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# Country report

## Non-discrimination

Slovakia

2020

including summary



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# **Country report**

## **Non-discrimination**

Transposition and implementation at national level of  
Council Directives 2000/43 and 2000/78

## **Slovakia**

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Reporting period 1 January 2019 – 31 December 2019

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\* The author has gratefully built on the reports written until 2016 by the previous expert Janka Debrecéniová.

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## EXECUTIVE SUMMARY

### 1. Introduction

The Slovak Republic is a country of 5.4 million people. In addition to Slovak nationals, a wide range of minority groups live in the country. The largest groups are Hungarians (8.5 %) and the Roma minority. The official number of Roma in the last census (2011) was 105 738 (2 %),<sup>1</sup> although the *Atlas of Roma Communities 2019* contains data on 405 024 Roma living in 949 concentrations - urban settlements.<sup>2</sup> The other minority groups include Czechs, Ukrainians, Croatians, Germans, Poles, Bulgarians, Moravians and Jews.<sup>3</sup>

In Slovakia, many individuals and groups face serious discrimination due to some of their traits. For example, the Roma people face widespread, deep prejudice and discrimination, which exists in all areas of life and is often characterised by segregation and exclusion.

Roma living in segregated settlements face an increased threat of forced eviction. In 2019, the Government of the Slovak Republic adopted an updated action plan to implement the Strategy of the Slovak Republic for the Integration of Roma for 2019–2020, which includes housing, and reiterates the importance of reducing the residential segregation of marginalised Roma communities and supporting their integration through building a system of multi-staged social housing.<sup>4</sup> In 2019, the Slovak equality body published a research report mapping the implementation of the right to housing in Slovakia, which raises issues concerning this right in relation to Roma living in marginalised communities.<sup>5</sup>

Too many Roma children are educated in segregated schools and/or classes and many of them are educated in schools for children with intellectual disabilities. The segregation of Roma children is the subject of cases in the domestic courts. The cases are litigated by NGOs, mostly as *actio popularis* claims or by legally representing individual claimants in court proceedings. In 2019, the first instance court dismissed a case concerning the documented segregation of Roma children at a primary school in a village called Terňa.<sup>6</sup> The claimant (a local NGO) argued that some Roma children at the school faced segregation due to the decisions of the state authorities responsible for setting up the locality's school catchment area as well as due to their inactivity in preventing existing segregation. The decision was appealed with a request to the Court of Appeal to refer the case to the Court of Justice of the EU for preliminary ruling on interpretation of the EU law in this case. The proceedings before the Court of Appeal are still pending. The domestic court also dismissed a claim by a Roma child that he had been discriminated against in access to education by being placed in special class for children with intellectual disabilities.<sup>7</sup> The decision was appealed and the case is pending before the appeal court. The first (and so far the only final) case on the segregation of Roma children in education decided by national courts, in 2011 and 2012, concluded that the education of Roma children in separate mainstream classes amounts to racial discrimination and undermines the human dignity of segregated

<sup>1</sup> See <http://census2011.statistics.sk/tabulky.html>.

<sup>2</sup> *Atlas of Roma Communities 2019*, uprocessed data are available at <https://www.minv.sk/?atlas-romskych-komunit-2019>. The data in the official census were based on people declaring their own ethnicity and many individuals did not openly declare themselves as Roma. Data in the *Atlas of Roma Communities* is based on perceived ethnicity attributed to them in the research, which explains a difference in numbers.

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

<sup>4</sup> Slovak Republic (2019) 'Aktualizované akčné plány Stratégie Slovenskej republiky pre integráciu Rómov do roku 2020 na roky 2019 - 2020 v oblastiach vzdelávania, zamestnania, zdravia, bývania a finančnej inklúzie' (The updated action plans of the Strategy of the Slovak Republic for the Integration of Roma up to 2020 for the period of 2019–2020 in the areas of education, employment, health, housing and financial inclusion) Adopted on 17 January 2019 by the the Slovak Government. Available at <https://rokovania.gov.sk/RVL/Material/23492/2>.

<sup>5</sup> Riečanský, M., Paľovčíková, G., Ujházyová, M. (2019), *Právo na bývanie: Výskumné sondy v oblasti uplatňovania práva na bývanie na Slovensku* (Right to Housing: Research probes on the implementation of the right to housing in Slovakia), Bratislava: Slovenské národné stredisko pre ľudské práva. The report is available in Slovak at <http://www.snslp.sk/SnslpWeb.html#menu=1419>.

<sup>6</sup> Decision of the District Court in Prešov, No. 19C/14/2016, 13 March 2019.

<sup>7</sup> Decision of the District Court in Malacky, No. 5C/212/2014, 17 May 2018.

