche*).<sup>101</sup>

After this decision repeated attempts have been made to incorporate the temporary balancing measures into the Anti-discrimination Act. The amendment of the Anti-discrimination Act,<sup>102</sup> with effect from 1 April 2008, reintroduced the regulation of temporary balancing measures in Article 8a. Although the said amendment had also transposed Directives 76/207/EEC and 2004/113/EC, in the final version the possibility of adopting temporary balancing measures on the ground of sex was completely omitted. In contrast with the initial draft,<sup>103</sup> during the discussion of the Act in Parliament the grounds of race and sex were replaced by the grounds of membership of a national or ethnic minority and social and economic disadvantages on which the temporary balancing measures may be adopted.

The amendment to the Anti-discrimination Act adopted in 2013,<sup>104</sup> with effect from 1 April 2013, extended the grounds on which the temporary balancing measures may be adopted: not only on the ground of age and disability, but also on the ground of racial or ethnic origin, membership of an ethnic minority, gender and sex. The temporary balancing measures can only be adopted in the fields falling under the material scope of the Anti-discrimination Act (employment and occupation, social security and social advantages, healthcare, education and access to and provision of goods and services including housing). According to the amendment, the possibility of adoption of temporary balancing measures was also extended to 'other legal entities'. The temporary balancing measures can be adopted by all public administration bodies (state authorities and local self-government) and legal entities from the private sector (companies, schools, NGOs, etc.)

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<sup>101</sup> The above-mentioned judgments of the CJEU on positive action were only analysed by some experts on gender equality: Debrečéniová, J.: *Pozitívny postup ako novodobá súčasť politík smerujúcich k zabezpečeniu rovnosti a jeho zakotvenie v medzinárodnom, európskom a slovenskom práve* (Positive action as a modern element of policies aimed at ensuring equality and its anchoring in international, European and Slovak law), in: *Ústav štátu a práva Slovenskej akadémie vied, Informačná kancelária Rady Európy: (Ne)rovnosť a rovnoprávnosť. Zborník z medzinárodnej konferencie konanej v dňoch 13. – 15. októbra 2005 v Tatranskej Štrbe* ((In)equality and equality. Proceedings of an international conference held on 13-15 October 2005 in Tatranska Strba); Magurová, Z. (2012) *Pozitívne opatrenia zamerané na rodovú rovnosť v rozhodnutiach Európskeho súdneho dvora* (Positive measures aimed at gender equality in judgements of the European Court of Justice), in *Právny obzor : teoretický časopis pre otázky štátu a práva* (Legal horizon: theoretical journal of state and legal matters), roč. 95, č. 6, pp. 584-600. ISSN 0032-6984; Magurová, Z. (2012) *Pozitívne opatrenia zamerané na rodovú rovnosť v kontexte európskeho práva* (Positive measures aimed at gender equality in the context of European law), in *Právny obzor : teoretický časopis pre otázky štátu a práva* (Legal horizon: theoretical journal of state and legal matters), roč. 95, č. 3, s. 237-252. ISSN 0032-6984.

<sup>102</sup> Slovak Republic, Act No. 85/2008 Coll. amending Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act).

<sup>103</sup> The original proposition contained the following wording: 'The adoption of temporary balancing measures by state administrative bodies targeted at eliminating disadvantages arising due to racial or ethnic origin, nationality or ethnic group, sex, age or disability, with the aim being to ensure equality of opportunities in practice, is not considered discrimination.'

<sup>104</sup> Slovak Republic, Act No 32/2013 Coll. amending Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), effective from 1 April 2013, available in English at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

The definition of temporary balancing measures is in compliance with the EU definition, but the application is not satisfactory. In its annual reports, the Slovak National Centre for Human Rights frequently criticises the fact that temporary balancing measures have rarely been implemented in practice by state authorities and especially legal entities from the private sector. These reports regularly contain no information about any temporary balancing measure taken on the ground of sex.

The Centre received only two reports on temporary balancing measures being adopted in 2018 by bodies entitled to do so.<sup>105</sup> Other, mainly public bodies, provided information about projects which they consider temporary balancing measures, but only in response to specific requests from the Centre.

#### 3.6.4 Measures to improve the gender balance on company boards

Legislation on quotas for women on company boards does not exist in Slovakia, concerning either public or private companies. Slovakia is one of the countries which did not support the adoption of the Gender-Balanced Boards Directive. There are no proposals pending that address the gender balance on company boards.

No codes of conduct or corporate governance codes (private or state-owned companies) regulating these quotas are known. No companies have published a policy of quotas or higher representation of women on company boards.

Only some specific measures of a non-legislative character and in support of initiatives were implemented. For example, the Charter of Diversity was signed on 30 May 2017.<sup>106</sup>

In 2015, 2016 and 2017 the Labour Ministry implemented a project entitled 'Support for balanced representation of women and men in managerial positions in organisations in the public and private sectors' which was financed by the European Commission's Progress programme.<sup>107</sup> This project was a reaction to existing inequalities in the representation of both sexes in these positions, which persist in spite of the fact that the share of women graduates from universities currently exceeds 50 %. The project aim was to support more balanced representation of women and men in management through several activities. Their purpose was to inform and raise awareness among the public, in particular employers, of the persisting inequalities and to highlight the positive effects of more balanced representation of both sexes in management.

#### 3.6.5 Positive action measures to improve the gender balance in other areas

As in many countries of the former Eastern Bloc, in the socialist era the formal 30 % quota for the participation of women in Parliament also existed in Slovakia, but it mostly applied to women nominated by the Communist Party. Due to these negative experiences<sup>108</sup> from the socialist era, current attitudes to quotas are rather negative, which was reflected in the reluctance to introduce quotas in the 1990s.

None of the Slovak governments has seriously dealt with the need of adoption of positive action measures to improve the gender balance or to increase the representation of women in management positions.

Temporary balancing measures and quotas are not in the media spotlight. The media do cover such measures, particularly during times when the issue is discussed in the EU.

<sup>105</sup> The report of municipality Boľany and report of Government Proxy for the Roma Communities are available in Slovak at: [www.snsip.sk/#page=2894](http://www.snsip.sk/#page=2894).

<sup>106</sup> Available in English at: [https://www.nadaciapontis.sk/article/prvych-16-firiem-podpisalo-chartu-diverzity-slovensko/2344?lang=en\\_US](https://www.nadaciapontis.sk/article/prvych-16-firiem-podpisalo-chartu-diverzity-slovensko/2344?lang=en_US).

<sup>107</sup> Available in English at: <http://www.gender.gov.sk/en/300/>.

<sup>108</sup> In the socialist era, women occupied about one third of the seats, but the Communist Party determined the candidates and elections were a formality. Women's participation in shaping policies was merely a formality, as these policies were adopted in an undemocratic framework.



Media reports often express the view that 'quotas humiliate women', that with the 'introduction of mandatory quotas for women the position of women in the business will not be strengthened but, on the contrary, will be weakened', that 'women have their place in business, but their position, like that of men, should depend on a combination of abilities, ambitions, talent and merits, not on their sex'.<sup>109</sup>

### **3.7 Harassment and sexual harassment**

#### **3.7.1 Definition and explicit prohibition of harassment**

A definition of harassment was introduced into Slovak legislation for the first time in 2003 by the so-called 'Euro-Amendment' (Harmonisation Amendment) to the Labour Code as one of the forms of discrimination in labour relations, for the purpose of transposition, especially of Directives 2000/43/EC and 2000/78/EC.

Under Section 13, Paragraph 4, 'Harassment is also considered to be a form of discrimination where unwanted conduct occurs with the purpose or effect of violating human dignity and creates for the employee a hostile, intimidating, degrading, humiliating or offensive environment.'

As the Labour Code contained a general prohibition of discrimination on the grounds of sex, the prohibition of harassment also automatically applied to harassment on the grounds of sex.

After the adoption of the Anti-discrimination Act<sup>110</sup> in 2004 the regulation of harassment was transferred from the Labour Code to the Anti-discrimination Act. However, the definition of harassment differed from the definition contained in the Labour Code as well as from definitions contained in the Directives. In particular, the term 'unwanted conduct' was replaced by the term 'treatment', whereby the attribute 'unwanted' was completely omitted from the definition.

The second major amendment to the Anti-discrimination Act<sup>111</sup> introduced the currently valid definition of 'harassment'. According to Article 2a, Section 4, harassment shall mean conduct which creates or may create an intimidating, hostile, shameful, humiliating, degrading, disrespectful or offensive environment and whose intention or consequence is or may be the violation of a person's freedom or human dignity.

The definition of harassment in the Anti-discrimination Act is not fully compatible with Directive 2006/54/EC. It does not include an explicit reference to unwanted conduct but in some aspects goes beyond the requirements of the Directive and may guarantee a higher level of protection against harassment than the Directive. In addition to covering the intention or consequence of a violation of an individual's dignity, it covers an actual or potential intervention into a person's freedom. As the Anti-discrimination Act does not define this freedom in detail, it can be widely interpreted as personal freedom, freedom of religious belief, conviction, speech and movement. Unlike the Directive, the definition of harassment in the Anti-discrimination Act does not contain any direct reference to the ground on which the harassment is prohibited. However, from the logical and systematic interpretation it is clear that the prohibition of harassment is relevant only on the grounds as defined in Article 3, Section 1 of the Anti-discrimination Act.

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<sup>109</sup> Available in Slovak at: <https://www.aktuality.sk/clanok/240384/komentar-kvoty-dehonestuju-zeny/>.

<sup>110</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), available in English at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>111</sup> Slovak Republic, Act No. 85/2008 Coll. of Laws amending the Anti-discrimination Act effective from 1 April 2008.

### 3.7.2 Scope of the prohibition of harassment

The prohibition of harassment is relevant to all fields defined in Article 3, Section 1 of the Anti-discrimination Act: employment (including access to employment, occupation, other gainful activities or functions including recruitment requirements and conditions and the manner of carrying out the process of selection for employment, access to vocational training, continuing vocational training and participation in programmes of active labour market measures, access to counselling for employment selection and change of employment, membership of and participation in organisations of employees and employers and organisations for people engaged in a certain profession, including the benefits provided by these organisations to their members);<sup>112</sup> social security (including access to and provision of social assistance, social insurance, old age pensions, complementary old age pensions, state social security allowance and social benefits);<sup>113</sup> healthcare; access to goods and services (including housing provided to the public by legal entities and entrepreneurs);<sup>114</sup> and education.

### 3.7.3 Definition and explicit prohibition of sexual harassment

The process of adoption of the Anti-discrimination Act was very complicated and lengthy, accompanied by unwillingness on the part of the political parties and Government to approve it. The greatest dispute about whether or not to include sexual harassment was conducted during the adoption of the Act.

Only the above-mentioned second fundamental amendment to the Anti-discrimination Act<sup>115</sup> in 2008 also increased protection for people from harassment by the introduction of an explicit prohibition of sexual harassment which is not contained elsewhere in Slovak national legislation.

The adoption of the legislation relating to sexual harassment tended to be regarded as a necessary evil, required by the harmonisation process, or as something redundant.

According to Article 2a, Section 5 of the Anti-discrimination Act,<sup>116</sup> sexual harassment shall mean verbal, non-verbal or physical conduct of a sexual nature whose intention or consequence is or may be a violation of a person's dignity and which creates an intimidating, degrading, disrespectful, hostile or offensive environment.

This definition of sexual harassment is not fully compatible with the definitions contained in Directive 2006/54/EC. It does not include an explicit reference to unwanted conduct. The definition of sexual harassment requires a cumulative fulfilment of the condition of actual or potential violation of an individual's dignity and the creation of an intimidating, hostile, degrading, humiliating or offensive environment without indicating the difference between these two requirements. This means that the definition is restrictive compared to the definition contained in the Directive.

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<sup>112</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), Article 6, Section 2 a), b), c), d), available in English at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>113</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), Article 5, Section 2 a), available in English at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>114</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), Article 5, Section 2 d), available in English at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>115</sup> Slovak Republic, Act No. 85/2008 Coll. of Laws amending Anti-discrimination Act effective from 1 April 2008.

<sup>116</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), available in English at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).



### 3.7.4 Scope of the prohibition of sexual harassment

The prohibition of sexual harassment is relevant to all fields defined in Article 3, Section 1 of the Anti-discrimination Act: employment (including access to employment, occupation, other gainful activities or functions, including recruitment requirements and conditions and the manner of carrying out the process of selection for employment, access to vocational training, continuing vocational training and participation in programmes of active labour market measures, access to counselling for employment selection and change of employment, membership of and participation in organisations of employees and employers and organisations for people engaged in a certain profession, including the benefits provided by these organisations to their members);<sup>117</sup> social security (including access to and provision of social assistance, social insurance, old age pensions, complementary old age pensions, state social security allowance and social benefits);<sup>118</sup> healthcare; access to goods and services (including housing provided to the public by legal entities and entrepreneurs);<sup>119</sup> and education.

### 3.7.5 Understanding of (sexual) harassment as discrimination

Harassment and sexual harassment are explicitly prohibited in the Anti-discrimination Act as a form of discrimination. According to Article 2a, Section 10 of the Anti-discrimination Act, 'Refusal or endurance of discrimination by a person may not in any way affect the subsequent treatment of this person or behaviour towards this person or constitute the basis for the decision related to this person.'

### 3.7.6 Specific difficulties

The EU-wide survey on violence against women published by the EU Agency for Fundamental Rights in 2014<sup>120</sup> shows considerable experience by Slovak women of sexual harassment and cyber-harassment. As many as 38 % of the respondents declared they had experienced verbal forms of sexual harassment since the age of 15. One in three respondents had experienced non-verbal forms of sexual harassment from this age, and 17 % had experienced cyber-harassment. Victims of sexual harassment declared feelings of vulnerability, anxiety and loss of confidence as the most common results of their experience. Nevertheless, in 2018 there were no cases concerning harassment or sexual harassment of women in the workplace reported either by the Slovak National Centre for Human Rights (equality body) or the Slovak National Labour Inspectorate.

## 3.8 Instruction to discriminate

### 3.8.1 Explicit prohibition

Article 2a, Section 1 of the Anti-discrimination Act<sup>121</sup> stipulates that discrimination shall also mean an instruction to discriminate.

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<sup>117</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), Article 6 Section 2 a), b), c), d), available in English at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>118</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), Article 5 Section 2 a), available in English at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>119</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), Article 5 Section 2 d), available in English at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>120</sup> EU Agency for Fundamental Rights, *Survey on violence against women in the EU*, available at: <https://fra.europa.eu/en/publications-and-resources/data-and-maps/survey-data-explorer-violence-against-women-survey>.

<sup>121</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), available in English at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

According to Article 2a, Section 6 an instruction to discriminate shall mean an action involving the abuse of the subordinate position of an individual for the purpose of discrimination against a third person.

The instruction to discriminate usually abuses the subordinate position of an individual to discriminate against a third party. Incitement to discriminate is persuading, affirming or inciting a person to discriminate against a third person and the relevant prohibition applies in all types of relations in areas where discrimination is prohibited.

### 3.8.2 Specific difficulties

There were no cases concerning instruction to discrimination reported either by the Slovak National Centre for Human Rights (equality body) or the Slovak National Labour Inspectorate.

## 3.9 Other forms of discrimination

According to Article 2a, Section 1 of the Anti-discrimination Act,<sup>122</sup> discrimination shall also mean incitement to discrimination.

Article 2a, Section 7 states: 'Incitement to discrimination shall mean persuading, affirming or inciting a person to discriminate against a third person.'

The difference between an instruction to discriminate and incitement to discriminate lies in the level of subordination of the discriminated person in relation to the perpetrator.

Article 2a Section 11 of the Anti-discrimination Act can be regarded as regulation of discrimination by association or assumed discrimination. It stipulates that, 'Discrimination due to:

- b) race, nationality or ethnic origin shall also mean the discrimination due to the relationship to a person of certain race, nationality or ethnic origin,
- c) religion or faith shall also mean the discrimination due to the relationship to a person of certain religion or faith, as well as the discrimination of a person without religion.'

## 3.10 Evaluation of implementation

Generally the legal definitions in Slovak legislation are in compliance with the EU definitions, but the application is not satisfactory.

The definitions of harassment and sexual harassment in the Anti-discrimination Act are not fully compatible with Directive 2006/54/EC. They do not include an explicit reference to unwanted conduct. The definition of sexual harassment requires a cumulative fulfilment of the condition of actual or potential violation of an individual's dignity and the creation of an intimidating, hostile, degrading, humiliating or offensive environment without indicating the difference between these two requirements. This means that the definition is restrictive compared to the definition contained in the Directive.

There is no definition of multiple discrimination in Slovak law.

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<sup>122</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), available in English at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

### **3.11 Remaining issues**

There were no other remaining issues regarding the central concepts of gender equality law discussed. No national law, case law or opinions of the equality body use other relevant concepts related to gender equality (e.g. distinction between formal and substantive equality).

## **4 Equal pay and equal treatment at work (Article 157 of the Treaty on the Functioning of the European Union (TFEU) and Recast Directive 2006/54)**

### **4.1 General (legal) context**

#### **4.1.1 Surveys on the gender pay gap and the difficulties of realising equal pay**

The Government adopted the National Strategy for Gender Equality for 2014-2019<sup>123</sup> and a related Action Plan. Among the concrete commitments was a reduction of the gender pay gap. The gender pay gap in hourly earnings between men and women has continued to decrease, from 21.5 % in 2012 to 19.6 % in 2017.<sup>124</sup>

No surveys have been published that provide insights into specific factors that explain the gender pay gap and difficulties that hamper the realisation of equal pay for women and men. There are no special initiatives of the Government and social partners aimed at its gradual reduction. Monitoring of initiatives aimed at the gender pay gap is not done individually but in connection with other activities linked with gender equality.

Studies focusing on the gender pay gap are rare and only a few papers which analyse gender-related pay differences are available.<sup>125</sup>

The overall gender pay gap reflects the strong persistence of vertical gender segregation in the Slovak labour market and the fact that women are generally more represented in jobs with lower wages. The largest gender pay gaps can be identified in economically stronger regions with a higher presence of the manufacturing sector.<sup>126</sup>

The Financial and insurance sector has the widest gender pay gap, despite the fact that this sector is characterised by a high share of female employment.<sup>127</sup>

Generally, the gender pay gap is smaller in the public sector than in the private sector. This may partially be caused by a higher share of other elements such as bonuses and special premiums in addition to gross wages in the private sector.<sup>128</sup>

A relatively wide gender pay gap remains one of the characteristic traits of the Slovak labour market and reflects both its strong gender segregation and the difficulties faced by employees with caring responsibilities.<sup>129</sup>

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<sup>123</sup> Available in English at: [https://www.gender.gov.sk/en/files/2015/06/Strategy\\_EN.pdf](https://www.gender.gov.sk/en/files/2015/06/Strategy_EN.pdf).

<sup>124</sup> [http://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=52696#pay](http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=52696#pay).

<sup>125</sup> Mitková Ľ. and Kottulová J. (2017) *Gender pay gap: Evidence from Slovakia*, Comenius University in Bratislava, Faculty of Management, Bratislava, Slovakia, ISBN 978-80-87325-15-5  
[https://www.researchgate.net/publication/330779158\\_Gender\\_pay\\_gap\\_Evidence\\_from\\_Slovakia](https://www.researchgate.net/publication/330779158_Gender_pay_gap_Evidence_from_Slovakia), in English; Porubánová, S. (2016) *The gender pay gap in Slovakia*,  
[https://ec.europa.eu/info/sites/info/files/sk\\_comments\\_paper\\_be\\_2016.pdf](https://ec.europa.eu/info/sites/info/files/sk_comments_paper_be_2016.pdf), in English..

<sup>126</sup> Mitková Ľ. and Kottulová J. (2017) *Gender pay gap: Evidence from Slovakia*, Comenius University in Bratislava, Faculty of Management, Bratislava, Slovakia, ISBN 978-80-87325-15-5, p. 230  
[https://www.researchgate.net/publication/330779158\\_Gender\\_pay\\_gap\\_Evidence\\_from\\_Slovakia](https://www.researchgate.net/publication/330779158_Gender_pay_gap_Evidence_from_Slovakia), in English.

<sup>127</sup> Mitková Ľ. and Kottulová J. (2017) *Gender pay gap: Evidence from Slovakia*, Comenius University in Bratislava, Faculty of Management, Bratislava, Slovakia, ISBN 978-80-87325-15-5, p. 231  
[https://www.researchgate.net/publication/330779158\\_Gender\\_pay\\_gap\\_Evidence\\_from\\_Slovakia](https://www.researchgate.net/publication/330779158_Gender_pay_gap_Evidence_from_Slovakia), in English.

<sup>128</sup> Mitková Ľ. and Kottulová J. (2017) *Gender pay gap: Evidence from Slovakia*, Comenius University in Bratislava, Faculty of Management, Bratislava, Slovakia, ISBN 978-80-87325-15-5, p. 232  
[https://www.researchgate.net/publication/330779158\\_Gender\\_pay\\_gap\\_Evidence\\_from\\_Slovakia](https://www.researchgate.net/publication/330779158_Gender_pay_gap_Evidence_from_Slovakia), in English.

<sup>129</sup> Mitková Ľ. and Kottulová J. (2017) *Gender pay gap: Evidence from Slovakia*, Comenius University in Bratislava, Faculty of Management, Bratislava, Slovakia, ISBN 978-80-87325-15-5, p. 234  
[https://www.researchgate.net/publication/330779158\\_Gender\\_pay\\_gap\\_Evidence\\_from\\_Slovakia](https://www.researchgate.net/publication/330779158_Gender_pay_gap_Evidence_from_Slovakia), in English.

#### 4.1.2 Surveys on the difficulties of realising equal treatment at work

No surveys or reports have been published that provide insights into specific factors that prevent the realisation of equal treatment at work.

#### 4.1.3 Other issues

Gender inequalities at work are caused by a number of factors. Among the most prominent ones are the traditional division of gender roles, low awareness of rights and gender-based inequalities, absence of real affirmative action and, last but not least, the absence of services to support better work-life balance.

Women in Slovakia are often faced with horizontal and vertical segregation. In fact, the fields of healthcare, social services and education tend to be dominated by women: over four fifths of the workforce in these sectors consists of women and the figure is three fifths for the public policy sector. Horizontal segregation of the labour market in Slovakia is very pronounced and 'female' jobs are less valued. The gender pay gap occurs not only between sectors, but also within sectors. A higher educational level does not automatically mean that women obtain better positions and better pay.<sup>130</sup>

#### 4.1.4 Political and societal debate and pending legislative proposals

There has been no political or societal debate or pending legislative proposals on equal pay in 2018.

An extensive awareness-raising campaign on the gender pay gap, its pervasiveness and harmful effects, was launched in 2014 within the framework of the national project 'Institute for gender equality' ('When I grow up').<sup>131</sup> The campaign well received and was followed by intense public discussion of gender disparities and their impact on the future and ambitions of women and men in the labour market as well as in the private sphere.

The Ministry of Labour regularly organises a competition entitled Employers Friendly to Family, Gender Equality and Equal Opportunities. The basic objectives of the competition include motivating employers to create conditions that are responsive to employees' family responsibilities and giving public recognition to employers who implement systems for reconciling work and family life and for creating equal opportunities for women and men. As part of the competition questionnaire, equal pay policy and a gender audit of monthly remuneration are included.

### 4.2 Equal pay

#### 4.2.1 Implementation in national law

The principle of equal pay for men and women is generally guaranteed under the Slovak Constitution.<sup>132</sup> According to Section 36, all employees have the right to fair and satisfactory conditions at work, in particular the right to remuneration for the work performed and the right of collective bargaining.

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<sup>130</sup> See: Porubánová, S. (2016) *The gender pay gap in Slovakia*, p. 2  
[https://www.europarl.europa.eu/RegData/etudes/STUD/2017/583140/IPOL\\_STU\(2017\)583140\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/583140/IPOL_STU(2017)583140_EN.pdf), in English.

<sup>131</sup> Available in Slovak at: <https://genderdatabaza.wordpress.com/2016/10/24/ked-vyrastiem/>.

<sup>132</sup> Slovak Republic, Act No. 460/1992 Coll. Constitution of the Slovak Republic, available at: <https://www.ustavnysud.sk/ustava-slovenskej-republiky>.

The principle of equal pay can also be deduced from Article 6, Section 2b of the Anti-discrimination Act.<sup>133</sup> It provides that the principle of equal treatment applies to employment relationships, including remuneration.

The general principle of equal pay for equal work is laid down in the Labour Code.<sup>134</sup> According to Section 6, women and men shall have the right to equal treatment with regard to access to employment, remuneration and promotion, vocational training, and also with regard to working conditions.

The situation has improved in the definition of pay<sup>135</sup> in the amendment to the Labour Code, effective since 1 September 2007. It was a fundamental reform, in which the definition of pay contained in Article 118 was changed and the principle of equal remuneration for equal work and for work of equal value was laid down in the new Article 119a.

The principle of equal pay covers employees, part-time workers (including job sharing) and workers who perform home-work or telework.

#### 4.2.2 Definition in national law

Article 118, Section 2 of the Labour Code<sup>136</sup> states: 'Pay shall be any financial settlement or settlement of a financial value (pay in kind), provided by an employer to an employee for work. The following items shall not be deemed to be pay in particular: pay compensation, severance allowances, discharge benefit, travel reimbursement including non-mandatory travel reimbursement, contributions from a social fund, contributions to supplementary pension saving funds, contributions to an employee's life insurance, revenues from capital holdings (shares) or bonds, a tax bonus, income compensation for an employee's temporary incapacity for work, supplementary sickness insurance, compensation for work standby, monetary compensation under Article 83a, Section 4<sup>137</sup> and other payments provided to an employee in relation to employment pursuant to this Act, other relevant regulations, a collective agreement or an employment contract which do not have the characteristics of pay.'

According to Article 118, Section 3, pay shall be considered to include any settlement provided by an employer to an employee for work on the occasion of his/her employment anniversary or personal anniversary, if such is not provided from net profit or from the social fund.

This definition does not comply with the definition of Article 157(2) TFEU. Provisions of the Labour Code state that pay conditions must be agreed without any discrimination on grounds of sex. Women and men shall be entitled to equal pay for the same work or work of equal value. But this condition does not apply to all remuneration for work and all benefits that are paid in relation to employment. For example, the above-mentioned enumeration of the settlements in Article 118, Section 2 excludes from pay all severance allowances, discharge benefits, non-mandatory travel reimbursement, contributions from a social fund, supplementary payments to sickness insurance benefits, and contributions to supplementary pension saving funds, which does not comply with the definition of Article 157(2) TFEU.

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<sup>133</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination and on amendment of certain Acts (Anti-discrimination Act), available in English at: [http://www.snsrp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snsrp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>134</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

<sup>135</sup> The Slovak term '*mzda*' is translated as 'wage' in the official English translation of the Labour Code.

<sup>136</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

<sup>137</sup> This covers reasonable monetary compensation for an employee refraining from performing earning activities that have the character of competition with the employer's activity after termination of the employment relationship.

Due to the horizontal direct effect of Article 157 TFEU, this can be remedied. However, it would be better if the legal definition in Article 118, Section 3 of the Slovak Labour Code complied with the concept of pay in EU law.

#### 4.2.3 Explicit implementation of Article 4 of Recast Directive 2006/54

Article 119a of the Labour Code states:

'Section 1) Pay conditions must be agreed without any form of sex discrimination. The provision of the first sentence 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's special regulations.

Section 2) Women and men have the right to equal pay for equal work and for work of equal value. Equal work or work of equal value is considered to be work of the same or comparable complexity, responsibility and urgency, which is carried out in the same or comparable working conditions and produces the same or comparable capacity and results of work in an employment relationship for the same employer.'

#### 4.2.4 Related case law

There are no available statistics on the number and types of cases concerning pay discrimination brought before national courts. There were no cases on equal pay reported by the Slovak National Centre for Human Rights (equality body).

Since 2002 annual reports on results in the area of pay equality are also provided by the National Labour Inspectorate. These reports underline the fact that the Labour Inspectorate has little competence in the area of pay inequality (full-time employees refuse to provide information, the labour inspector has to conceal the identity of the complainant, the reversed burden of proof for the employer does not apply to complaints handled by the inspectorates, etc).<sup>138</sup>

The 2015 *Report on discrimination and gender equality in employment relations* states that violations of the obligation to agree on pay conditions without any discrimination and to provide employees with equal pay for equal work or for work of equal value (Article 119a of the Labour Code) was identified in 12 cases. The violation was not identified as less favourable treatment of women in terms of remuneration as compared to men. All these cases usually concerned unequal pay for people of the same sex, which the employer was unable to justify by objective indicators.<sup>139</sup>

In the 2018 *Report* the National Labour Inspectorate identified 39 unequal pay cases but without providing any other detailed information.<sup>140</sup>

#### 4.2.5 Permissibility of pay differences

No justifications for pay differences are allowed in legislation.

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<sup>138</sup> There is no obligation for the employers to provide anonymous data.

<sup>139</sup> National Labour Inspectorate (2016), *Informatívna správa o diskriminácii a rodovej rovnosti v pracovnoprávných vzťahoch za rok 2015* (Report on discrimination and gender equality in employment relations 2015), <https://www.ip.gov.sk/diskriminacia-a-rodova-rovnost-v-pracovnopravnych-vztahoch/>, p. 5, in Slovak.

<sup>140</sup> National Labour Inspectorate (2018), *Informatívna správa o diskriminácii a rodovej rovnosti v pracovnoprávných vzťahoch za rok 2018* (Report on discrimination and gender equality in employment relations 2018), <https://www.ip.gov.sk/diskriminacia-a-rodova-rovnost-v-pracovnopravnych-vztahoch/>, p. 9, in Slovak.



#### 4.2.6 Requirement for comparators

Comparability is an element in Article 119a, Section 2 of the Labour Code which states: 'Women and men have the right to equal pay for equal work and for work of equal value. Equal work or work of equal value is considered to be work of the same or comparable complexity, responsibility and urgency, which is carried out in the same or comparable working conditions and produces the same or comparable capacity and results of work in an employment relationship for the same employer.'

#### 4.2.7 Existence of parameters for establishing the equal value of the work performed

The Article 119a, Section 2 of the Labour Code stipulates: 'Equal work or work of equal value is considered to be work of the same or comparable complexity, responsibility and urgency, which is carried out in the same or comparable working conditions and produces the same or comparable capacity and results of work in an employment relationship for the same employer.'

#### 4.2.8 Other relevant rules or policies

There are no other relevant rules or policies that provide parameters for establishing the equal value of the work performed.

#### 4.2.9 Wage transparency

According to Article 119a, Section 3 of the Labour Code,<sup>141</sup> if the employer implements a system of job evaluation, the evaluation must be based on the same criteria for men and women without any sex discrimination. In the evaluation of the work of women and men, employers may use other objectively measurable criteria if they can be applied to all employees without regard to sex.

#### 4.2.10 Implementation of the transparency measures set out by European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women

No measures set out by the European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency have been implemented.

#### 4.2.11 Other measures, tools or procedures

No other measures, tools or procedures have been developed to enhance pay transparency and the closure of the equal pay gap.

### 4.3 Access to work, working conditions and dismissal

#### 4.3.1 Definition of the personal scope (Article 14 of Recast Directive 2006/54)

In conformity with the principle of equal treatment, Article 6 of the Anti-discrimination Act<sup>142</sup> includes a prohibition of discrimination on the grounds of sex in the field of access to employment, occupation, self-employment, other gainful activities or functions, including job requirements (which also encompasses job advertisements) and conditions and means of employee selection. The Act also includes a general prohibition of discrimination in access to vocational training and employment agencies, as well as a

<sup>141</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

<sup>142</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), available in English at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).



prohibition of discrimination in terms of promotion. The Anti-discrimination Act furthermore 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 public sectors.

The Labour Code<sup>143</sup> contains more detailed regulations regarding access to employment. In addition to the general equal treatment clause in Article 13 that applies to all employment relationships (including part-time work, job sharing, home-work and telework) from the beginning until the termination of the employment, it contains a special article on so-called 'Pre-contractual Relations' (Article 41). This Article contains a specific prohibition on a future employer requiring information on pregnancy and family relationships and a prohibition on violating the equal treatment principle. This article also applies to the employment relationships of civil servants and public servants. In order to make the recruitment process more transparent, Article 41 was amended by Section 10,<sup>144</sup> which introduces the obligation for employers to disclose salary conditions in job adverts. This requirement applies to all forms of advertisement including online advertising, posters or billboards. If an employment agreement is consequently concluded with a successful candidate, the employer shall provide the employee with at least the salary identified in the job advert itself.<sup>145</sup>

In Article 14, Section 1 of the Act on Employment Services<sup>146</sup> the right of access to employment is defined as the right to receive help either in the search for an appropriate job, or in vocational training and preparation for the labour market. The right of access to employment is guaranteed in accordance with the principle of equal treatment. In order to achieve the application of the equal treatment principle in access to employment, the Act also contains a provision in Article 13 z)(ab) about the duty of employment agencies to inform job applicants about their right to equal treatment in access to employment. Moreover, the Act contains a specific prohibition in Article 62 that prevents job advertisements with job offers from containing any restrictions or discrimination on the grounds inter alia of sex, marital or family status or social origin. According to this article, the criteria for the selection of employees must guarantee equal opportunities for all citizens.

According to Article 11, Section 1 of the Labour Code,<sup>147</sup> 'An employee shall be a natural person who in labour-law relations and, if stipulated by special regulation also in similar labour relations, performs dependent work for the employer.'

This definition of a 'worker' reflects the relevant case law of the CJEU.

#### 4.3.2 Definition of the material scope (Article 14(1) of Recast Directive 2006/54)

According to Article 6, Section 2 of the Anti-discrimination Act,<sup>148</sup>

'The principle of equal treatment shall apply only with regard to the rights of natural persons provided for under separate legal provisions regulating:

<sup>143</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

<sup>144</sup> Slovak Republic, Act No. 63/2018 Coll. as an amendment of Act No. 311/2001 Coll., the Labour Code effective since 1 May 2018.

<sup>145</sup> Employers may be fined up to approximately EUR 33 000 if the advertisement for a job does not include information about the base salary offered. If the base salary agreed in the labour contract is lower than the one advertised for the vacant position, the fine may reach up to EUR 100 000.

<sup>146</sup> Slovak Republic, Act No. 5/2004 Coll. Act on Employment Services (*Zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov*).

<sup>147</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

<sup>148</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), available in English at: [http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

- a) access to employment, occupation, other gainful activities or functions (hereinafter 'employment'), including recruitment requirements and conditions and the manner of carrying out the process of selection for employment;
- b) performance of employment and the conditions of performing the work in employment including remuneration, promotions and dismissal;
- c) access to vocational training, continuing vocational training and participation in programmes of active labour-market measures including access to counselling for employment selection and change of employment (hereinafter 'vocational training'); and
- d) membership and participation in organizations of employees and employers and in organizations associating persons of a certain profession including the benefits provided by the organizations to their members.'

This scope is identical to the scope of Article 14(1) of Recast Directive 2006/54/EC.

#### 4.3.3 Implementation of the exception on occupational activities (Article 14(2) of Recast Directive 2006/54)

According to Article 8, Section 1 of the Anti-discrimination Act<sup>149</sup> differences in treatment shall not constitute discrimination if they are objectively justified by the nature of occupational activities in employment or the circumstances under which such activities are carried out, provided that such reason constitutes a real and decisive requirement for employment under the condition that the aim is legitimate and the requirement is appropriate.

The original wording of the concept of different treatment in Article 8, Section 1 of the Anti-discrimination Act as adopted in 2004 was changed in September 2007 to produce a more precise definition, nearly identical to the wording of the Recast Directive.

#### 4.3.4 Protection against the non-hiring, non-renewal of a fixed-term contract, non-continuation of a contract and dismissal of women connected to their state of pregnancy and/or maternity

Protection against the non-hiring, non-renewal of a fixed-term contract, non-continuation of a contract and dismissal of women connected to their state of pregnancy and/or maternity is guaranteed by the Anti-discrimination Act<sup>150</sup> (Article 6), which includes a prohibition of discrimination on the grounds of sex in the field of access to employment, occupation, self-employment, other gainful activities or functions, including job requirements and conditions and means of employee selection. Besides the general regulation regarding access to employment in Article 13, the Labour Code<sup>151</sup> contains in Article 41 (regulating pre-contractual relations) a prohibition on a future employer requiring information on pregnancy and family relationships. Dismissal of pregnant employees or female employees on maternity leave or parental leave is prohibited according to Articles 64 and 68 of the Labour Code.

#### 4.3.5 Implementation of the exception on the protection for women in relation to pregnancy and maternity (Article 28(1) of Recast Directive 2006/54)

Article 41, Section 2 of the Constitution guarantees to pregnant women special care, protection in labour relations and corresponding working conditions.

<sup>149</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), available in English at: [http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>150</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), available in English at: [http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>151</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

According to Article 8, Section 7b of the Anti-discrimination Act,<sup>152</sup> objectively justified differences in treatment on the grounds of sex shall not be deemed to constitute discrimination if their purpose is the protection of pregnant women and mothers.

#### 4.3.6 Particular difficulties

There are no specific difficulties related to the application and implementation of national law in relation to equal access to work, vocational training, employment contracts, working conditions, promotion and protection against dismissal on grounds connected to sex.

There were no cases reported by the Slovak National Centre for Human Rights (equality body) or the Slovak National Labour Inspectorate.

#### 4.3.7 Positive action measures (Article 3 of Recast Directive 2006/54)

There is no available information on adopting positive action measures with a view to ensuring full equality in practice between men and women in working life.

### 4.4 Evaluation of implementation

National law implements the EU law topics discussed in this chapter quite satisfactorily. A deficiency in the Labour Code<sup>153</sup> is the definition of equal pay which is not in compliance with the definition in Article 157(2) TFEU.

### 4.5 Remaining issues

According to the fourth part of the study entitled *Women still can't have it all: Barriers to higher maternal employment in Slovakia*, which examines potential gender discrimination in the recruiting process in Slovakia using data obtained in a field experiment conducted between July 2016 and March 2017:

'in general, the results from a field experiment in Slovakia do not show preferential treatment of any gender in the recruiting process, but there are some occupation- and region-specific observations. Females appear to be treated unfavourably when applying for jobs typically requiring lower educational background. Surprisingly, the data indicate possible unfavourable treatment of females in the capital, but not in Eastern Slovakia. No difference is found for jobs requiring tertiary education. The results also do not prove discrimination against applicants within specific age cohorts. Moreover, in general, women returning to the labour market after maternity leave do not appear to be treated unfavourably, at least in the early stages of the recruiting process.'<sup>154</sup>

However, the gender-specific effect is present among machine operator applicants. Within this group, the odds of receiving a call-back for an interview is more than two times greater for men than women. In general, the odds of success differ across occupations significantly, with machine operator being the most successful. The variable of 'capital city' is significant and implies higher chances of success in the region of the capital city. The chance of success for a man in the capital is 1.4 times higher than for a woman.<sup>155</sup>

<sup>152</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), available in English at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>153</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

<sup>154</sup> Hidas S. and Horváthová V. (2018) *Women still can't have it all: Barriers to higher maternal employment in Slovakia*, p. 17, available at: <https://www.finance.gov.sk/en/finance/institute-financial-policy/working-papers/women-still-cant-have-it-all-barriers-higher-maternal-employment-slovakia.html> (in English).

<sup>155</sup> Hidas S. and Horváthová V. (2018) *Women still can't have it all: Barriers to higher maternal employment in Slovakia*, p. 19, available at: <https://www.finance.gov.sk/en/finance/institute-financial-policy/working-papers/women-still-cant-have-it-all-barriers-higher-maternal-employment-slovakia.html> (in English).

## **5 Pregnancy, maternity, and leave related to work-life balance for workers (Directive 92/85, relevant provisions of Directives 2006/54 and 2010/18)<sup>156</sup>**

### **5.1 General (legal) context**

#### **5.1.1 Surveys and reports on the practical difficulties linked to work-life balance**

No surveys or reports have been published that provide insights into difficulties that workers face in practice in relation to work-life balance.

According to the study *Women still can't have it all: Barriers to higher maternal employment in Slovakia*, employment of Slovak mothers in the first three years of their children's lives lags significantly behind the labour outcomes observed in other EU countries. This has a negative impact on the financial well-being of their families and their medium-term labour outcomes and wages. As a result of long parental leave, women with children suffer a wage penalty upon returning to work relative to non-mothers and men.<sup>157</sup>

Mothers with higher previous labour market income, a higher level of education and longer work experience tend to enter the labour market faster after childbirth. On the other hand, factors such as being a single mother or low availability of informal childcare provided by grandparents have a strong negative impact on maternal employment. Moreover, women appear to be treated unfavourably when applying for jobs typically requiring a lower educational background, which potentially creates an additional barrier to returning to work.

Family policies should be aimed at tackling the main barriers to maternal employment such as the lack of quality and affordable childcare facilities, low availability of flexible work arrangements and relatively long parental leave without involvement of fathers.<sup>158</sup>

#### **5.1.2 Other issues**

There are no other issues.

#### **5.1.3 Overview of national acts on work-life balance issues**

There are no special laws relating to work-life balance, beside the articles of the Labour Code mentioned in the sections below.

#### **5.1.4 Political and societal debate and pending legislative proposals**

There has been no political or societal debate or pending legislative proposals on the issue in relation to work-life balance in 2018.

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<sup>156</sup> See Masselot, A. (2018), *Family leave: enforcement of the protection against dismissal and unfavourable treatment* European network of legal experts in gender equality and non-discrimination, available at: <https://www.equalitylaw.eu/downloads/4808-family-leave-enforcement-of-the-protection-against-dismissal-and-unfavourable-treatment-pdf-962-kb> and McColgan, A. (2015), *Measures to address the challenges of work-life balance in the EU Member States, Iceland, Liechtenstein and Norway*, European network of legal experts in gender equality and non-discrimination, available at: <https://www.equalitylaw.eu/downloads/3631-reconciliation>.

<sup>157</sup> Hidas S. and Horváthová V. (2018) *Women still can't have it all: Barriers to higher maternal employment in Slovakia*, p. 4, available at: <https://www.finance.gov.sk/en/finance/institute-financial-policy/working-papers/women-still-cant-have-it-all-barriers-higher-maternal-employment-slovakia.html> (in English).

<sup>158</sup> Hidas S. and Horváthová V. (2018) *Women still can't have it all: Barriers to higher maternal employment in Slovakia*, p. 2, available at: <https://www.finance.gov.sk/en/finance/institute-financial-policy/working-papers/women-still-cant-have-it-all-barriers-higher-maternal-employment-slovakia.html> (in English).

## 5.2 Pregnancy and maternity protection

### 5.2.1 Definition in national law

The Labour Code<sup>159</sup> contains the terms pregnant worker, a worker who has recently given birth (literally mother until the completion of the ninth month after confinement) and worker who is breastfeeding in the General Provisions in Article 6 and in the chapters on 'Working conditions of women and men caring for children' (Articles 160-162), 'Arrangement of working time' (Articles 164-165), 'Maternity leave and parental leave' (Articles 166-169) and 'Breaks for breastfeeding' (Article 170).

According to Article 40, Section 6 of the Labour Code, a pregnant employee is an employee who has informed her employer in writing of her condition and who has submitted a medical confirmation of this.

According to Article 40, Section 7 of the Labour Code, a breastfeeding employee shall be an employee who has informed her employer in writing of this fact.

### 5.2.2 Obligation to inform employer

However, the Labour Code does not impose on a woman the obligation to inform the employer about her pregnancy. If a woman does not inform the employer about her pregnancy in writing and does not submit the medical certificate, although it is clear that she is pregnant and the employer is aware of her pregnancy, she will not be entitled to the special legal protection, e.g. as regards the adaptation of working conditions and working hours. It also means that the prohibition of the termination of the employment relationship within a protected period will not apply in that event.

### 5.2.3 Case law on the definition of a pregnant worker, a worker who has recently given birth and/or a worker who is breastfeeding

There is no available case law on the definition of a pregnant worker, a worker who has recently given birth and/or a worker who is breastfeeding,

### 5.2.4 Implementation of protective measures (Article 4-6 of Directive 92/85)

According to Article 41 of the Constitution,<sup>160</sup> marriage, parenthood and the family are under the protection of the law (Section 1). Special care, protection in labour relations, and adequate working conditions are guaranteed to a woman during the period of pregnancy (Section 2) and parents caring for children are entitled to assistance from the state (Section 5).

The general regulation of protection from less favourable treatment due to the take up of family-related leave is contained in the Labour Code.<sup>161</sup> According to Article 6 of the 'Fundamental Principles':

'For pregnant women, mothers until the completion of the ninth month after confinement, and breastfeeding mothers, working conditions shall be secured that will protect their biological state with respect to pregnancy, childbirth, care for the child after birth, and their special relationship with the child after birth. For women and men, working conditions shall be secured that will enable them to perform their social function in the upbringing of children and childcare.'

<sup>159</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

<sup>160</sup> Slovak Republic, Act No. 460/1992 Coll. Constitution of the Slovak Republic <https://www.ustavnysud.sk/ustava-slovenskej-republiky>, available in English.

<sup>161</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code in the chapter on 'Working conditions of women and men caring for children' (Articles 160-165).

Article 161 of the Labour Code sets out how protection shall be provided for women during these periods of their lives. The legislator basically grants special protection, which is manifested in the working conditions, adaptation of working hours and prohibition of the termination of the employment relationship within a protected period, maternity or parental leave and childcare, in the individual provisions of the Labour Code.<sup>162</sup>

#### 5.2.5 Case law on issues addressed in Article 4 and 5 of Directive 92/85

There is no available case law and there were no cases reported by the Slovak National Centre for Human Rights (equality body).

#### 5.2.6 Prohibition of night work

Legal protection of employment rights for pregnant women, mothers until the completion of the ninth month after confinement, and breastfeeding mothers is contained in the chapter 'Working conditions of women and men caring for children' (Articles 160-165 of the Labour Code).<sup>163</sup>

The employer is obliged to transfer a pregnant woman, a mother until the completion of the ninth month after confinement or a breastfeeding mother working nights to day work, if she applies for such transfer.<sup>164</sup> If she cannot be transferred to day work, the employer is obliged to give her time off and wage compensation.<sup>165</sup>

#### 5.2.7 Case law on the prohibition of night work

There is no available case law and there were no cases on the prohibition of night work reported by the Slovak National Centre for Human Rights (equality body) or the Slovak National Labour Inspectorate.

#### 5.2.8 Prohibition of dismissal

An employer cannot give notice<sup>166</sup> to an employee within the protected period, also meaning within the period of a female employee's pregnancy, when a female employee is on maternity leave or a male employee caring for a newborn child is on parental leave (during the same period as maternity leave).

An employer cannot immediately (without notice) terminate the employment relationship with a pregnant employee, a female employee on maternity leave, or a male employee caring for a newborn child on parental leave.<sup>167</sup>

Dismissal is permitted in exceptional cases as defined in Article 10(1) of Directive 92/85/EEC if the employer or its business unit is being closed down or relocated.<sup>168</sup>

#### 5.2.9 Redundancy and payment during maternity leave

Payment for maternity leave does not cease if the employee is made redundant during her maternity or his parental leave. The maternity allowance is a social endowment, paid by

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<sup>162</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Articles 160-170.

<sup>163</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

<sup>164</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 55 Section 2 f).

<sup>165</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 162, Section 4 and 5.

<sup>166</sup> An employment relationship may be terminated by agreement, by notice, by immediate termination and by termination during the probation period (Article 59, Section 1 of the Labour Code).

<sup>167</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 68, Section 3.

<sup>168</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 68, Section 3 a).

the Social Insurance Agency,<sup>169</sup> not by the employer, the amount of which depends on the contributions paid to the social security scheme.

#### 5.2.10 Employer's obligation to substantiate a dismissal

According to Article 72 of the Labour Code,<sup>170</sup> the employer may terminate the employment within the probationary period of a pregnant woman, a mother who has given birth within the last nine months or a breastfeeding woman only in writing, in exceptional cases,<sup>171</sup> not relating to her pregnancy or maternal role, giving appropriate reasons<sup>172</sup> in writing, otherwise the termination shall be invalid. Since August 2011 the employer is no longer allowed to terminate the employment relationship with a pregnant employee in the probation period without stating reasons.

In 2011 the amendment to the Labour Code concerning the conditions for the dismissal of pregnant women during the probationary period was adopted. A particular type of discrimination often took the form of the dismissal of pregnant women during the probationary period after their employer learnt about their pregnancy. Such dismissals occurred in spite of the fact that, since 2004 the Anti-discrimination Act has been in force in Slovakia and it prohibits, among other things, discrimination on the ground of pregnancy. Although the EU directives only permit the dismissal of pregnant women for well-founded reasons unrelated to pregnancy, due to the insufficient legislation in this area the practice in Slovakia was diametrically different.

#### 5.2.11 Case law on the protection against dismissal

An increase in the number of reported cases of discrimination on the ground of pregnancy was registered and reported by the Slovak National Centre for Human Rights (equality body),<sup>173</sup> especially in 2008<sup>174</sup> and 2009.<sup>175</sup> Despite this fact, the Centre had no relevant information concerning the decisions of the courts in such cases.

The author of report has information concerning two cases.

Case of Supreme Court (No. 2 Cdo 183/2008).<sup>176</sup> The Court decided on an appeal lodged by a claimant whose employer, having learnt about her pregnancy, removed her from the post of deputy director and reduced her salary. The claimant regarded the unilateral act of the defendant, changing her employment contract and decreasing her salary, as invalid.

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<sup>169</sup> The SIA is designated as the competent and liaison institution for the following branches of social security: sickness benefits, maternity and equivalent paternity benefits, disability benefits, old-age benefits, survivors' benefits, benefits in respect of accidents at work and occupational diseases, and unemployment benefits.

<sup>170</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

<sup>171</sup> The Labour Code does not define what is meant by exceptional cases. According to expert opinion the probation period must not serve as a tool for the discriminatory dismissal of female workers on the ground of their pregnancy, i.e. for a reason that has no relation to their ability or inability to carry out certain work, or to the quality of this work.

<sup>172</sup> In application of Article 72, the 'appropriate reason' must not circumvent the Act or involve conduct that is morally unacceptable. Generally, notice must be given in writing and delivered to the other party, otherwise it shall be invalid. An employer may only give notice to an employee for reasons expressly stipulated in the Labour Code. The reason for giving notice must be defined in the notice in terms of fact such that it may not be confused with a different reason, or the notice shall otherwise be deemed invalid. The reason for giving notice may not be subsequently amended (Article 61 of Labour Code).

<sup>173</sup> This was before the amendment to the Labour Code concerning the conditions for the dismissal of pregnant women during their probationary period, which was adopted in 2011.

<sup>174</sup> Slovak National Centre for Human Rights (2009) *Report on the observance of human rights including the observance of the principle of equal treatment in the Slovak Republic for the year 2008*, pp. 125-126, available in English at: [http://www.snslp.sk/CCMS/files/Report\\_for\\_the\\_year\\_2008.pdf](http://www.snslp.sk/CCMS/files/Report_for_the_year_2008.pdf).

<sup>175</sup> Slovak National Centre for Human Rights (2010) *Report on the observance of human rights including the observance of the principle of equal treatment in the Slovak Republic for the year 2009*, pp. 144-145, available in English at: <http://www.snslp.sk/files/report-observance-hr-2009-en.pdf>.

<sup>176</sup> <https://www.nsud.sk/data/att/8087.pdf>, available in Slovak.



The first instance court allowed her complaint and in its judgment (No. 9 C 129/2006 – 273) declared the defendant's conduct unreasonable and ordered the defendant to pay the claimant the sum of EUR 670 in damages (because of the reduction in her salary), the sum of EUR 1 330 in immaterial damages caused by indirect discrimination based on pregnancy, plus a quantified compensation of legal costs. According to the first instance court, indirect discrimination on the grounds of the claimant's pregnancy consisted of actions by the defendant which, by making neutral decisions, placed the claimant at a disadvantage in employment relations compared to other employees and in comparison with how the defendant treated the claimant in the employment relationship before her pregnancy.

In its judgment (No. 10 Co 133/2007, 10 Nc 13/2007), the regional (appeals) court upheld the ruling of the first instance court in relation to the part ordering the defendant to pay damages and establishing that the defendant had violated the principle of equal treatment by discriminating against the claimant on the ground of her pregnancy. The regional court changed the ruling of the first instance court in relation to the part ordering the defendant to pay immaterial damages by dismissing this part of the action. The regional court also quashed the said ruling in the part ordering the defendant to pay the court fees and did not award either party compensation for the costs of the legal proceedings. It agreed with the conclusion of the first instance court that facts revealing 'indirect discrimination in an employment relationship because of the pregnancy'<sup>177</sup> against the claimant had been established in the legal proceedings and that the defendant had been unable to fulfil the obligation to prove that the principle of equal treatment had not been violated. In the opinion of the regional appeals court the claimant had not sufficiently proved in the proceedings that her dignity, social respect and social self-realisation had been considerably impaired.

The Supreme (Extraordinary Appeals) Court changed the ruling of the regional court in the disputed part, because the Supreme Court considered the decision of the first instance court to be correct.

The second case (initiated in August 2010) concerns a woman who had been employed by the Ministry of Interior (in a fire-fighting unit, which was significantly dominated by men). The claimant became pregnant during the probationary period and was dismissed immediately 'without the reason being given' for the dismissal (although it was obvious that the only reason for the dismissal was her pregnancy). Although the relevant Slovak legislation (valid at the time of the termination) enabled the Ministry to terminate the employment in the probationary period 'without giving a reason', the Ministry ignored a directly effective provision of EU directives and similar provisions of the relevant international conventions prohibiting employers from terminating employment relationships with pregnant women, unless duly justified reasons for this termination connected to pregnancy exist and unless these reasons are provided in writing. Although the claimant, won the case at the first instance, the first instance court in its judgment (No.19 C/65/2010-577) did not provide sufficient legal reasoning based on the relevant national, EU and international law relating to discrimination against women. Besides, it only granted to the claimant very symbolic non-pecuniary damages (EUR 1 000, as compared to the EUR 15 000 requested), ignoring the impact the treatment on the side of the Ministry had on the claimant's dignity and on her personal and family life (loss of income prior to the birth of her child, reduced chances of finding a new job as the mother of young children, etc.).

Both parties appealed against the decision of the first instance court. The regional (appeals) court in its judgment (No. 9 Co 121/2017) upheld the judgment of the first instance court and, moreover, awarded the claimant a higher compensation of non-pecuniary damages in cash of EUR 5 000. The Court stressed that discrimination against

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<sup>177</sup> <https://www.nsud.sk/data/att/8087.pdf>, p. 7, available in Slovak.

pregnant women also affects the private sphere (family life), more intensively rather than 'just' simple discrimination based on sex.

### 5.3 Maternity leave

#### 5.3.1 Length

According to Article 166, Section 1 of the Labour Code,<sup>178</sup> the duration of maternity leave is 34 weeks,<sup>179</sup> 37 weeks for single mothers, or 43 weeks for multiple births. The provisions on maternity leave contained in the Labour Code apply to both the private and the public sector, to civil service relationships and to the exercise of public services.

#### 5.3.2 Obligatory maternity leave

According to Article 167 of the Labour Code, maternity leave<sup>180</sup> for a woman connected with childbirth and the care of a newborn child must not be shorter than 14 weeks and if the woman goes on maternity leave before she gives birth, the maternity leave must not end before the sixth week after childbirth.<sup>181</sup>

The beginning of maternity leave for a woman is determined by a physician and generally commences six weeks prior to the expected date of confinement and, at the earliest, from the beginning of the eighth week prior to this date.<sup>182</sup>

If a woman has used less than six weeks of maternity leave prior to giving birth, because the birth occurred earlier than was anticipated by the physician, she shall be entitled to maternity leave from the day of commencement up to the expiry of 34 weeks, 37 weeks for single mothers, or 43 weeks for multiple births. If a woman has used less than six weeks of her maternity leave before her confinement for another reason, she shall be entitled to maternity leave from the day of confinement until the expiry of 28 weeks, 31 weeks for single mothers, or 37 weeks for multiple births. The reason for this in a sense 'repressive' legislation, consisting of fixing a maximum and minimum length of maternity leave, is to put pressure on the woman through economic encouragement, to ensure protection of pregnancy, childbirth, the health of the woman who has given birth, the healthy development of the foetus and the child's health after birth.

#### 5.3.3 Legal protection of employment rights (Article 5, 6 and 7 of Directive 92/85)

Legal protection of employment rights related to the protected groups (a pregnant woman, a mother who has given birth within the last nine months or a breastfeeding woman) is contained in Articles 160-165 of the Labour Code.<sup>183</sup>

Pregnant women, mothers until the end of the ninth month after confinement and breastfeeding women must not be employed in work activities that are physically inappropriate or harmful for them. Neither can a pregnant woman be employed in such work activities that, according to medical opinion, jeopardise her pregnancy due to her individual health condition. The same holds for mothers until the end of the ninth month following childbirth and breastfeeding women.<sup>184</sup>

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<sup>178</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

<sup>179</sup> Maternity leave increased in 2011 from 28 to 34 weeks when one child is born to a family with two parents, and 37 weeks in the case of a single mother.

<sup>180</sup> Maternity leave is legally constructed as a right for women.

<sup>181</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 167, Section 1. This means that obligatory maternity leave (before and after confinement) is 14 weeks, of which six weeks after confinement is obligatory.

<sup>182</sup> A woman is in principle entitled to choose the beginning of maternity leave only within the timeframe of six to eight weeks prior to the expected day of confinement.

<sup>183</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

<sup>184</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 161.

If a pregnant woman performs work that is prohibited for pregnant women, or which according to medical opinion threatens her pregnancy, the employer shall be obliged to implement a temporary change to her working conditions.<sup>185</sup>

If a change to the woman's working conditions is not possible, the employer shall temporarily transfer her to work that is suitable and in which she may earn the same pay as she earns for her normal work within the scope of the employment contract. If this is not possible, the employer shall transfer her, upon her agreement, to a different type of work.<sup>186</sup>

If a woman who is in work to which she was transferred through no fault of her own earns a salary that is lower than that earned in her normal work, for the purpose of balancing out the difference she shall be provided with an equalisation benefit for pregnancy and motherhood paid by the Social Insurance Agency (SIA),<sup>187</sup> according to the Social Insurance Act.<sup>188</sup>

The employer is also obliged to transfer a pregnant woman working nights to day work, if the pregnant woman applies for such a transfer. If she cannot be transferred to day work, the employer is obliged to give a pregnant employee time off and wage compensation.<sup>189</sup> If the employer has not transferred a pregnant woman to different work, although the employer was obliged to do so, the employee has the right to refuse to perform any further work. The employee is then entitled to wage compensation equivalent to the amount of average earnings. She is also entitled to such compensation when it can be presumed that the employer had no other work for her.

#### 5.3.4 Legal protection of rights ensuing from the employment contract

According to Article 54 of the Labour Code,<sup>190</sup> the agreed content of an employment contract may only be amended where the employer and employee agree on such amendment. The employer shall be obliged to set out the amendment to an employment contract in writing. The employment relationship and contract remain valid during the period of maternity leave.

#### 5.3.5 Level of pay or allowance

Maternity allowance and sickness benefits are provided from the sickness insurance system by the Social Insurance Agency. During maternity leave, the woman shall be provided with maternity allowance, which is an insurance benefit provided under the Social Insurance Act<sup>191</sup> and paid by the SIA at a rate of 75 %<sup>192</sup> of her daily counting base (which is based on her income/wage before maternity leave). The maximum amount in 2018 was EUR 1 394.30 per month. The estimated average monthly maternity allowance for mothers was EUR 614 and for fathers<sup>193</sup> EUR 840.

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<sup>185</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 162, Section 1.

<sup>186</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 162, Section 2.

<sup>187</sup> The SIA is designated as the competent and liaison institution for the following branches of social security: sickness benefits, maternity and equivalent paternity benefits, disability benefits, old-age benefits, survivors' benefits, benefits in respect of accidents at work and occupational diseases, and unemployment benefits.

<sup>188</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 162, Section 3 and Act No. 461/2003 Coll. Social Insurance Act, Articles 44-47.

<sup>189</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 162, Section 4.

<sup>190</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

<sup>191</sup> Slovak Republic, Act No. 461/2003 Coll. Social Insurance Act, (*Zákon č. 461/2003 Z.z. o sociálnom poistení*), Articles 48-53.

<sup>192</sup> The original rate was 55 % of the assessment base, increasing to: 60 % from 1 January 2011; 65 % from 1 January 2012; 70 % from 1 January 2016; and 75 % from 1 July 2017.

<sup>193</sup> Fathers entitled, to parental leave in order to be able to care for the new-born child, are provided with maternity allowance under the same conditions as mothers during maternity leave are.

The legal regulation of sick leave is contained in the above-mentioned Act on Social Insurance and in the Act on Compensation of Income during Sick Leave.<sup>194</sup> Sickness benefit is provided at a day rate. For the first three days the benefit is equivalent to 25 % of the daily assessment basis, from the fourth day of the temporary incapacity for work the cash sickness benefit is 55 % of the daily assessment base. This means that during the first three days of sick leave, an employee, self – employed person or voluntarily insured person is, generally, granted payment of 25 % of their normal pay and for the following days 55 % of their normal pay. Thus the level of maternity allowance at a rate of 75 % of the normal salary is higher than sickness benefit.

#### 5.3.6 Additional statutory maternity benefits

There are no additional statutory maternity benefits supplemented by employers.

#### 5.3.7 Conditions for eligibility (Article 11(4) of Directive 92/85)

The conditions for eligibility for benefits are stipulated in Article 48 of the Social Insurance Act.<sup>195</sup> The criteria for eligibility for maternity allowance are that a person who is pregnant or takes care of a child must have sickness insurance at the time that the reason for the provision of maternity allowance arises, and must have had this insurance for at least 270 days in the last two years before the birth of the child. People who do not pay sickness insurance contributions, mandatorily or voluntarily, are not entitled to maternity allowance. In this case they can apply for parental benefits – state social benefits paid by the Office of Labour, Social Affairs and Family. The state pays those eligible contributions which are intended to ensure the proper care of children until the age of three (or six for children with a long-term health condition). Since 2018, the rate of monthly benefits has been EUR 214.70; a parent of twins will receive EUR 268.40 per month and a parent of triplets EUR 322.05 per month.

#### 5.3.8 Right to return to the same or an equivalent job (Article 15 of Directive 2006/54)

The right to return to the same or an equivalent job is guaranteed by Article 157, Section 1 of the Labour Code.<sup>196</sup>

Where a female employee returns to work after maternity leave, the employer shall be obliged to assign her to her original work and workplace. Where assignment to the original work and workplace is not possible, the employer shall be obliged to assign her to different work corresponding to her contract of employment – this means to 'equivalent' work.

The employer is obliged to ensure working conditions that are no less favourable than those she enjoyed before going on maternity leave, and she shall have the right to benefit from any improvements to working conditions to which she would have been entitled if she had not taken maternity leave or parental leave.

#### 5.3.9 Legal right to share maternity leave

The legislation does not provide a legal right to share maternity leave.<sup>197</sup>

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<sup>194</sup> Slovak Republic, Act No 462/2003 Coll. on compensation of income during sick leave, (*Zákon č.462/2003 Z.z. o náhrade príjmu pri dočasnej pracovnej neschopnosti zamestnanca a o zmene a doplnení niektorých zákonov*).

<sup>195</sup> Slovak Republic, Act No. 461/2003 Coll. Social Insurance Act (*Zákon č. 461/2003Z.z. o o sociálnom poistení*) .

<sup>196</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

<sup>197</sup> Maternity leave is designated for the mother before and after confinement with maternity allowance (if the conditions for the insurance are met), or alternatively with parental allowance. Parental leave in the meaning of 'paternity leave' is designated for father after the birth of a child in the same way as maternity leave with maternity allowance (if the conditions for the insurance are met), or alternatively with parental allowance.

On the other hand, since the amendment to the Social Insurance Act came into force in 2011,<sup>198</sup> allowing men to receive maternity allowance,<sup>199</sup> the number of men staying at home with their children on 'paternity leave'<sup>200</sup> is growing. Legislation allows men to stay at home with their child for 28 weeks until the child reaches three years old, while receiving the maternity allowance. One of the reasons for the growing interest from men in this kind of leave is the increasing sum of maternity allowance (nearly the same as net salary). One of the basic conditions for men who want to receive maternity allowance is that they have paid sickness insurance for at least 270 days at least two years before submitting an application (the same condition as for women). Moreover, the man must claim in writing that he is taking the child into his care and the mother must agree with it. The last condition is that the mother of the child is not on maternity or parental leave and is not receiving maternity allowance or parental benefit.

#### 5.3.10 Case law

No available information.

### 5.4 Adoption leave

#### 5.4.1 Existence of adoption leave in national law

Slovak legislation does not regulate adoption leave literally. In addition to biological parents, the claim for maternity leave and paternity leave is granted to people who have taken a child into so-called substitute family care (i.e. adoption, foster care or care in the case of the death of the child's mother).<sup>201</sup>

Article 169, Section 2 of the Labour Code includes the following:

The scope of the claim for maternity leave in the case of so-called substitute parents (in comparison with the scope of the claim regarding the said types of leave for biological parents) is modified and exists from the day of taking the child into care for 28 months (31 months for a single parent and 37 months for the care of two or more children).

The woman, during maternity leave, shall receive maternity allowance under the same conditions as biological parents, as provided for in the Social Insurance Act<sup>202</sup> and paid by the Social Insurance Agency (SIA)<sup>203</sup> at a rate of 75 %<sup>204</sup> of the daily counting base (which is based on the income/wage before maternity leave). The maximum amount in 2018 was EUR 1 394.30 per month.

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Parental leave is designated for the mother after maternity leave until the child reaches the age of three, or six in the case of a child with a health condition.

Parental leave is designated for the father if the mother of the child agrees and is not on maternity or parental leave and does not receive any maternity allowance or parental allowance until the age of 3 or six in the case of a child with a health condition.

<sup>198</sup> Slovak Republic, Act No. 461/2003 Coll. Social Insurance Act.

<sup>199</sup> Fathers entitled, to parental leave in order to be able to care for the new-born child, are provided with maternity allowance under the same conditions as mothers during maternity leave are.

<sup>200</sup> The first meaning of parental leave, which is designed for a man providing care for a newborn child (the same scope as maternity leave for women).

<sup>201</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 169, Section 1.

<sup>202</sup> Slovak Republic, Act No. 461/2003 Coll. Social Insurance Act.

<sup>203</sup> The SIA is designated as the competent and liaison institution for the following branches of social security: sickness benefits, maternity and equivalent paternity benefits, disability benefits, old-age benefits, survivors' benefits, benefits in respect of accidents at work and occupational diseases, and unemployment benefits.

<sup>204</sup> The original rate was 55 % of the assessment base, increasing to: 60 % from 1 January 2011; 65 % from 1 January 2012; 70 % from 1 January 2016; and 75 % from 1 July 2017.

#### 5.4.2 Protection against dismissal (Article 16 of Directive 2006/54)

Protection against dismissal for workers who take 'adoption leave' is contained in Article 157, Section 1 of the Labour Code.<sup>205</sup>

Where a female employee returns to work after maternity leave the employer shall be obliged to assign them to their original work and workplace. Where the assignment to the original work and workplace is not possible, the employer shall be obliged to assign them to different work corresponding to their contract of employment – this means to 'equivalent' work. The employer shall be obliged to assign employees under conditions that are no less favourable for them than those they enjoyed before going on maternity leave and they shall have the right to benefit from any improvements to working conditions to which they would have been entitled if they had not taken maternity or parental leave.

#### 5.4.3 Case law

No available information on related case law.

### 5.5 Parental leave<sup>206</sup>

#### 5.5.1 Implementation of Directive 2010/18

The Directive was transposed substantially in 2010 and 2011, when amendments were made to Act No. 461/2003 Coll. Social Insurance Act, Act No. 311/2001 Coll. Labour Code, Act No. 73/1998 Coll. on Civil Service of Members of the Police Force, the Slovak Intelligence Service, the Prison Wardens and Judiciary Guards Corps of the Slovak Republic and of the Railway Police, Act No. 200/1998 Coll. on the Civil Service of Customs Officers, Act No. 315/2001 Coll. on the Fire Fighting and Rescue Corps, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), Act No. 346/2005 Coll. on Civil Service of Professional Soldiers of the Armed Forces of the Slovak Republic and Act No. 400/2009 Coll. on Civil Service.

#### 5.5.2 Applicability to public and private sectors (Clause 1 of Directive 2010/18)

The provisions on parental leave contained in the Labour Code apply to both the private and public sectors, to civil service relationships and to the exercise of public services.

#### 5.5.3 Scope of the transposing legislation

The provisions on parental leave contained in the Labour Code<sup>207</sup> apply to both the private and public sectors, to civil service relationships and to the exercise of public services. They also cover part-time employment contracts, contracts for a definite period of time and employment relationships with a temporary employment agency.

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<sup>205</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

<sup>206</sup> Parental leave has two meanings in Slovak labour legislation. The same term describes two different legal situations, each has its own place in the Labour Code and they perform different functions, but confusion arises as the same term is used in two contexts. The exact type of parental leave can only be precisely differentiated by legal professionals. The first type – paternity leave – is designed for a man providing care for a newborn child. The second meaning of parental leave includes women as well as men for the purpose of extended care of a child. Although there is no term meaning 'paternity leave' in Slovak legislation, in this report, leave that is exclusively available to a father who takes care of a newborn child is nevertheless referred to as 'paternity leave', in order to distinguish this leave from parental leave in its second meaning – in order to extend the care of a child until the age of three (six).

Slovak translations: maternity leave: *materská dovolenka*, parental leave: *rodičovská dovolenka*, paternity leave: *otcovská dovolenka*.

<sup>207</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Articles 166 -169.

#### 5.5.4 Length of parental leave

The employer is obliged to provide a woman or a man upon their request with parental leave until their child turns three and, if the child is in ill health, until the child turns six. Parental leave is allowed for the time requested by the parent, usually for a period not shorter than one month.<sup>208</sup>

The employer may agree with a woman or a man that parental leave can be provided at most until the child turns five and, if the child is in ill health, until the child turns eight.<sup>209</sup>

#### 5.5.5 Age limits

Parental leave is allowed until the child turns three and, if the child is in ill health, until the child turns six.<sup>210</sup>

Parental leave may be agreed until the child turns five and, if the child is in ill health, until the child turns eight.<sup>211</sup>

The age limits are the same for adopted children.<sup>212</sup>

#### 5.5.6 Individual nature of the right to parental leave

The right to parental leave is individual for each of the parents and it can also be taken simultaneously. Thus there is no necessity to transfer part of the parental leave to the other parent, and the Labour Code<sup>213</sup> does not provide for such a possibility. If both parents apply for parental leave, only one of them will be entitled to parental benefits. According to the Labour Code, the second spouse/parent is entitled to the parental leave in the form of unpaid time off work with a guarantee of employment upon their return.

#### 5.5.7 Transferability of the right to parental leave

Parental leave can also be taken simultaneously by both parents, but only one of them is entitled to parental benefits. There is no necessity to transfer part of the parental leave to the other parent, because the length of parental leave is limited by the age of child (until the age of three for a healthy child and until the age of six for a child with a long-term health condition requiring special care).

#### 5.5.8 Form of parental leave

Parental leave<sup>214</sup> is full-time.

#### 5.5.9 Work and/or length of service requirements (Clause 3(b) of Directive 2010/18)

There is no work and/or length of service requirement in order to benefit from parental leave.

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<sup>208</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 166, Section 2.

<sup>209</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 166, Section 4.

<sup>210</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 166, Section 2.

<sup>211</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 166, Section 4.

<sup>212</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 169.

<sup>213</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

<sup>214</sup> The second type of parental leave covers women as well as men and offers an extended period during which they can care for their child.



#### 5.5.10 Notice period

Since 1 April 2011, the amendment to the Labour Code,<sup>215</sup> in Article 166, Section 3, has been effective, according to which both women and men must give their employer at least one month's notice in advance of the expected date of going on parental leave, including the expected date of suspension, termination and any changes regarding starting, suspending and terminating parental leave.

#### 5.5.11 Postponement of parental leave (Clause 3(c) of Directive 2010/18)

There is no possibility for parental leave to be postponed for justifiable reasons related to the operation of the organisation.

#### 5.5.12 Special arrangements for small firms (Clause 3(d) of Directive 2010/18)

There are no special arrangements for small firms.

#### 5.5.13 Special rules and exceptional conditions for parents of children with a disability or long-term illness (Clause 3(3) of Directive 2010/18)

There are special rules for parents of children with long-term illnesses requiring special care. The employer is obliged to provide parents of children with long-term illnesses with parental leave until the child turns six.<sup>216</sup>

The employer may agree with parents of children with long-term illnesses that parental leave can be provided at most until the child turns eight.<sup>217</sup>

#### 5.5.14 Measures addressing the specific needs of adoptive parents (Clause 4 of Directive 2010/18)

Slovak legislation does not regulate adoption leave literally. In addition to biological parents, the claim for parental leave is granted to persons who have taken a child into so-called substitution family care (i.e. adoption, foster care or care in the case of the death of the child's mother).<sup>218</sup>

Although parental leave for adoptive parents is quite generous, the Government has not taken measures to address the specific needs of adoptive parents.

#### 5.5.15 Provisions protecting workers against less favourable treatment or dismissal (Clause 5(4) of Directive 2010/18)

The general regulation of workers' protection against less favourable treatment on the grounds of an application for, or the taking of, parental leave are contained in the Fundamental Principles of the Labour Code,<sup>219</sup> Article 6. Women and men have the right to equal treatment as regards access to employment, remuneration and careers, training and working conditions. For women and men, working conditions shall be secured that will enable them to perform their social role in the upbringing of children and childcare.

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<sup>215</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

<sup>216</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 166, Section 2.

<sup>217</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 166, Section 4.

<sup>218</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 169, Section 1. See the information provided in sub-section 3.4.1

<sup>219</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

#### 5.5.16 Right to return to the same or an equivalent job (Clause 5(1) of Directive 2010/18)

The legal regulation of the conditions regarding return from parental leave to the same or an equivalent job was completed and harmonised with effect from 1 April 2011 in Article 157, Section 2, of the Labour Code.<sup>220</sup> If an employee returns to work after termination of maternity or parental leave, the employer is obliged to assign them to their original working position and workplace. If this is not possible, the employer is obliged to assign the employee other work corresponding to the employment contract.

#### 5.5.17 Maintenance of rights acquired or in the process of being acquired by the worker (Clause 5(2) of Directive 2010/18)

The employer is obliged to assign the employee a working position and workplace under conditions that are no less favourable to them than the conditions which applied when they left for maternity or parental leave, and the employee is entitled to benefit from each improvement in working conditions to which they would have been entitled if they had not taken maternity or parental leave. These rights will be exercised, including any changes resulting from legal regulations, collective agreement or usual procedures applied at the employer's organisation.<sup>221</sup>

#### 5.5.18 Status of the employment contract or relationship during parental leave

The employment relationship and contract remain valid during the period of parental leave.

#### 5.5.19 Continuity of entitlement to social security benefits

Contributions to the health security system, old-age and disability insurance are paid by the state on behalf of people on parental leave.

Sickness insurance is suspended during parental leave, but this period will be counted when assessing entitlement to maternity benefit as a term of insurance. The state does not pay contributions to the sickness insurance system on behalf of people on parental leave.

#### 5.5.20 Remuneration

Parental leave is not remunerated by the employer.

#### 5.5.21 Social security allowance

During parental leave, the parent is entitled to parental allowance, which is provided under the Act on Parental Allowance by the state to the beneficiary to ensure proper care of the child. Parental allowance is a state social benefit, the amount of which does not depend on any contributions paid to the social security scheme and amounts to EUR 214.70 for one child, to EUR 268.40 for twins and to EUR 322.05 for triplets and more.

#### 5.5.22 More favourable provisions (Clause 8 of Directive 2010/18)

Slovak legislation complies with the Directive. However, there is still a great deal of room for improvement from a legislative point of view, which could contribute to achieving gender equality in practice. One of the obstacles is the practical impossibility of both parents taking 'paid' parental leave at the same time for the same child. If both parents apply for parental leave, only one of them will be entitled to parental allowance, the amount of which is insufficient to cover the living costs of both the parents and the child.

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<sup>220</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

<sup>221</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 157, Section 2.

### 5.5.23 Case law

There is no case law available.

## 5.6 Paternity leave

### 5.6.1 Existence of paternity leave in national law

There is no term meaning paternity leave in Slovak legislation. In this report, leave that is exclusively available to a father who takes care of a newborn child is nevertheless referred to as 'paternity leave', in order to distinguish this leave from parental leave which can be taken by both parents. Slovak translations: maternity leave: *materská dovolenka*, paternity leave: *otcovská dovolenka*, parental leave: *rodičovská dovolenka*.

### 5.6.2 Protection against unfavourable treatment and/or dismissal (Article 16 of Directive 2006/54)

No regulation of paternity leave.

### 5.6.3 Case law

No regulation of paternity leave, no available case law.

## 5.7 Regulation Time off/care leave

### 5.7.1 Existence of care leave in national law (Clause 7 of Directive 2010/18)

Article 141 of the Labour Code<sup>222</sup> entitles workers to time off from work on grounds of force majeure for urgent family reasons in case of sickness or accident.

The employer is obliged to accept the absence of an employee from work during maternity, paternity and parental leave, which is included in Article 141 of the Labour Code as one of the substantive personal obstacles to work.

This also applies during in relation to care for a child under ten who for significant reasons cannot be placed in an educational centre or school that otherwise cares for the child; or if the person caring for the child falls ill or is placed in quarantine or undergoes treatment in a healthcare facility that cannot take place outside his or her working hours.

All circumstances including maternity and parental leave are regarded as 'important personal obstacles to work'. For this type of time off, the employee is not entitled to be paid by the employer, because they are entitled to an allowance under the Social Insurance Act.<sup>223</sup> There is no limit to the amount of times per year an employee can take this time off.

The employer is obliged to provide the employee with paid time off work to cover preventive medical checks related to pregnancy, if the examination or treatment cannot take place outside working hours.<sup>224</sup> Time off from work will also be provided for accompanying the mother of the employee's newborn child to and from the maternity hospital.<sup>225</sup>

The employer is obliged to provide their employee with time off from work when the employee is accompanying:

<sup>222</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

<sup>223</sup> Slovak Republic, Act No. 461/2003 Coll. Act on Social Insurance.

<sup>224</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 141, Section 2 a) 3.

<sup>225</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 141, Section 2 b).

- (i) a family member to a medical facility for examinations or treatment for a sudden disease or accident and also for planned examinations and treatment. Wage compensation is for a maximum of seven days per calendar year.
- (ii) A child with disabilities to a social care facility or special school. In this situation, wage compensation is provided for a maximum of ten days per calendar year.<sup>226</sup>

#### 5.7.2 Case law

No available information.

### 5.8 Leave in relation to surrogacy

Article 82 of the Family Act<sup>227</sup> expressly and clearly states that the mother is the woman who gave birth to the child and that any agreements and contracts to the contrary are invalid.

### 5.9 Flexible working time arrangements

#### 5.9.1 Right to reduce or extend working time

The Labour Code<sup>228</sup> contains several provisions that may contribute to the development of part-time work on a voluntary basis and to the flexible organisation of working time. Many of these provisions are related to time management and/or division of working time.

According to Article 49 of the Labour Code, an employer may agree with an employee on a reduced weekly working time schedule rather than the previously determined weekly working time schedule. Part-time work differs from both standard full-time and fixed-term work in the volume of weekly working hours. However, the legislation does not contain a general right to part-time work. The arrangement of reduced working time is based on the contractual principle, i.e. the employee is not automatically entitled to reduced working time. The relevant agreement on part-time work is, in principle, laid down in writing.

Only certain groups of employees are entitled to work part time. If a pregnant woman or a woman or man permanently caring for a child younger than 15 applies for part-time work or another suitable adjustment of working time, the employer is obliged to grant the application, unless serious operating reasons prevent it.<sup>229</sup> In the case of a refusal of such an application by the employer, it can be enforced in court. The Labour Code does not specify what is meant by serious operational reasons. According to the commentary to the Labour Code for the purposes of interpretation, this term must be understood as facts relating to the technical, organisational and economic activities of the employer, which could be directly threatened if the employee's requests were accepted.

The conclusion of an agreement on reduced working time, and thus on part-time work, is not subject to the fulfilment of any other criteria, such as certain eligibility criteria, a time limit for requesting the right or the size of the employer. Maternity leave or parental leave cannot be taken in the form of part-time working. No allowance or payment is provided to workers working reduced hours. There are no measures in place to specifically encourage men to make use of this legal right.

Job sharing, according to Article 49a of the Labour Code, means a job in which employees in an employment relationship with reduced working time distribute amongst themselves the working time and the job description pertaining to the job. In addition to the

<sup>226</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 141, Section 2 c) 1. and 2.

<sup>227</sup> Slovak Republic, Act No. 36/2005 Coll. Family Act and on changes and amendments to certain acts (Zákon č. 36/2005 Z.z. o rodine a o zmene a doplnení niektorých zákonov).

<sup>228</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

<sup>229</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 164, Section 2.

employment contract, the employer concludes a written agreement on the assignments of the employees sharing a job and before concluding this agreement the employer informs the employees in writing about the working conditions relating to the job share. These acts impose a heavy administrative burden and may discourage employers from concluding contracts of this type. Employees sharing a job have the legal obligation to substitute each other if there are obstacles at work on the part of one of them, for example when the child of one of the employees falls ill, which may cause problems in practice. The issue of employee liability for damage caused and the issue of remuneration of employees with different qualifications sharing a job are regarded as problematic too. Employees sharing a job should have access to all employee opportunities and options in the same way as part-time and full-time employees, as well as to employee benefits and means of social protection.

#### 5.9.2 Right to adjust working time patterns

Article 85 of the Labour Code<sup>230</sup> defines working time as the time segment when an employee is at the disposal of their employer, performs work and fulfils obligations pursuant to an employment contract. The same article sets out the even distribution of working time<sup>231</sup> and uneven distribution of working time,<sup>232</sup> the working time account<sup>233</sup> and flexible working time.<sup>234</sup>

The decision on the even distribution of working time lies within the competence of the employer but is not an obligation of the employer. If the employer takes a decision in this area, all they have to do is discuss it with the employees' representatives, providing these representatives work in the employer's organisation, and the employee must respect the decision.

The employer may decide, after agreement with the employees' representatives or, if there are no employees' representatives in the workplace, after agreement with the employee, on an uneven distribution of working time over a period not exceeding four months. If this period exceeds four months, but does not exceed twelve months, since 1 January 2013<sup>235</sup> the employer may not decide on an uneven distribution of working time independently, but may do so on the basis of a collective agreement or agreement with the employees' representatives.

The uneven distribution of working time may be arranged with specially protected employees only on the basis of an agreement with the employee, which can be substituted neither by a decision by the employer, nor by an agreement with the employees' representatives. This provision applies to pregnant women, women or men who are permanent carers of a child younger than three, and single employees who are permanent carers of a child younger than 15.

The working time account is a method of uneven distribution of working time. When a working time account is introduced, an employer may schedule working time so that when there is a greater need for work an employee works more hours than their stipulated weekly working time and where there is less need for work the employee works fewer hours than their stipulated weekly working time or they may not work at all. The average weekly working time may not exceed the stipulated weekly working time over a period exceeding 12 consecutive months. The working time account may be agreed in the collective agreement or after agreement with the employees' representatives in the workplace. Moreover, the agreement may not be replaced by a decision of the employer

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<sup>230</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

<sup>231</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 86.

<sup>232</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 87.

<sup>233</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 87a.

<sup>234</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 89.

<sup>235</sup> It was introduced by amendment of the Labour Code, valid since 1 January 2013.

or by an agreement with the employee. This account may therefore be introduced at an organisation only when employees' representatives consent to its introduction in an agreement or in a collective agreement. The agreement must be in writing.

The introduction of a working time account for a specially protected employee requires an agreement with the employee, which cannot be replaced by a decision of the employer or an agreement with the employees' representatives. It concerns pregnant women, women or men who are permanent carers of a child younger than three, and single employees who are permanent carers of a child younger than 15.<sup>236</sup>

The employer must keep a working time account and a wage account for each employee and report on a weekly basis the difference between the determined weekly working time and the number of hours actually worked by the employee.

The employer may introduce flexible working time autonomously if there are no employees' representatives in the workplace.<sup>237</sup> Otherwise the introduction of flexible working time requires an agreement with the employees' representatives or their consent expressed in the collective agreement. Flexible working time is a method of distributing working time where the employee alone chooses the beginning and, if appropriate, the end of their working time on specific days within time segments determined by the employer (optional working time).

Between the two segments of optional working time a time segment is inserted during which the employee is obliged to be present in the workplace (basic working time).<sup>238</sup>

The fulfilment of any other criteria, such as certain eligibility criteria, a time limit for requesting this right, a specific trigger and the size of the employer, is not required.

### 5.9.3 Right to work from home or remotely

Article 52 of the Labour Code<sup>239</sup> stipulates special types of employment relationships, such as working from home (or other agreed location) and working remotely (teleworking – at home or at another agreed location with the use of information technologies). In these cases the employee is not subject to the provisions on distribution of the determined weekly working time, obligatory breaks during the working days and obligatory rest periods during the working week, and idle time. If there are significant personal obstacles at work the employee may only require from the employer wage compensation in the case of the death of a family member; the employee is not entitled to a wage for overtime work, wage supplement for work on a public holiday, wage supplement for night work or wage compensation for work performed in difficult conditions, unless the employee and the employer agree otherwise.

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<sup>236</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 87, Section 3.

<sup>237</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code, Article 88.

<sup>238</sup> The Labour Code allows the introduction of flexible working time with even or uneven distribution of working time as follows:

*Flexible working day*, where the employee alone chooses the beginning of their work shift and on the respective working day is obliged to work the overall work shift falling on this day according to the schedule of working time determined by the employer;

*Flexible working week* with evenly distributed working time, where the employee alone chooses the beginning and the end of their work shifts and in the respective week is obliged to work the overall determined weekly working time, but the length of a work shift must not exceed 12 hours;

*Flexible four-week working period*, where the employee alone chooses the beginning and the end of work shifts and, over a period of four successive weeks determined by the employer, the employee is obliged to work the working time determined by the employer for this four-week period.

Full flexible working time is working time without any limitations, i.e. there is no firmly determined basic working time (however, the length of a work shift must not exceed 12 hours).

<sup>239</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

The arrangement of working from home and working remotely / teleworking is based on the contractual principle.

The conclusion of such an agreement is not subject to the fulfilment of any criteria.

#### 5.9.4 Other legal rights to flexible working arrangements

There are no other legal rights to flexible working arrangements, such as arrangements by which workers can 'bank' hours to take time off in the future.

#### 5.9.5 Case law

No available information.

### **5.10 Evaluation of implementation**

The national law implements the EU law topics discussed in this chapter quite satisfactorily.

### **5.11 Remaining issues**

There were no other remaining issues regarding legislation on work-life balance.



## **6 Occupational social security schemes (Chapter 2 of Directive 2006/54)**

### **6.1 General (legal) context**

#### **6.1.1 Surveys and reports on the practical difficulties linked to occupational and/or statutory social security issues**

No surveys or reports have been published that provide insights into the difficulties workers face in practice in relation to social security.

#### **6.1.2 Other issues related to gender equality and social security**

There are no other issues in relation to the social security system which are relevant to gender equality.

#### **6.1.3 Political and societal debate and pending legislative proposals**

There are no pending legislative proposals concerning social security.

### **6.2 Direct and indirect discrimination**

According to Article 5 of the Anti-discrimination Act,<sup>240</sup> the principle of equal treatment on all grounds set out in the Anti-discrimination Act shall apply only with regard to the rights laid down under separate laws regulating the access to and provision of social assistance, social insurance, old-age pensions, complementary old-age pensions, state social security allowance and social benefits.

The occupational pension schemes are not regulated by special legislation. Some provisions of the Act on Additional Pension Savings, however, could be considered as laying down the conditions for such schemes.<sup>241</sup> The aim of this Act is to enable an insured person, e.g. an employee according to the Labour Code and professional dancers, to receive an additional pension income in old age or due to disability and to grant their survivors an additional pension income in the event of the insured person's death. In Article 7, the Act prohibits discrimination in the accrual of additional pension savings, referring to the Anti-discrimination Act (including the provisions on legal protection and proceedings in matters concerning the violation of the principle of equal treatment). It also states that any provisions of the collective agreement connected with additional pension savings, or of the employer's agreement, participant's agreement, plan of endowments/payments, or bylaws of the additional pension fund that are not in full compliance with the principle of equal treatment are invalid. Pursuant to Article 34 of this Act, the additional pension savings company is obliged to, inter alia, apply the principle of equal treatment in relation to all savers.

### **6.3 Personal scope**

The personal scope of Slovak law relating to occupational social security schemes is identical to that specified in Article 6 of Directive 2006/54/EC.

### **6.4 Material scope**

The material scope of Slovak law relating to occupational social security schemes is identical to that specified in Article 7 of Directive 2006/54/EC.

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<sup>240</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), available at: [http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>241</sup> Slovak Republic, Act No. 650/2004 Coll. on Additional Pension Savings.

## **6.5 Exclusions**

The exclusions from the material scope as specified in Article 8 of Directive 2006/54/EC are not applied.

## **6.6 Laws and case law falling under the examples of sex discrimination mentioned in Article 9 of Directive 2006/54**

No available information.

## **6.7 Actuarial factors**

Sex is not used as an actuarial factor in occupational social security schemes.

## **6.8 Difficulties**

In Slovakia, there is no specific regulation of occupational social security schemes. The social security system is based on three schemes: social insurance, which covers old age, disability, survivors, pregnancy and disease; state social benefits, which are direct financial contributions by the state to help people to overcome an undesirable fall in their standards of living due to the occurrence or continuation of certain events in the lives of families (dependent children) and citizens; and social assistance, which is the approach of the state to the citizen in need, where the role of the state is only to assist the citizen in overcoming their crisis situation. Social insurance consists of a mandatory public insurance component (based on mandatory contributions and defined benefits) governed by the Act on Social Insurance,<sup>242</sup> a mandatory/voluntary saving component governed by the Act on Old-Age Pension Savings<sup>243</sup> and a voluntary private saving component, which is a supplementary component governed by the Act on Additional Pension Savings.<sup>244</sup>

## **6.9 Evaluation of implementation**

Slovak national law implements the EU law topics discussed in this chapter satisfactorily.

## **6.10 Remaining issues**

There were no other remaining issues regarding occupational social security.

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<sup>242</sup> Slovak Republic, Act No. 461/2003 Coll. Act on Social Insurance.

<sup>243</sup> Slovak Republic, Act No. 461/2003 Coll. Act on Social Insurance.

<sup>244</sup> Slovak Republic, Act No. 650/2004 Coll. on Additional Pension Savings.

## **7 Statutory schemes of social security (Directive 79/7)**

### **7.1 General (legal) context**

#### **7.1.1 Surveys and reports on the practical difficulties linked to statutory schemes of social security (Directive 79/7)**

No surveys or reports on the practical difficulties linked to statutory schemes of social security have been published.

#### **7.1.2 Other relevant issues**

There are no other issues in relation to statutory social security schemes.

#### **7.1.3 Overview of national acts**

The Slovak social security system is based on three schemes:

1. social insurance, which secures income for old age, disability, survivors, pregnancy and disease;
2. state social benefits, which are paid from direct financial contributions by the state to aid in overcoming an undesirable fall in the individual's standards of living due to the occurrence or persistence of certain events in the lives of families (dependent children) and citizens;
3. social assistance, which is the approach of the state to the citizen in need, where the role of the state is only to assist the citizen in overcoming a crisis situation. It is expected that the citizen will actively seek a way out of their crisis situation.

Social insurance consists of

- a) a mandatory, public, insurance component (based on mandatory contributions and providing defined benefits) represented by the first tier governed by the Act on Social Insurance;<sup>245</sup>
- b) a mandatory/voluntary, saving component representing the second tier governed by the Act on Old-age Pension Saving;<sup>246</sup> and
- c) voluntary, private, saving, supplementary component representing the third tier governed by the Act on Supplementary Pension Saving.<sup>247</sup>

#### **7.1.4 Political and societal debate and pending legislative proposals**

There are no pending proposals concerning statutory social security schemes.

### **7.2 Implementation of the principle of equal treatment for men and women in matters of social security**

According to Article 5 of the Anti-discrimination Act,<sup>248</sup> the principle of equal treatment on all grounds set out in the Anti-discrimination Act shall apply only with regard to the rights laid down under separate laws regulating the access to and provision of social assistance, social insurance, old-age pensions, complementary old-age pensions, state social security allowances and social benefits.

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<sup>245</sup> Slovak Republic, Act No. 461/2003 Coll. Act on Social Insurance.

<sup>246</sup> Slovak Republic, Act No. 43/2004 Coll. Act on Old-age Pension Savings.

<sup>247</sup> Slovak Republic, Act No. 640/2004 Coll. Act on Supplementary Pension Savings

<sup>248</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), available at:  
[http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

### 7.3 Personal scope

The personal scope of Slovak law relating to statutory social security schemes is identical to that specified in Article 2 of Directive 79/7/EEC. The statutory social security schemes apply to the whole working population. The Act on Social Insurance<sup>249</sup> covers employees: public servants, civil servants, constitutional representatives, the public guardian of rights (ombudsman), employees in an employment relationship according to the Labour Code, members of co-operatives, etc.

This Act does not relate to the so-called 'force branches', i.e. specific groups of civil servants, such as police officers, professional soldiers, members of the Police Corps, the Slovak Intelligence Service, the Bureau of National Security, the Prison Corps and the Judicial Guard. Separate laws regulate the schemes for these groups of professionals. Their employer (the Ministry of Defence and the Ministry of Interior) pays contributions to special funds associated with ministerial budget chapters.

### 7.4 Material scope

The material scope of Slovak law relating to statutory social security schemes as specified in Article 3, Paragraphs 1 and 2 of Directive 79/7/EEC is identical. The scope of social insurance according to the Act on Social Insurance<sup>250</sup> consists of five independent sub-schemes:

1) sickness insurance - in case of loss of or decrease in income from a job and to provide an income in case of temporary incapacity for work, pregnancy and maternity. From the sickness insurance system the following are provided:

- sickness benefits,
- nursing benefits,
- settlement benefit,
- maternity benefits

2) pension insurance

old-age insurance - to ensure an income in old age and in case of death. From the old age insurance system the following are provided:

- old-age pension,
- early old-age pension,
- widow's pension and widower's pension,
- orphan's pension.

disability insurance - in case of reduced ability to do a job due to a long-term adverse health condition or death. From the disability insurance system the following are provided:

- disability pension,
- widow's pension and widower's pension,
- orphan's pension.

3) accident insurance - in case of damage to health or death due to an accident at work or in service (hereinafter referred to as 'accident at work') and occupational disease. From the old age insurance system the following are provided:

- injuries bonus,
- injuries annuity,
- one-off settlement,
- survivors' injuries annuity,
- one-off indemnification,
- working rehabilitation and rehabilitation benefit,

<sup>249</sup> Slovak Republic, Act No. 461/2003 Coll. Act on Social Insurance.

<sup>250</sup> Certain groups of professionals (police corps, army, etc.) do not participate in the public system, they are covered by special occupational pension schemes.

- retraining and retraining benefit,
- compensation for injuries and compensation for aggravation of social expediency,
- compensation of costs related to treatment,
- compensation of expenses related to funeral.

4) guarantee insurance - in case of insolvency of the employer to meet claims of the employee,

From the guarantee insurance system the following is provided:

- guarantee insurance benefit

5) unemployment insurance - in case of loss of income of the employee due to unemployment and to ensure an income due to unemployment

From the unemployment insurance system the following is provided:

- unemployment benefit

According to the Act on Old-Age Pension Savings, old-age savings are savings in a saver's personal account. The aim of the saving is, together with old-age insurance according to the Law on Social Insurance, to provide the saver with an income in old age and also to provide the saver's survivors with income in case of his or her death. The law distinguishes between:

- old age pension,
- early old age pension,
- survivors' pension.

## **7.5 Exclusions**

The pensionable age introduced by the Act on Social Insurance<sup>251</sup> has been gradually extended and has now been equalised for women and men at 62 years of age, although the Act still contains some exceptions to the general provision and provides for a gradual equalisation of the currently divergent pensionable ages for women depending on the number of children raised.

## **7.6 Actuarial factors**

Sex is not used as an actuarial factor in statutory social security schemes.

## **7.7 Difficulties**

There are no specific difficulties in Slovakia in relation to implementing Directive 79/7/EEC.

## **7.8 Evaluation of implementation**

While public opinion on this issue, particularly among women, still favours an earlier retirement age for women, support for equalising the ages is growing. Thus, public education is needed to bring home the point that keeping the old system under new conditions would be highly disadvantageous for women. Furthermore, it is also necessary to ensure that enough jobs are available for older women, which is not the case currently. It is already difficult for older women to remain in employment or to find a job. If a high proportion of older women remain unemployed and live on social security income, the equalisation of retirement age will not improve the situation of the state budget or women's pension funds. Further analysis is needed to assess how the raising of the women's pension age will influence the social net of families which is still quite strong in Slovakia. In particular, the childcare provided by older women for their grandchildren in many cases allows a younger generation of women to enter the labour market. If these

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<sup>251</sup> Slovak Republic, Act No. 461/2003 Coll. Act on Social Insurance.

'family services' will no longer be possible and available, it will be necessary to ensure there are enough affordable childcare services.

### **7.9 Remaining issues**

There were no other remaining issues regarding statutory social security.

## **8 Self-employed workers (Directive 2010/41/EU and some relevant provisions of the Recast Directive)**

### **8.1 General (legal) context**

#### **8.1.1 Surveys and reports on the specific difficulties of self-employed workers**

No surveys or reports on the specific difficulties of self-employed workers have been published.

#### **8.1.2 Other issues**

There are no other issues in relation to self-employed workers.

#### **8.1.3 Overview of national acts**

No special act only regulating issues regarding self-employed people exists in Slovakia.

#### **8.1.4 Political and societal debate and pending legislative proposals**

There has been no political or societal debate or pending legislative proposals on issues in relation to self-employed people in 2018.

### **8.2 Implementation of Directive 2010/41/EU**

The Directive has been implemented in relation to social insurance, which consists of a mandatory public insurance component (based on mandatory contributions and defined benefits) governed by the Act on Social Insurance,<sup>252</sup> a mandatory or voluntary savings component governed by the Act on Old-Age Pension Savings<sup>253</sup> and a voluntary private savings component, which is a supplementary component governed by the Act on Supplementary Pension Savings.<sup>254</sup>

Health insurance is not included in the scope of social insurance. Having health insurance is mandatory for all self-employed people.

### **8.3 Personal scope**

#### **8.3.1 Scope**

The basic definition of a self-employed person (so-called *SZČO*) is contained in the Act on Social Insurance.<sup>255</sup> With effect from 1 July 2014, an *SZČO* is defined as a natural person who has reached the age of 18 and who derives income from a business or other self-employed occupation in the calendar year that is decisive for the payment or duration of mandatory sickness insurance and mandatory old-age insurance for *SZČOs*. For the status of an *SZČO* it is therefore relevant whether a person earns a taxable income, rather than whether they are registered with the tax office (as was the case before).

According to the Act on Employment Services,<sup>256</sup> self-employed activity also means:

- (i) trade operated independently, systematically, in a person's own name, as their own responsibility, for profit-making purposes and under conditions laid down by the Small Businesses Act;

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<sup>252</sup> Slovak Republic, Act No. 461/2003 Coll. Act on Social Insurance.

<sup>253</sup> Slovak Republic, Act No. 43/2004 Coll. Act on Old-age Pension Savings.

<sup>254</sup> Slovak Republic, Act No. 640/2004 Coll. Act on Supplementary Pension Savings.

<sup>255</sup> Slovak Republic, Act No. 461/2003 Coll. Act on Social Insurance.

<sup>256</sup> Slovak Republic, Act No. 5/2004 Coll. Act on Employment Services.



- (ii) activity performed under special regulations – so-called freelance occupations, e.g. the activities of lawyers or notaries public; and
- (iii) activity of a natural person who carries out fee-based mediation of employment, executes the activities of a temporary employment agency or who executes the activities of a supported employment agency, according to the Act on Employment Services.

### 8.3.2 Definitions

The term 'self-employed person' has been regulated by several acts which, however, previously contained several different definitions of the term. The definition of the term was unified in 2011.<sup>257</sup>

### 8.3.3 Categorisation and coverage

A natural person who produces agricultural products and is registered can also be defined as a self-employed person. The agricultural sector is not treated differently and all self-employed people are considered to be part of the same category.

### 8.3.4 Recognition of life partners

Slovak national law does not contain specific regulations concerning the spouse or life partner of a self-employed person. The definition of 'co-operating person' (contributing partner)<sup>258</sup> as a spouse who participates in the activities of a self-employed person was included in the previous Act on Social Insurance, which was abolished by the current Act on Social Insurance in 2003. This new Act lacks any regulation concerning contributing partners. What could be considered as an assisting spouse can only be found in Article 11(1) of the Small Businesses Act, which states that the deputy responsible for performing the trading activities of the trader must be in an employment relationship, unless this responsible person is the trader's spouse. However, this type of engagement in a trader's activities is not explicitly called a cooperative partnership, and the statutory social insurance does not recognise such a concept either.

According to current legislation, there is practically no legal definition of an assisting spouse and no legal/social protection for such people. Issues relating to their social protection are not resolved in a satisfactory manner, so the Slovak legislation transposing the Directive does not meet the prescribed criteria.

## 8.4 Material scope

### 8.4.1 Implementation of Article 4 of Directive 2010/41/EU

In all the above-mentioned acts that contain definitions of a self-employed person the principle of equal treatment is established, in accordance with the concept of equal treatment as expressed in the Anti-discrimination Act.

### 8.4.2 Material scope

The material scope is identical to that of the Directive.

<sup>257</sup> By amendments to Act No. 461/2003 Coll. on Social Insurance, Act No. 5/2004 Coll. on Employment Services, Act No. 43/2004 Coll. Act on Old-Age Pension Savings and to Act No. 571/2009 Coll. on Parental Contributions.

<sup>258</sup> This had a significant impact in terms of voluntary social insurance, for which a co-operating member could opt if their self-employed partner was insured.

## 8.5 Positive action

No positive actions have been adopted.

## 8.6 Social protection

The system of social protection comprises social insurance and a pension savings system, state social support for families, social assistance and health insurance.

Social insurance consists of a mandatory public insurance component (based on mandatory contributions and defined benefits) governed by the Act on Social Insurance,<sup>259</sup> a mandatory or voluntary savings component governed by the Act on Old-Age Pension Savings<sup>260</sup> and a voluntary private savings component, which is a supplementary component governed by the Act on Additional Pension Savings.<sup>261</sup> Health insurance<sup>262</sup> is not included in the scope of social insurance. Having health insurance is mandatory for all self-employed people.

Mandatory insurance for sickness and pension insurance applies to a self-employed person whose income from business and other gainful occupation in the previous year was more than 12 times the tax base (more than 12 times 50 % of the average yearly pay for a full-time job).

There is only one system of social protection.

The spouses or life partners of self-employed people, if they are not their employees or partners in the business, are not protected under the social security scheme for self-employed workers. They are, however, allowed to join the social security scheme voluntarily. The precondition is that the individual is voluntarily insured for sickness and pensions at the same time.

## 8.7 Maternity benefits

According to Article 48 of the Social Insurance Act,<sup>263</sup> self-employed workers are entitled to maternity allowance, which is provided under the Social Insurance Act and paid by the Social Insurance Agency (SIA).<sup>264</sup>

The criteria for eligibility for maternity allowance are that: 1. the self-employed person has the mandatory sickness insurance; and 2. has no debts in respect of insurance contributions. A person who is pregnant or care for a child must have sickness insurance at the time that the reason for the provision of maternity allowance arises, and this insurance must have existed for at least 270 days in the last two years before the birth of the child.

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<sup>259</sup> According to the Act on Social Insurance, the scope of social insurance covers five independent sub-schemes: sickness insurance (which is designed to protect people from remaining without any income or with a considerably lower income during times of sickness, pregnancy or maternity); pension insurance (old-age insurance – designated to secure income for old-age pensioners and in case of death, and disability insurance – designated to secure income for people who cannot find employment because of their disability), injury insurance (which covers risk of health damage or death caused by a work-related accident or work-related disease), guarantee insurance (which covers the risk of insolvency (bankruptcy) of the employer in order to pay the wages to the employees and the compulsory contributions of the employer for the contributory pensions fund) and unemployment insurance (designed to secure an income for eligible workers who become unemployed).

<sup>260</sup> Slovak Republic, Act No. 43/2004 Coll. Act on Old-age Pension Savings.

<sup>261</sup> Slovak Republic, Act No. 580/2004 Coll. on Health Insurance.

<sup>262</sup> Slovak Republic, Act No. 650/2004 Coll. on Additional Pension Savings.

<sup>263</sup> Slovak Republic, Act No. 461/2003 Coll. on Social Insurance.

<sup>264</sup> The SIA has been designated to be the competent and liaison institution for the following branches of social security: sickness benefits, maternity and equivalent paternity benefits, disability benefits, old-age benefits, survivors' benefits, benefits in respect of accidents at work and occupational diseases and unemployment benefits.

Maternity allowance meets the requirement of sufficiency in Article 8(3). Maternity allowance is paid for seven days a week and is 75 %<sup>265</sup> of the daily counting base (with a monthly ceiling corresponding to 1.5 times the national average wage and which is based on the income/wage before maternity leave). The maximum amount in 2018 was EUR 1 394.30 per month. The estimated average monthly maternity allowance for mothers was EUR 614 and for fathers<sup>266</sup> EUR 840.

A person who does not pay sickness insurance contributions, mandatorily or voluntarily, is not entitled to maternity allowance. In this case they can apply for parental benefits – state social benefits paid by the Office of Labour, Social Affairs and Family. The state pays the eligible person contributions that are to ensure the proper care of a child until the age of three (or six for a child with a long-term health condition). Since 2018, the amount of monthly benefits has been EUR 214.70; a parent of twins will receive EUR 268.40 per month and a parent of triplets EUR 322.05 per month.

## **8.8 Occupational social security**

### **8.8.1 Implementation of provisions regarding occupational social security**

According to Article 5 of the Anti-discrimination Act,<sup>267</sup> the principle of equal treatment in occupational security schemes also applies to self-employed people.

### **8.8.2 Application of exceptions for self-employed persons regarding matters of occupational social security (Article 11 of Recast Directive 2006/54)**

No exceptions for self-employed people regarding matters of occupational social security are regulated.

## **8.9 Prohibition of discrimination**

The principle of equal treatment on all grounds set out in the Anti-discrimination Act<sup>268</sup> applies only with regard to the rights laid down under separate laws regulating the access to and provision of a) social assistance, social insurance, old-age pensions, complementary old-age pensions, state social security allowance and social benefits, b) healthcare, c) education, d) goods and services, including housing, provided to the public by legal entities and entrepreneurs

## **8.10 Evaluation of implementation**

Slovak national law implements the EU law topics discussed in this chapter quite satisfactorily.

## **8.11 Remaining issues**

There are no other remaining issues regarding the self-employed.

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<sup>265</sup> The original rate was 55 % of the assessment base, increasing to: 60 % from 1 January 2011; 65 % from 1 January 2012; 70 % from 1 January 2016; and 75 % from 1 July 2017.

<sup>266</sup> Fathers entitled, to parental leave in order to be able to care for the new-born child, are provided with maternity allowance under the same conditions as mothers during maternity leave are.

<sup>267</sup> Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), available at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>268</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), available at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf), Article 5.

## **9 Goods and services (Directive 2004/113)<sup>269</sup>**

### **9.1 General (legal) context**

#### **9.1.1 Surveys and reports about the difficulties linked to equal access to and supply of goods and services**

No surveys or reports on the specific difficulties linked to equal access to and supply of goods and services have been published.

#### **9.1.2 Specific problems of discrimination in the online environment/digital market/collaborative economy**

There is no regulation of the collaborative economy. The responsibilities between the provider and the platform are not regulated and no academic literature is available.

#### **9.1.3 Political and societal debate**

There has been no political or societal debate on this topic in 2018.

### **9.2 Prohibition of direct and indirect discrimination**

According to Article 5 of the Anti-discrimination Act,<sup>270</sup> the principle of equal treatment on all grounds set out in the Anti-discrimination Act applies only with regard to the rights laid down under separate laws regulating the access to and provision of:

- a) social assistance, social insurance, old-age pensions, complementary old-age pensions, state social security allowance and social benefits;
- b) healthcare;
- c) education;
- d) goods and services, including housing, provided to the public by legal entities and entrepreneurs.

Under the Consumer Protection Act,<sup>271</sup> when providing goods and services to consumers, the seller has the obligation to comply with the principle of equal treatment stipulated in the Anti-discrimination Act. This means that Article 5(d) of the Anti-discrimination Act applies to sellers / entrepreneurs who provide goods and services to public.

### **9.3 Material scope**

The provisions of the Anti-discrimination Act<sup>272</sup> do not apply to goods and services offered or provided on a private basis. Prohibition of discrimination in the access to and supply of goods and services is limited to the sale of goods and the supply of services in public and targeted to the public.

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<sup>269</sup> See e.g. Caracciolo di Torella, E. and McLellan, B. (2018) *Gender equality and the collaborative economy* (2018) European network of legal experts in gender equality and non-discrimination, available at: <https://www.equalitylaw.eu/downloads/4573-gender-equality-and-the-collaborative-economy-pdf-721-kb>.

<sup>270</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), available at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>271</sup> Slovak Republic, Act No 250/2007 Coll. Consumer Protection Act, Article 4, Section 3.

<sup>272</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), available at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf), in English.

## 9.4 Exceptions

No exceptions from the material scope as specified in Article 3(3) of Directive 2004/113/EC, regarding the content of media, advertising and education, are applied. The principle of equal treatment also applies to the content of media and advertising and education. According to the law, 'advertising must not contain any discrimination on the grounds of sex, race and social origin'.<sup>273</sup>

Rights provided for under the Act on Higher Education shall be guaranteed equally to all applicants and students. In conformity with the principle of equal treatment in education, laid down in Anti-discrimination Act, any discrimination on the grounds of gender, religion or belief, marital and family status, colour, language, political and other opinion, trade union involvement, national or social origin, disability, age, property, lineage or other status shall be prohibited.<sup>274</sup>

The principle of equal access to education and the prohibition of all forms of discrimination and, in particular, segregation is stipulated in the School Act.<sup>275</sup>

## 9.5 Justification of differences in treatment

According to Article 8, Section 7/c, of the Anti-discrimination Act, objectively justified differences of treatment on grounds of sex shall not be deemed to constitute discrimination if they consist of the provision of goods and services exclusively or preferentially to members of one sex, if they have a legitimate aim and if the means to achieve this aim are appropriate and necessary.

## 9.6 Actuarial factors

Amendments<sup>276</sup> to the Anti-discrimination Act and the Insurance Act (in effect since 1 April 2013) significantly intervened in the insurance sector. Article 8, Section 8 of the Anti-discrimination Act in previously allowed the use of differences based on sex for the determination of the amount of insurance premiums and the calculation of insurance benefits by insurance companies without regarding the approach as discriminatory. Since 1 April 2013 such an approach, with the exception of insurance contracts concluded before 1 April 2013, is regarded as sex discrimination and is prohibited.

## 9.7 Interpretation of exception contained in Article 5(2) of Directive 2004/113

In order to take into account the effects of the judgment of the CJEU in case C-236/09 *Test-Achats*, the Slovak legislator adopted Act 32/2013 Coll. This Act removed a provision of Article 8, Section 8, of the Anti-discrimination Act which permitted the use of differences based on sex in the calculation of individuals' premiums and benefits, provided that the difference was the determining factor for the assessment of the insurance risk arising from the insurance contract and this assessment was based on relevant and accurate actuarial and statistical data.

This Act introduced a new transitional provision into the Anti-discrimination Act (Article 13a). Pursuant to this provision, the use of differences in the calculation of individuals' premiums and benefits based on sex is not discriminatory when it is contained in insurance contracts concluded before 1 April 2013, provided that these differences are the determining factor for the assessment of the insurance risk and this assessment is based on actuarial and statistical data.

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<sup>273</sup> Slovak Republic, Act No.147/2001 Coll. on advertising, Article 3, Section 1/a.

<sup>274</sup> Slovak Republic, Act No. 131/2002 Coll. on higher education, Article 55, Section 2.

<sup>275</sup> Slovak Republic, Act No. 245/2008 on Upbringing and Education (the School Act), Article 3c) and d).

<sup>276</sup> Slovak Republic, Act No. 32/2013 Coll.

This Act has also deleted the provisions of Article 35, Sections 3 to 5, of the Insurance Act No. 8/2008 Coll.<sup>277</sup>

### **9.8 Positive action measures (Article 6 of Directive 2004/113)**

No positive action measures were adopted.

### **9.9 Specific problems related to pregnancy, maternity or parenthood**

There were no specific problems of discrimination on the grounds of pregnancy, maternity or parenthood in relation to access to and the supply of goods and services.

### **9.10 Evaluation of implementation**

Slovak national law implements the EU law topics discussed in this chapter quite satisfactorily.

### **9.11 Remaining issues**

There were no other remaining issues regarding goods and services.

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<sup>277</sup> These provisions regulated the obligations stemming from the use of the exception prescribed by Article 5, Paragraph 2, of the Directive. The provisions stipulated that insurance companies were obliged to collect and update the actuarial and statistical data related to the use of the criterion of a person's sex as the determining factor for the calculation of the individual's premiums and benefits, provided that the calculation of the premiums and benefits was based on these data. The deleted provisions of the Act on Insurance also imposed on insurance companies an obligation to submit the above-mentioned data to the National Bank of Slovakia. On the basis of the submitted data, the National Bank of Slovakia regularly published and updated actuarial and statistical data related to the use of sex as the determining actuarial factor. This act was replaced by the new Act No. 39/2015 Coll. Insurance Act, in force since 1 January 2016.

## 10 Violence against women and domestic violence in relation to the Istanbul Convention

### 10.1 General (legal) context

#### 10.1.1 Surveys and reports on issues of violence against women and domestic violence

Based on the European-wide research 'Violence against women' conducted by the European Union Agency for Fundamental Rights (FRA),<sup>278</sup> 34 % of Slovak women experience physical and/or sexual violence during their lifetime.<sup>279</sup>

The *Report on violence against women in Slovakia for the years 2012 and 2013* contains the findings from this survey and available data from the Ministry of Interior, the Ministry of Justice and the Ministry of Health.<sup>280</sup> The report also provides information on strategic documents and legislative amendments in the area of violence against women. Furthermore, it revises the indicators previously provided and analyses the efforts to harmonise them. Particular attention is devoted to the issues of sexual exploitation and the most up-to-date knowledge about the criminalisation of the demand for sexual services.

In June 2018 the Ministry of Labour, Social Affairs and Family published a draft summary report on gender equality 2017 ('Report')<sup>281</sup> aimed at the analysis of violence against women. Experts in the area of human rights, gender equality and violence against women and some members of the Gender Equality Committee of the Council of the Slovak Government for Human Rights, National Minorities and Gender Equality submitted their comments<sup>282</sup> to the draft Report. The comments on deficiencies of the Report concerned the following areas: the scope and quality of the content of the submitted report; consideration of the social and political context in which the Report is submitted; consideration of the situation of different groups of women and men (so-called 'intersectional aspect' and multiple discrimination); the scope and quality of the processing of qualitative indicators of gender equality; and concrete comments on individual parts of the draft report.

According to the experts, the scope and quality of the Report were insufficient and hence the Report did not fulfil its basic function – to provide summary information about the situation in the area of gender equality, with special focus on acts of violence committed against women in 2017 in Slovakia. The Report should also analyse the situation in other key areas of gender equality.

The experts requested that data for Slovakia should be completed in the Eurobarometer Gender Equality Summary from 2017 and compared with the EU average.

<sup>278</sup> <http://fra.europa.eu/en/data-and-maps/violence-against-women-survey/survey-information>.

<sup>279</sup> The first Slovak sociological survey on domestic violence and violence against women was carried out in 2001 on a clinical sample that was later followed by other studies (Bodnárová, B. and Filadelfiová, J. (2003) Domáce násilie a násilie páchané na ženách v SR: skrátená verzia záverečnej správy z výskumu. (Domestic violence and violence against women in the Slovak Republic, Summary report from the representative research), Bratislava SŠPR, 2003). In 2008 representative research was carried out into the prevalence and experience of women with violence committed against women, with a representative sample of 827 women between the ages of 18 and 65. The research provided findings on the incidence of intimate partner violence and violent behaviour by other men (not intimate partners) against women (Bodnarova, B., Filadelfiová, J. and Holubová, B., *Representative research on prevalence and experience of women with VAW in Slovakia*, Institute for Labour and Family Research, Bratislava 2008, <https://www.ceit.sk/IVPR/images/IVPR/vyskum/2008/Holubova/SUMMARY.pdf>, available in English.

<sup>280</sup> Holubová, B. (2014) *Správa o násilí páchanom na ženách na Slovensku za roky 2012 a 2013* (Report on Violence Against Women in Slovakia for the Years 2012 and 2013), available at: <https://www.ceit.sk/IVPR/images/IVPR/vyskum/2014/Holubova/2287.pdf>, in Slovak.

<sup>281</sup> Pursuant to Government Resolution No. 862/2007 of 11 October 2007, every year a Summary Report on the State of Gender Equality in Slovakia is prepared covering the previous year. See: [https://www.gender.gov.sk/wp-content/uploads/2018/06/vlastny\\_material.pdf](https://www.gender.gov.sk/wp-content/uploads/2018/06/vlastny_material.pdf), available only in Slovak.

<sup>282</sup> <https://www.slov-lex.sk/legislativne-procesy/-/SK/LP/2018/354>, available only in Slovak.

In view of the current efforts to enforce further limitations on or even full prohibition of abortions in Slovakia, the experts requested that this issue be addressed by the Report.

The Report should stress that any attempts at discrediting the Istanbul Convention are contrary to the further existence of the Slovak Republic as a democratic state, because the fight against the ratification of the Istanbul Convention and against non-government organisations and initiatives enforcing gender equality and striving to eliminate gender-based violence has intensified in the previous year in Slovakia. Conservative, anti-gender, extremist and anti-European discourse was intensifying and the influence of conservative/traditionalist groupings and churches on public enterprises was growing. Cooperation by the state administration authorities with human rights NGOs significantly reduced (e.g. change of members of the Gender Equality Committee and restoration or strengthening of membership of organisations that openly fight against gender equality, which is in contradiction with the focus and statute of the committee).

In order to comprehensively map the situation in the area of gender equality and violence against women, the Report must examine the situation of different groups of women, especially those who are threatened by multiple discrimination and intersectional discrimination. The experts therefore requested that the Report also include information about problems faced in the areas of gender equality and gender-based violence by women affected by overlapping inequalities (e.g. older women; women from marginalised and socially excluded communities; women from rural areas; disabled women; women who are heads of single-parent families; women from socially disadvantaged environments, etc.).

The experts also referred to concrete inaccuracies and missing data in the information provided, in the development of legislation and policies; they criticised the authors for insufficient and unprofessional processing of the following parts of the Report: Theoretical basis; Types and forms of domestic violence; Myths and facts; and Consequences of domestic violence.

The experts also highlighted the insufficient focus on the activities of the responsible state authorities (Ministry of Labour, Social Affairs and Family, Department of Gender Equality and Equal Opportunities, Coordinating-Methodical Centre for Gender-Based and Domestic Violence) and the fact that activities implemented by other entities were overlooked.

The Report primarily focuses on gender-based violence and pays minimal attention to the issues of the comprehensive elimination of gender-based violence and the protection of women against violence in general. The experts proposed adding extensive coverage of the following areas in the Report, which should clearly describe the present situation in the area of the elimination of gender-based violence and indicate the development and future priorities of Slovakia: primary prevention of gender-based violence; services for women experiencing violence; and the role of state authorities in cases of gender-based violence.

The required improvements to the draft of the Report were not accepted by the Ministry of Labour, Social Affairs and Family and the draft report, without changes, was sent to the Government for discussion. However, the draft was not included on the Government's agenda and the Report was never approved by the Government.<sup>283</sup> Despite this fact, the Ministry of Labour, Social Affairs and Family published the draft on its website without any accompanying note that it was not approved by the Government.<sup>284</sup>

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<sup>283</sup> <https://rokovania.gov.sk/RVL/Material/23052/1>, available in Slovak.

<sup>284</sup> Ministry of Labour, Social Affairs and Family (2018) *Súhrnná správa o stave rodovej rovnosti na slovensku za rok 2017 násilie na ženách a domáce násilie* (Summary report on gender equality in Slovakia in 2017 – violence against women and domestic violence), available at: <https://www.gender.gov.sk/suhrnna-sprava-o-rodovej-rovnosti-za-rok-2017/>, in Slovak.



### 10.1.2 Overview of national acts on violence against women, domestic violence and issues related to the Istanbul Convention

Neither violence against women nor domestic violence have yet been defined in Slovak legislation. Likewise, a special act concerning violence against women or domestic violence has not yet been adopted in Slovakia.

Since 1999 individual mechanisms to prevent violence against women have been legislatively revised, in particular through amendments to the Criminal Code,<sup>285</sup> the Code of Criminal Procedure,<sup>286</sup> the Civil Code<sup>287</sup> and the Code of Civil Procedure,<sup>288</sup> the general regulation in the criminal law was maintained.

Cases of violence against women and domestic violence – provided that they are seriousness enough to be classified as a crime – constitute one of the offences against life and health, freedom and human dignity, family and youth, and others. An amendment to the Act on the Police<sup>289</sup> was later adopted, which introduced the term 'order (the offender) out of the common dwelling'.

This means that certain civil and criminal law mechanisms for protection against violence against women and domestic violence have been regulated. What is missing is a comprehensive act defining violence against women in all its forms and manifestations, in accordance with international conventions.

During summer 2015 the Department on Gender Equality of the Ministry of Labour prepared a draft of the new Act on the Prevention and Elimination of Gender-Based Violence and Domestic Violence which was based on the Istanbul Convention. However, this proposal has not been further discussed since 2015.<sup>290</sup> The new Government, which was formed after the 2016 elections, decided to prepare a draft Victims' Act.

Critics of the adoption of a special act on gender-based violence against women claim that the newly adopted Act on Victims of Criminal Offences (Victims' Act),<sup>291</sup> by which transposition of the Victims' Directive should have been finalised, will also provide adequate protection to women exposed to gender-based violence and their children.

This act partially transposed the EU Victims' Directive,<sup>292</sup> which aimed to ensure that all victims of crime have access to support services, to protect particularly vulnerable victims and prevent the 'secondary victimisation' of victims with respect to their treatment by the criminal justice system. Notably, the Victims' Directive recognises the role played by characteristics such as gender, gender identity or gender expression in motivating violence. However, the new Slovak Victims' Act<sup>293</sup> lacks a provision on gender discrimination, so that the victims of gender-based violence and crimes motivated by the victims' gender identity or expression are not included in the concept of 'vulnerable victims'.

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<sup>285</sup> Slovak Republic, Act No. 300/2005 Coll.

<sup>286</sup> Slovak Republic, Act No. 301/2005 Coll.

<sup>287</sup> Slovak Republic, Act No. 40/1964 Coll.

<sup>288</sup> This was replaced by the new Act No. 160/2015 Coll. Civil Disputes Act.

<sup>289</sup> Slovak Republic, Act No. 171/1993 Coll.

<sup>290</sup> The Government decided to postpone the presentation of the prepared draft to Parliament. The reason for this was that parliamentary elections were held in March 2016, so there were only two sessions of Parliament in which new acts could be adopted. The other reason was that in the pre-election period the previous Government was afraid of raising 'controversial' issues such as gender-based violence and the ratification of the Istanbul Convention.

<sup>291</sup> Slovak Republic, Act No. 274/2017 Coll.

<sup>292</sup> Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ 2012 L 315.

<sup>293</sup> Slovak Republic, Act No. 2017 Coll on Victims of Criminal Offences and on Amendments and Supplements to certain Acts.

The author recommends that a 'special' and 'comprehensive' act on the elimination of gender-based violence be adopted, based on the Istanbul Convention, together with a revised 'general' Victims' Act based on the EU Victims' Directive, in order to improve the situation in the area of gender-based violence against women.<sup>294</sup>

### 10.1.3 National provisions on online violence and online harassment

Slovakia has no specific provisions on online violence or online harassment. However, a wide range of provisions in the Criminal Code can be applied to 'cyberviolence'.<sup>295</sup>

With effect from 1 September 2011 the Criminal Code<sup>296</sup> incorporated a constituent element of the offence of dangerous harassment under Article 360a of the Criminal Code to penalise 'stalking', i.e. the long-term harassment of another person that is capable of giving the harassed person grounds to fear for their life or health or the life or health of someone close to them or that significantly impairs the quality of their life.

According to Article 360a of the Criminal Code:

(1) Whoever follows another person over an extended period of time in a way giving possible rise to a reasonable fear for the life or health of that person or the life or health of a person close to that person or giving rise to the substantial impairment of the quality of life of that person by:

- a) threatening to inflict bodily harm or other harm to that person or a person close to that person;
- b) seeking the personal proximity of that person or following that person;
- c) contacting that person through a third person or electronic communication service, in writing or in any other manner against the will of that person;
- d) misusing the personal details of that person in order to establish personal or any other contact with that person; or
- e) limiting that person in their usual way of life, shall be punished by a prison sentence of up to one year.

(2) A prison sentence of six months to three years shall be imposed upon an offender if they committed an act referred to in Section 1 a) against a protected person, 1 b) in a more serious manner of conduct, 1 c) out of a special motive, or 1 d) publicly.

### 10.1.4 Political and societal debate

The need to adopt legislation on the protection of victims of gender-based violence was also discussed publicly. The critics of ratification of the Istanbul convention and the Ministry of Justice, which was preparing the draft Victims' Act, stated that this act would ensure the coherent protection of all victims of violent crimes without any discrimination

<sup>294</sup> See: Magurová, Z. and Magurová, H. (2017) 'Ochrana obetí rodovo podmieneného násilia páchaného na ženách' (Protection of victims of gender-based violence against women) In *Právny obzor*, 2017, roč. 100, č. 6, pp. 622-635.

<sup>295</sup> Slovak Republic, Act No. 300/2005 Coll. Criminal Code - namely: Stalking (Article 360a), Extortion (Article 189), Duress (Article 192), Sexual Exploitation (Articles 201, 201a, 201b), Defamation (Article 373), Harm Done to Rights of Another (Articles 375, 376), Manufacturing of Child Pornography (Article 368), Dissemination of Child Pornography (Article 369), Possession of Child Pornography and Participation in Child Pornographic Performance, Corrupting Morals (Articles 371, 372), Corrupting Morals of Youth (Article 211), Establishment, Support and Promotion of Movements Directed at the Suppression of Fundamental Rights and Freedoms (Article 421), Expression of Sympathy for Movements Directed at the Suppression of Fundamental Rights and Freedoms (Article 422), Production, Distribution, Possession of Extremist Materials (Articles 422a, 422b, 422c), Denial and Approval of the Holocaust, the Crimes of Political Regimes and Crimes against Humanity (Article 422d), Defamation of Nation, Race and Conviction (Article 423), or Incitement to National, Racial and Ethnic Hatred (Article 424).

<sup>296</sup> Slovak Republic, Act No. 262/2011 Coll. amending Act No. 301/2005 Coll. the Criminal Code.

and taking into account the specific needs of victims of domestic violence and violence against women. But this is not the reality.<sup>297</sup>

## 10.2 Ratification of the Istanbul Convention

The Slovak Republic was one of the first states to sign<sup>298</sup> the Istanbul Convention; nevertheless, this Convention has still not been ratified. Although the Government declared its intention to ratify it in 2012 and the task to ratify the Istanbul Convention was incorporated into the National Action Plan<sup>299</sup> to prevent and eliminate violence against women for 2014-2019 (NAP), the ratification was postponed several times.<sup>300</sup>

The Ministry of Justice has the task of monitoring the development of public debate and to facilitate expert discussions on the issue of the Convention on a continuous basis.<sup>301</sup> However, the Ministry has not yet organised any such discussion.

In 2014 the Minister of Justice argued that, prior to the ratification, a special law on domestic violence has to be enacted. At the same time he called for dialogue with the conservative organisations which raised objections against the ratification of the Istanbul Convention because of the introduction of 'gender ideology'.<sup>302</sup> In the same year the Minister of Labour stressed that, as the body monitoring the issue of VAW, it insists on the ratification of the Istanbul Convention, because it was clearly supported by the Council of the Government for Human Rights and the Committee for Gender Equality and because this requirement also results from the NAP.

The issue of ratification of the Istanbul Convention was reopened in 2015 with the help of several NGOs. The main aim of a campaign, 'Ring the bell against violence against women – Let's support the Istanbul Convention', initiated by the civil society organisation, Freedom of Choice (*Možnosť voľby*), was to encourage people to take action against violence against women by supporting ratification of the Istanbul Convention.<sup>303</sup>

This campaign was followed by several negative reactions from religion organisations strictly against ratification of the Istanbul Convention. On 4 May 2015 one of these organisations initiated a petition against the ratification of the Istanbul Convention.

<sup>297</sup> See the information in Sections 2.2 and 10.1.2, in particular the lack of a provision on gender discrimination. See also: Magurová Z. (2018) 'Gender-based violence as human rights violence' in *Almanac IX. International Conference on Systems of Protection of Human Rights in Europe and in Australia & Oceania, April 23 – 25 2017, Warsaw, Poland*, Toruń, Wydawnictwo Adam Marszałek, pp. 143 -150. Magurová, Z. and Magurová, H. (2016) 'Istanbulský dohovor ako nástroj eliminácie násilia páchaného na ženách' (Istanbul Convention as a tool for the elimination of violence against women) In *Paneurópske právnické fórum: zborník príspevkov z vedeckej konferencie doktorandov a mladých vedeckých pracovníkov, 1. ročník. – Bratislava: Paneurópska vysoká škola*, pp. 115-122. Bargerová, Z., Holubová, B., Just Hrnčárová, N., Karlovská, D., Králová, S., Magurová, Z. and Mesochoritsová, A. (2016) *Analýza Istanbulského dohovoru vo svetle verejných politík SR* (Analysis of the Istanbul Convention in the light of public policies) Mesochoritsová, A. and Magurová, Z. (ed.). Bratislava, Možnosť voľby, 2016, available at: <http://moznostvolby.sk/wp-content/uploads/2017/03/analiza-istanbulskeho-dohovoru-vo-svetle-verejnych-politik-sr.pdf>, in Slovak.

<sup>298</sup> The Slovak Republic signed the Istanbul Convention in 2011 in accordance with the resolution of the Slovak Government No. 297 of 4 May 2011. <http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Uznesenie-11688?prefixFile=u>, available only in Slovak.

<sup>299</sup> <http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=23121> available only in Slovak, [http://www.gender.gov.sk/wp-content/uploads/2012/06/NAP\\_VaW\\_2014-2019\\_EN.pdf](http://www.gender.gov.sk/wp-content/uploads/2012/06/NAP_VaW_2014-2019_EN.pdf) available in English.

<sup>300</sup> The ratification should have been carried out in 2013, this was then postponed until 2014, then until 30 June 2016 and June 2017.

<sup>301</sup> <http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=26776>, available only in Slovak, <https://spectator.sme.sk/c/20628259/slovak-cabinet-postpones-ratification-of-istanbul-convention.htm>, available in English.

<sup>302</sup> Slovak National Centre for Human Rights (2015) *Report on the observance of human rights including the observance of the principle of equal treatment and the rights of the child in the Slovak Republic for the year 2014*, available at: [http://www.snsrp.sk/CCMS/files/komplet\\_prekald\\_spravy\\_AJ\\_final.pdf](http://www.snsrp.sk/CCMS/files/komplet_prekald_spravy_AJ_final.pdf), pp. 44-48, in English.

<sup>303</sup> Video and foto available at: <http://moznostvolby.sk/odzvonne-nasiliu-na-zenach-podporme-istanbulsky-dohovor/>, [http://moznostvolby.sk/bwq\\_gallery/znami-muzi-odzvanaju-nasiliu/](http://moznostvolby.sk/bwq_gallery/znami-muzi-odzvanaju-nasiliu/).

According to the equality body, this petition contains a number of pieces of inaccurate and biased information.<sup>304</sup>

In its Government Manifesto in 2016 the new four-party Government declared its intention to:

'pay particular attention to reducing inequalities between men and women in all spheres of public and private life in accordance with the adopted strategic documents and international commitments of the Slovak Republic. In this context, there is particular focus on combating violence against women, such as the development of services and measures to prevent and punish violence against women and domestic violence, but also with a countrywide discussion on international instruments that concern marriage, family and violence against women and children.'<sup>305</sup>

The Manifesto does not contain any commitment to adopt a new act on the prevention and elimination of gender-based violence and domestic violence based on the requirements of the Istanbul Convention.

The Government has not been planning to provide any financial support from the state budget for specialised services for victims of violence against women, as required by the Istanbul Convention. The Coordinating Methodical Centre<sup>306</sup> for gender-based and domestic violence that is responsible for the coordination of policies to prevent and eliminate gender-based violence and domestic violence, as required by Article 10 of the Istanbul Convention, was established in April 2015 within the framework of Project CMC,<sup>307</sup> supported by Norway Grants. This project ended in April 2016 and the state administration faced the question of how to maintain the Centre without foreign funding. For some time the Centre was being financed from the so-called 'governmental reserve'. In 2018 the Centre was supported by Norway Grants, and co-financed by the State Budget. The special chapter dedicated to the financing of the Centre is still missing from the State Budget. According to some NGOs, there was a significant restriction on the Centre's operations in 2017 and during the course of 2018 there were constant personnel changes and a failure to provide appropriate telephone counselling.

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<sup>304</sup> Available in Slovak at: [http://snslp.sk/CCMS/files/2015\\_Report\\_on\\_the\\_observance\\_of\\_human\\_rights\\_including\\_the\\_principle\\_of\\_equal\\_treatment.pdf](http://snslp.sk/CCMS/files/2015_Report_on_the_observance_of_human_rights_including_the_principle_of_equal_treatment.pdf), p. 64.

<sup>305</sup> [https://www.vlada.gov.sk/data/files/6483\\_programove-vyhlasenie-vlady-slovenskej-republiky.pdf](https://www.vlada.gov.sk/data/files/6483_programove-vyhlasenie-vlady-slovenskej-republiky.pdf), p. 41.

<sup>306</sup> Under the National Action Plan for the Prevention and Elimination of Violence against Women for the Years 2014-2019, the Ministry of Labour was assigned the task of establishing a coordinating and methodical centre and ensuring its sustainability. The establishment of the coordinating and methodical centre was also a result of recommendations by the UN Committee on the Elimination of Discrimination against Women. The Coordinating Methodical Centre began operation on May 2015 and the national helpline on 1 February 2015.

<sup>307</sup> Available in Slovak at: <https://www.zastavmenasilie.gov.sk/kmc/>.

## **11 Compliance and enforcement aspects (horizontal provisions of all directives)**

### **11.1 General (legal) context**

#### **11.1.1 Surveys and reports about the particular difficulties related to obtaining legal redress**

No surveys or reports have been published that provide insights into the particular difficulties faced by victims of gender discrimination in practice in obtaining legal redress.

#### **11.1.2 Other issues related to the pursuit of a discrimination claim**

There were no other remaining issues in relation to pursuing a discrimination claim for victims.

#### **11.1.3 Political and societal debate and pending legislative proposals**

There has been no political or societal debate or pending legislative proposals on discrimination claims in 2018.

### **11.2 Victimisation**

Victimisation, according to Article 2a, Section 8, of the Anti-discrimination Act,<sup>308</sup> is considered to be discrimination. Victimisation is also regulated in the Labour Code<sup>309</sup> and some other laws. There is no available information on judgments concerning victimisation.

According to Article 2a, Section 8, of the Anti-discrimination Act, victimisation is an action or omission which has adverse consequences for the person in question and directly relates to legal protection against discrimination when the person in question or a third person submits a complaint regarding, or testifies to, a violation of the principle of equal treatment. The Anti-discrimination Act also contains procedural guarantees against victimisation.

According to Article 13, Section 3, of the Labour Code in the workplace, nobody may be persecuted or otherwise sanctioned in the performance of labour-law relations for submitting a complaint, charge or proposal to start a criminal prosecution against another employee or an employer. Other laws also contain similar provisions, such as Act No. 73/1998 Coll. on Civil Service of Members of the Police Force, the Slovak Intelligence Service, the Prison Wardens and Judiciary Guards Corps of the Slovak Republic and of the Railway Police; Act No. 200/1998 Coll. on the Civil Service of Customs Officers; Act on the Fire Fighting and Rescue Corps; Act No. 346/2005 Coll. on Civil Service of Professional Soldiers of the Armed Forces of the Slovak Republic; and Act No. 400/2009 Coll. on Civil Service.

The definition of victimisation in the Anti-discrimination Act covers a broader scope than just employment.

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<sup>308</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), available at: [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>309</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

## 11.3 Access to courts

### 11.3.1 Difficulties and barriers related to access to courts

In 2012 an NGO specialising in racial discrimination, *Poradňa*,<sup>310</sup> collected court judgments concerning discrimination that had been decided in previous years and comprehensively analysed the Slovak courts' decision-making work in cases of discrimination since the adoption of the Anti-discrimination Act in 2004.

Based on its analysis, as well as its own legal experience in the courts, *Poradňa* states that the implementation of the provisions of the Anti-discrimination Act by the courts in cases of gender and multiple discrimination remains inconsistent and often flawed. Courts remain insufficiently informed about anti-discrimination legislation and its proper application in practice.

Court proceedings concerning discrimination last an excessively long time (rarely less than several years) and the courts remain extremely reluctant to award any financial compensation for victims of discrimination. They tend to downplay the severity of discrimination, overlooking or not understanding its *prima facie* impact on a person's dignity. In some instances there have been hints of a certain bias or preoccupation of the courts, particularly when dealing with cases of discrimination against Roma women.<sup>311</sup>

In 2015 *Poradňa* stated:

'In order to reverse the current situation the Slovak courts have to improve their decisions in favour of discriminated persons, including women, with adequate compensation and with a sufficient deterrent effect on the offenders. Positive court rulings will gradually motivate other persons to actively pursue their rights and resist discrimination by legal remedies and will strengthen their faith in legal institutions.'<sup>312</sup>

### 11.3.2 Availability of legal aid

Victims of discrimination may be supported and also represented in court by the Slovak National Centre for Human Rights (the Centre),<sup>313</sup> which is the equality body, or by an organisation which has protection against discrimination as its aim,<sup>314</sup> not only before regular courts (first and second instance), but also before the Supreme Court or the Constitutional Court. Under the previous Civil Procedure Act the Centre and NGOs could represent victims of discrimination only before the courts of first and second instance.

<sup>310</sup> *Poradňa pre občianske a ľudské práva* (Centre for Civil and Human Rights) (<https://www.poradna-prava.sk/en/>).

<sup>311</sup> Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012) *Diskriminácia na Slovensku: Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*. (Discrimination in Slovakia: Searching for barriers in access to legal means of protection from discrimination); available in Slovak, but with summary of all the relevant findings in English at: 333 Košice: *Poradňa pre občianske a ľudské práva*, available at: <http://poradna-prava.sk/wp-content/uploads/2012/11/Publik%C3%A1ciu-si-m%C3%B4žete-stiahnu%C5%A5-tu-105-MB.pdf>.

<sup>312</sup> Written comments concerning Slovakia to the Committee on the Elimination of Discrimination against Women (CEDAW) for consideration at its 62th session in November 2015, available in English: <http://www.poradna-prava.sk/en/documents/written-comments-for-the-un-committee-on-the-elimination-of-discrimination-against-women/> and <http://www.poradna-prava.sk/sk/dokumenty/diskriminacia-na-slovensku-hladanie-bariery-v-pristupe-k-ucinnej-pravnej-ochrane-pred-diskriminaciou/>, available in Slovak with a summary in English.

<sup>313</sup> Slovak National Centre for Human Rights: <http://www.snslp.sk/?locale=en>.

<sup>314</sup> There are only a few NGOs in Slovakia which provide legal assistance to victims of discrimination. One of them is the Centre for Civil and Human Rights (*Poradňa*) which mainly deals with cases of discrimination against Roma (<https://www.poradna-prava.sk/en/>). Another is Citizen, Democracy and Accountability (*OaDZ*), which focuses on gender-related discrimination (<http://odz.sk/en/>).

In cases of discrimination which affects a larger or non-specified number of people or otherwise threatens the public interest, such an organisation, or the Centre, can initiate a case in its own name. The Centre can also be involved in the process of mediation and has the power to adopt non-binding opinions.

## **11.4 Horizontal effect of the applicable law**

### **11.4.1 Horizontal effect of relevant gender equality law**

According to the available information, the question of the horizontal effect of the applicable gender equality law does not pose any particular problem in ensuring compliance with and in enforcing gender equality law.

### **11.4.2 Impact of horizontal direct effects of the charter after *Bauer***

There is no available information about whether the recognition of the horizontal direct effects of the Charter provisions (in the *Bauer* ruling of the CJEU) have any specific relevance for better enforcement of gender equality.

## **11.5 Burden of proof**

The Anti-discrimination Act<sup>315</sup> also regulates anti-discrimination proceedings. It is the only act that also includes provisions regarding the shift of the burden of proof. Article 11, Section 2 states: 'The defendant has the obligation to prove, that there was no violation of the principle of equal treatment if the facts submitted to a court by the claimant give rise to a reasonable assumption that such violation has indeed occurred.'

Due to the inaccurate transposition, the initial wording of Article 11 of the Anti-discrimination Act contained the formulation '...if the claimant submits evidence [not facts] to the court...', which weakened the claimant's position in the proceedings regarding the violation of the principle of equal treatment. This deficiency has been eliminated by an amendment<sup>316</sup> of the quoted provision, which was replaced by '...if the claimant informs the court about facts...'.

The draft of the Anti-discrimination Act initially also envisaged an amendment of the Code of Civil Procedure,<sup>317</sup> but this idea was abandoned in the end. The courts therefore tended to 'only' adhere to the procedural rule and avoid the application of the provisions included in the Anti-discrimination Act. They often justified the non-application of the principle of the shift of the burden of proof by the fact that this procedural principle was not provided for in the Code of Civil Procedure.<sup>318</sup> Consequently, victims of discrimination were often unsuccessful in court proceedings due to lack of evidence.

The situation has gradually improved, although in cases of gender discrimination it is still unsatisfactory, thanks to the interpretation of the shift of the burden of proof provided by the Supreme Court and Constitutional Court in judgments concerning racial discrimination.

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<sup>315</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act), available at: [http://www.snsrp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snsrp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>316</sup> Slovak Republic, Act No. 85/2008 Coll. on Amendment of the Act No. 365/2004 Coll on Equal Treatment in Certain Areas and on Protection against Discrimination (Anti-discrimination Act).

<sup>317</sup> Slovak Republic, Act No. 99/1963 Coll. on Civil Procedure Code. On 1 July 2016 this was replaced by the new Act No.160/2015, Civil Disputes Act.

<sup>318</sup> Slovak Republic, Article 315, Section 2, of the new Civil Disputes Act stipulates that the procedural provisions contained in the Anti-discrimination Act (e.g. on the burden of proof) take precedence over the Civil Disputes Act.



The Supreme Court provided an interpretation of the shift in the burden of proof in its decision 3 Cdo 171/2008, from 21 January 2009.<sup>319</sup>

'In the case of national legislation (Article 13, Section 7, of the Labour Code<sup>320</sup> and Article 11, Section 2, of the Anti-Discrimination Act), the burden of proof not only affects the defendant but also the applicant. The claimant must prove priority of the facts from which it may be presumed that there has been direct or indirect discrimination. The claimant must claim and at the same time produce evidence (burden of proof), which can reasonably give reason to conclude that the principle of equal treatment has been violated. Then, the burden shifts to the defendant who is entitled to prove their claims that they did not violate the principle of equal treatment. The claimant is therefore required to establish the first "at first sight" (prima facie), where the claimant's argument, personal inner conviction or feeling of such intervention in itself is not sufficient. It then follows that the presented evidence should have predictive value, demonstrating the objective circumstances of the case, where possible, "at first sight" (prima facie) to find a violation of the principle of equal treatment. If the claimant does not indicate that he/she was treated in an unusual way, causing a disadvantage (discrimination), the claim cannot be successful.'

In finding No. IV. ÚS 16/09, from 30 April 2009,<sup>321</sup> the Constitutional court stated,

'It is apparent from the national legislation (Article 13, Section 7, of the Labour Code, up to 31 June 2004, and Article 11, Section 2, of the Anti-Discrimination Act, since 1 July 2004) that the 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, respectively (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.'

The Constitutional Court, in finding No. III. ÚS 90/2015, from 1 December 2015,<sup>322</sup> emphasised that, 'anti-discrimination disputes are demanding for the taking of evidence, in particular at the stage of the evaluation of evidence'. 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'.

From the quoted judgments it is obvious that, when courts apply the concept of the shift of the burden of proof, they apply it in accordance with the directives and with the case law of the European Court of Justice. The above-mentioned amendment of the provisions of Article 11, Section 2, of the Anti-discrimination Act has also contributed to the improvement of the situation.<sup>323</sup>

<sup>319</sup> Decision is available in Slovak at: <http://merit.slv.cz/3Cdo171/2008>.

<sup>320</sup> The reversed burden of proof in cases of discrimination has been incorporated in the Labour Code since 2001 for cases brought to the courts by individuals in employment relations. Currently, the shift of the burden of proof for civil procedures is contained in the Anti-discrimination Act.

<sup>321</sup> <http://merit.slv.cz/IV.US16/2009>, available in Slovak.

<sup>322</sup> <http://merit.slv.cz/III.US90/2015>, available in Slovak.

<sup>323</sup> Magurová, Z. (2014) 'Uplatňovanie preneseného dôkazného bremena v prípadoch diskriminácie' (Application of the shift of the burden of proof in discrimination cases). In: *Zborník z medzinárodnej vedeckej konferencie Bratislavské právnické fórum 2013*, Bratislava, Právnická fakulta Univerzity



In comparison with the directives, according to the Anti-discrimination Act the shift of the burden of proof is applied in relation to all forms of discrimination, i.e. not only in relation to direct or indirect discrimination. The scope of applicability of the shift of the burden of proof is therefore wider.

On the other hand, the shift in the burden of proof does not explicitly apply to judicial proceedings in which administrative bodies' decisions relating to discrimination are reviewed, nor in proceedings of inspectorates such as labour inspection, school inspection or inspection in the field of the provision of goods and services, which makes identification of cases of discrimination in these fields very inefficient.

Based on its analysis, as well as its own legal experience in the courts, *Poradňa* states that the courts remain insufficiently informed about anti-discrimination legislation and its proper application in practice. Specifically, the application of the reversed burden of proof continues to fall short of legal consistency.<sup>324</sup>

## 11.6 Remedies and sanctions

### 11.6.1 Types of remedies and sanctions

Disputes concerning the violation of the principle of equal treatment, including gender discrimination, are specifically covered by the Anti-discrimination Act<sup>325</sup> (as a special regulation) and by the Civil Disputes Act<sup>326</sup> (as a general regulation on civil proceedings).

According to Article 9, Section 2, of the Anti-discrimination Act, everyone who considers their rights have been violated because the principle of equal treatment has not been applied to them may pursue their claims by judicial process.

According to Section 9 of the Labour Code,<sup>327</sup> employees and employers who sustain damage due to breach of obligations arising from labour-law relations may exercise their rights in court.

The Civil Disputes Act introduced new provisions on disputes with protection of the weaker party, which are classified in three categories: consumer disputes (Articles 301-306), anti-discrimination disputes (Articles 307-315) and individual labour-law disputes (Articles 316-323).

An anti-discrimination dispute is a dispute that concerns violation of the principle of equal treatment according to the Anti-discrimination Act. In proceedings on anti-discrimination disputes the principle of the reversed burden of proof, as it results from the Anti-discrimination Act, is applied, so the procedural provisions contained in the Anti-discrimination Act take precedence over the Civil Disputes Act (Article 315, Section 2).

An individual labour-law dispute is a dispute between the employee and the employer resulting from labour-law and other similar employment relationships. In order to solve cases of competition of claims according to labour-law and anti-discrimination regulations,

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Komenského, pp. 331-339, available in Slovak at:

[https://www.flaw.uniba.sk/fileadmin/praf/Veda/Konferencie\\_a\\_podujatia/Session\\_of\\_Civil\\_Law.pdf](https://www.flaw.uniba.sk/fileadmin/praf/Veda/Konferencie_a_podujatia/Session_of_Civil_Law.pdf).

<sup>324</sup> Written comments concerning Slovakia to the Committee on the Elimination of Discrimination against Women (CEDAW) for the consideration at its 62th session in November 2015, available in English at: <http://www.poradna-prava.sk/en/documents/written-comments-for-the-un-committee-on-the-elimination-of-discrimination-against-women/> and <http://www.poradna-prava.sk/sk/dokumenty/diskriminacia-na-slovensku-hladanie-barier-v-pristupe-k-ucinnej-pravnej-ochrane-pred-diskriminaciou/>, available in Slovak with a summary in English.

<sup>325</sup> Slovak Republic, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination and on amendment of certain acts (Anti-discrimination Act).

<sup>326</sup> Slovak Republic, Act No.160/2015 Civil Disputes Act which replaced previous Act No.99/1963 Coll. on Civil Procedure Code on 1 July 2016.

<sup>327</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

a special interpretation rule is included: if discrimination occurs in relation to employment, such a dispute shall be regarded as a labour-law dispute (Article 316, Section 2).

The parties in both types of disputes are the claimant and the defendant. The special instruction obligation of the court is more strictly regulated for anti-discrimination and individual labour-law disputes, but only in relation to the claimant, i.e. the party or employee discriminated against as the weaker party.

When fulfilling its special instruction obligation, the court must instruct the claimant on the possibility of representation, i.e. not only on their right to representation through a lawyer or physical person or to request the Centre of Legal Aid for the appointment of a legal representative, but also on the right to representation through a legal person in accordance with the Anti-discrimination Act (for an anti-discrimination dispute) or through a trade union organisation (for an individual labour-law dispute), as well as on evidence that must be submitted to prove the alleged claim and on other possibilities required for the effective exercise or defence of the claimant's rights.

In both types of proceedings a fundamental departure from the general regulation of procedural evidence occurs through the application of the interrogation principle that is typical of non-judicial proceedings. However, the interrogation principle only applies in relation to the claimant as the weaker party. It involves the possibility of the court taking the evidence initiative. The court need not limit itself to the activities of the claimant in proposing evidence, but can help them in the collection of evidence by procuring and producing means of proof that the claimant has not put forward.

Another advantage of the claimant as the weaker party in both types of disputes concerns the date until which they may submit operative facts justifying their alleged claim and propose new means of proof. The law allows them to do so until the decision on the merits of the case is issued.

According to the Explanatory report to the Civil Disputes Act, the new legal regulation of anti-discrimination disputes is aimed at protecting a person who has been discriminated against who, as the weaker party in the dispute, is often unable to efficiently and effectively defend themselves.

The Anti-discrimination Act refers to three specific types of actions:

- first – writ of 'quire impedit': the purpose is to ensure that the person who has behaved in a discriminatory fashion will refrain from the unlawful infringement (for example, stop the harassment or discrimination);
- second – action for restitution: the purpose is to rectify the unlawful situation and to eliminate the wrongful consequence of the unlawful conduct and also cover material damage (for example, to pay the difference in salary when the amount paid was inadequate amount due to unequal treatment ); and
- third – action for satisfaction: the purpose is to provide adequate satisfaction (for example an apology). This is compensation of so-called immaterial damage i.e. prejudice to the dignity and integrity of the person of the individual as a human being. Satisfaction should not serve as the reparation of material damage suffered by the damaged party, but as compensation for immaterial damage, i.e. compensation that is justified with regard to the character of the discriminatory interference.

If failure to observe the principle of equal treatment results in a substantial reduction of the dignity, social respect or social position of the victim and adequate satisfaction proves to be insufficient, the victim may also claim monetary non-pecuniary damages (the amount will be set by the court with regard to the extent of non-pecuniary damage and taking account of the circumstances in which it occurred).

Article 13 of the Labour Code,<sup>328</sup> which was amended by the Anti-discrimination Act, also stipulates in Section 5 the right of an employee 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, examine it, abstain from such conduct in the future and eliminate the consequences thereof.

However, the effect of such a remedy is questionable and it is not used in practice. According to Article 13, Section 6, of Labour Code, any employee who considers that their legally protected rights or interests are affected by the non-appliance of principles of equal treatment may go before a civil court and seek legal protection as provided under the separate Anti-discrimination Act.

According to Article 308 of the Civil Disputes Act, a party may be represented in the anti-discrimination dispute by a person authorised for representation according to the Anti-discrimination Act.

According to Article 10 of the Anti-discrimination Act, victims of discrimination may be supported and also represented in court by the Slovak National Centre for Human Rights (the Centre), which is the equality body, or by an organisation which has protection against discrimination as its aim.<sup>329</sup>

According to Article 317 of the Civil Disputes Act, an employee may be represented in individual labour-law disputes by a trade union.

The Civil Disputes Act (Article 429, Section 2) introduced the possibility for trade unions, NGOs whose activities involve protection against discrimination and the Centre also to represent claimants when applying to the Supreme Court with an extraordinary appeal in disputes with a weaker party. (According to previous legislation, legal representation by these entities was only possible before the courts of first and second instance.)

The Anti-discrimination Act explicitly states in Article 9, Section 5, that everyone is also entitled to the protection of their rights out of court through mediation.

The process of mediation is regulated by the special Act on Mediation,<sup>330</sup> which does not specify anti-discrimination mediation. According to Article 15, Section 1, the mediation agreement is binding for both parties in the mediation. According to Article 15, Section 2, if the mediation agreement is written in form in notary minutes and approved by the court, it is also legally enforceable.

According to Article 19, Section 1a, of the Act on Labour Inspection, which regulates administrative offences, the labour inspectorate is authorised to impose penalties on employers for violations of their obligations concerning pay conditions up to the amount of EUR 100 000 and to impose penalties on managers and statutory bodies who, through their own fault, violated the obligations concerning pay conditions, up to the amount of four times their average monthly salary.

#### 11.6.2 Effectiveness, proportionality and dissuasiveness

Although there is a lack of discrimination cases on the ground of gender, from the available judgments it is clear that courts require victims to prove considerable impairment of their dignity, social status or social achievement in order for financial compensation for non-

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<sup>328</sup> Slovak Republic, Act No. 311/2001 Coll. Labour Code.

<sup>329</sup> There are only a few NGOs in Slovakia which provide legal assistance to victims of discrimination. One of them is the Centre for Civil and Human Rights (*Poradňa*), which mainly deals with cases of discrimination against Roma. Another is Citizen, Democracy and Accountability (*OaDZ*), which focuses on gender-related discrimination.

<sup>330</sup> Slovak Republic, Act No. 420/2004 Coll. on Mediation and on the amendment of certain acts, as amended.

pecuniary damage to be awarded. There is a high degree of unwillingness on the part of the courts to award financial compensation for non-pecuniary damages; if compensation is awarded, it is generally symbolic. Such low compensations are not effective, proportionate and dissuasive, so the court protection in proceedings in such cases is very limited.

In many cases in which women are discriminated against, only a claim for adequate compensation is possible. If the sanction in the form of redress is to be effective, proportionate and dissuasive, the amount of money claimed needs to reflect this. The claimant is supposed to pay 3 % of any sum claimed as non-pecuniary compensation (at all stages of the proceedings). Many women who have been discriminated against are therefore discouraged from submitting a complaint to court, as the high court fees often constitute a real barrier to enforcing their right to equal treatment and enjoying protection from discrimination.

### **11.7 Equality body**

The Slovak National Centre for Human Rights (Centre) as an independent legal entity is a specialised national institution that promotes the observance of the principle of equal treatment and develops activities to combat discrimination. It was established in 1994<sup>331</sup> and its tasks were extended in accordance with the Anti-discrimination Act in 2004, when it started to fulfil the functions of an equality body. In the last three years, the functioning of the Centre has been criticised<sup>332</sup> not only by human rights NGOs but also by the Government Council for Human Rights, National Minorities and Gender Equality.<sup>333</sup>

The Centre covers all discrimination grounds and is currently unable to fully ensure the real and effective fulfilment of functions in the areas of support and assurance of equal treatment and protection of human rights. It does not have a special division for gender equality with sufficient funding and gender equality experts.

The Centre provides legal advice and legal aid to victims of discrimination. A key competence of the Centre is the authority to represent victims in proceedings relating to the violation of the principle of equal treatment. The legal representation provided by the Centre is free of charge; however, in case of defeat the client has to bear the costs of the trial. The Centre is also contacted for consultation by individuals who are already being represented in court by advocates in discrimination cases. In such cases, the Centre provides its expert opinions, which can be submitted to the court as documentary evidence (e.g. they are not defined as expert opinions under the rules of the Civil Disputes Act). In general, due to the length of procedures and the associated costs (especially in case of defeat), the Centre aims to settle cases out of court and tries to solve them through mediation.

A significant number of cases in which the Centre has issued expert opinions or provided legal assistance or legal representation before the courts relate to discrimination in employment on the ground of 'other status' (mostly harassment against an employee by

<sup>331</sup> Slovak Republic, Act No. Act No.308/1993 Coll. on the Establishment of the Slovak National Centre for Human Rights.

<sup>332</sup> In June 2011 the Analytical Report on the Activities of the Centre noted, among other deficiencies, that the Centre did not have sufficient capacity in the area of equal treatment and only very few cases of discrimination had been brought to the courts by the Centre, none of which had been successfully resolved. The suggestion was to transform the Centre into an equality body and transfer its competences in the area of human rights to the Public Defender of Rights (the Ombudsman). Due to the fall of the former Government, the transformation of the Centre was postponed. See: <http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Mater-Dokum-133077?prefixFile=m>, in Slovak.

<sup>333</sup> The Government Council for Human Rights, National Minorities and Gender Equality is a permanent professional, advisory, coordinating and consultative body of the Government of the Slovak Republic, among other activities responsible for promoting the principle of equal treatment and equality, including gender equality. It consists of several specific committees. The Committee on Gender Equality is one of them. It functions as an advisory body. <https://www.radavladyp.gov.sk/>, in Slovak.

their supervising manager) and it is a deficiency of the Centre that it has not sufficiently addressed discrimination in Slovak society on the ground of gender.<sup>334</sup>

The Centre is not competent to decide cases of discrimination or to impose fines or sanctions. A statutory obligation of the Centre is also to prepare expert opinions and recommendations on compliance with the principle of equal treatment. These opinions and recommendations are not binding for parties or private and public bodies.

There are not enough resource materials and information to make it possible to draw a comprehensive picture about the work of the Centre. The only available sources of information are basically the reports issued by the Centre about its own activities. The Reports on the observance of human rights in the Slovak Republic<sup>335</sup> and Annual Reports on Activities of the Slovak National Centre for Human Rights<sup>336</sup> from recent years are very general, without any analyses of the court decisions.

There is no available information on the experts who work at the Centre or on the members of the Board.

### **11.8 Social partners**

The social partners still pay little attention to equal opportunities and do not play any real role in promoting gender equality. Trade unions primarily try to negotiate the highest possible increase in wages and the greatest degree of job security for employees. Equal opportunities issues included in collective agreements have mostly concerned the working conditions of pregnant women and employees caring for young children.

### **11.9 Other relevant bodies**

There are no other relevant agencies or bodies that are engaged in the enforcement of gender equality law through strategic litigation. There are only a few NGOs in Slovakia which provide legal assistance to victims of discrimination. One of them is the Centre for Civil and Human Rights (*Poradňa*) which mainly deals with cases of discrimination against Roma (<https://www.poradna-prava.sk/en/>). Another is Citizen, Democracy and Accountability (*OaDZ*), which focuses on gender-related discrimination (<http://odz.sk/en/>).

### **11.10 Evaluation of implementation**

The present legislation in the area of equal opportunities is largely compatible with the EU gender equality legislation. No specific law on gender equality exists in Slovakia, but the individual provisions of the EC directives have been incorporated, particularly in the Anti-discrimination Act.

### **11.11 Remaining issues**

The remaining issues in relation to enforcement and compliance are:

- lack of cases;
- lack of data and statistics;
- barriers to access to the courts and to justice in general;

<sup>334</sup> See: *Annual report on the activities of the Slovak National Centre for Human Rights for the year 2018*, p. 22, available at: [http://www.snslp.sk/CCMS/files/2018\\_Activity\\_Report\\_of\\_the\\_Slovak\\_National\\_Centre\\_for\\_Human\\_Rights.pdf](http://www.snslp.sk/CCMS/files/2018_Activity_Report_of_the_Slovak_National_Centre_for_Human_Rights.pdf), in English.

<sup>335</sup> Slovak National Centre for Human Rights, reports on the observance of human rights, available at: <http://www.snslp.sk/?locale=en#page=2426>, in English.

<sup>336</sup> Annual reports on the activities of the Slovak National Centre for Human Rights, available at: <http://www.snslp.sk/?locale=en#page=2427>, in English.

- insufficient knowledge of anti-discrimination legislation by legal professionals and by decision-makers in general;
- discriminatory attitudes and lack of training;
- lack of qualified and accessible legal assistance in the field of anti-discrimination; and
- insufficiencies in the education system in relation to human rights and non-discrimination.

## 12 Overall assessment

The Anti-discrimination Act can be regarded as a progressive and comprehensive piece of legislation, which in many provisions goes beyond the requirements of the directives and has a wider scope *ratione personae* and *ratione materiae*. It regulates the duty to observe the principle of equal treatment on a relatively complex list of grounds, including sex and gender in the fields of employment and occupation, social security including social advantages, healthcare, provision of goods and services including housing, and education. It not only provides for the prohibition of discrimination, but also for the proactive obligation to take measures for protection against discrimination and the instruction to discriminate as one of the forms of discrimination.

The newly adopted Victims' Act lacks a provision on gender discrimination, so that the victims of gender-based violence and crimes motivated by their gender identity or expression are not included in the concept of 'vulnerable victims' and are insufficiently protected.

Slovakia signed the Istanbul Convention on 11 May 2011. The task of ratification was incorporated into the respective National Action Plan for the Prevention and Elimination of Violence against Women 2014-2019. However, ratification was postponed several times. Despite all these efforts, in 2018 the situation became less favourable. The prime minister – joining the anti-gender discourse – announced in February that Slovakia would not ratify the Convention.

The institutional framework for gender equality is inadequate. One of the key problems is based on an insufficient budget allocation for the work of the relevant institutions working in the area of gender equality, such as the Slovak National Centre for Human Rights.

The Centre is currently unable to fully ensure the real and effective fulfilment of functions in the areas of support and assurance of equal treatment on the ground of gender. It does not have a special division for gender equality with sufficient funding and gender equality experts.

The reports on the observance of human rights in the Slovak Republic and the annual reports on the activities of the Slovak National Centre for Human Rights from recent years are very general without any analysis of the decisions of the courts.

Even though the Centre is regarded by the Government as the gender equality body, it does not have a special division on gender equality with sufficient funding and gender equality experts.

The same applies to the Government Council for Gender Equality. Although the Council has its own Executive Committee and Consulting Committee, the potential of this multi-level structure is not sufficiently used. The majority of the members of the Council and its committees are nominated by the individual ministries. The Council has no real power or influence and it only 'recommends' to the Government opinions that correspond with the Government's opinions.

The Department for Gender Equality and Equal Opportunities of the Ministry of Labour, which fulfils tasks related to the administrative and technical safeguarding of the Council's activities, does not create conditions allowing the members of the Council's committees to acquire information about prepared and implemented changes in legislation and to submit their comments to these changes. Such an initiative is desirable because it may also help with the systematic application of the gender aspect in the law-making process, which is not yet applied in Slovakia.

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