Roma children.<sup>8</sup> The segregation of Roma children in education is still a widespread problem. It is notable that Slovakia faces infringement proceedings by the European Commission for violating the EU Racial Equality Directive (2000/43/EC) in the practice of discriminating against Roma children in special and mainstream education systems. Following the letter of formal notice sent to the Slovak Government by the European Commission in April 2015, in October 2019 the Commission delivered a reasoned opinion to Slovakia concluding the measures introduced by the Slovak Government are not yet sufficient to resolve the problem.<sup>9</sup> The issue was also addressed by the Public Defender of Rights, who in her report concluded that although the Government has been continuously working on introducing steps to improve the implementation of the rights of all children and pupils to education, this has not led to obvious progress. The Public Defender of Rights called on the Government authorities to introduce and implement desegregation measures that are as specific and sustainable as possible.<sup>10</sup> In 2019, the Slovak Parliament passed an act amending the School Act, the relevant parts of which will enter into force from 1 January 2021.<sup>11</sup> The amendments will introduce compulsory preschool education for all children from the age of five and will remove from the legislation the possibility of creating so-called zero-grade classes. According to the state, the aim of these legislative changes is to prepare Roma children from marginalised environments to start attending primary school directly in the first grade, with the other children.

Widespread and often open racism and general disrespect towards minorities are omnipresent, not only among the general public but also at the highest political level. Racial and nationalist hatred raises additional concerns. There is continued public support for far-right policies.<sup>12</sup>

LGB individuals cannot marry or enter into a registered partnership in Slovakia. Homophobic voices and voices that contest the concept of gender equality are getting stronger and stronger and come not only from the Catholic Church hierarchies, but also from the highest political representatives. The Slovak Public Defender of Rights has concluded that non-recognition of same sex partnerships violates the human rights obligations of the Slovak Republic. However, her statements do not have any formal legal impact.<sup>13</sup>

People with disabilities face numerous physical and societal barriers and segregation on a daily basis in all fields of life. The ombudswoman has addressed the current deficiencies and recommended specific measures that the state authorities responsible must take in order to prevent discrimination against people with disabilities in accessing public buildings.<sup>14</sup>

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<sup>8</sup> Decision of the Regional Court in Prešov, No. 19C/14/2016, 30 October 2012. The English translation of the decision is available online at <https://www.poradna-prava.sk/en/documents/?type=decisions>.

<sup>9</sup> The European Commission gave formal notice about starting infringement proceedings against Slovakia on 29 April 2015 and on 10 October 2019 sent the Slovak Government reasoned opinion INF 19/5950. See [https://ec.europa.eu/commission/presscorner/detail/EN/INF\\_19\\_5950](https://ec.europa.eu/commission/presscorner/detail/EN/INF_19_5950).

<sup>10</sup> Office of the Public Defender of Rights (May 2018), *Správa verejnej ochrankyne práv o stave prijatia navrhovaných opatrení z rokov 2013, 2014 a 2015 v oblasti výchovno-vzdelávacieho procesu na Slovensku s cieľom zlepšovania ochrany a dodržiavania základných práv a slobôd osôb* (Report assessing the implementation of her previously proposed measures against discrimination of Roma children in education by the Ministry of Education), available in English translation at: [http://www.vop.gov.sk/files/EN\\_SPRAVA\\_VOP\\_vn%C3%BAtorny\\_audit\\_skolstvo.pdf](http://www.vop.gov.sk/files/EN_SPRAVA_VOP_vn%C3%BAtorny_audit_skolstvo.pdf).

<sup>11</sup> Act No. 209/2019 amending the Act No. 245/2008 on Education (Schools Act).

<sup>12</sup> In parliamentary elections held on 29 February 2020, the far right extremist party, National Party- Our Slovakia received 7.97 %. The results of the election are available at <https://volby.sme.sk/parlamentne-volby/2020/vysledky>.

<sup>13</sup> Office of the Public Defender of Rights (September 2017), *Stanovisko verejnej ochrankyne práv k verejnej ochrankyne práv k problematike práva párov rovnakého pohlavia na uznanie ich vzťahu v právnom poriadku SR* (Opinion of the Public Defender of Rights on the issue of same-sex couples and recognition of their relationship in the Slovak legal order) available at <http://www.vop.gov.sk/stanovisko-verejnej-ochrankyne-prav-k-problematike-prava-parov-rovnakeho-pohlavia-na-uznanie-ich-vztahu-v-pravnom-poriadku-sr>.

<sup>14</sup> Office of the Public Defender of Rights (October 2016), *Správa o výsledkoch prieskumu bezbariérového prístupu do budov škôl a bezbariérovosti v nich* (Report on outcomes of the research on access to school buildings for the disabled); Office of the Public Defender of Rights (September 2016), *Správa o výsledkoch*



Older people also face discrimination and violation of their rights. In 2019, the Office of the Public Defender of Rights specifically addressed this issue and published the results of field research, mapping the living conditions of seniors in selected facilities. The report uncovered a wide range of human rights violations of seniors that occur in retirement homes throughout the country.<sup>15</sup>

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

## 2. Main legislation

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

The Constitution of the Slovak Republic states that human rights are guaranteed to every individual regardless of sex, race, skin colour, language, belief, religion, political affiliation or conviction, national or social origin, nationality (národnosť)<sup>16</sup> or ethnic origin, property, lineage or any other status. The list of prohibited grounds of discrimination in the Constitution is open-ended ('any other status'), which is why it can be argued that sexual orientation, disability and age, as well as any other grounds covered by the legislation are also constitutionally protected grounds.<sup>17</sup> No person can be denied their legal rights, discriminated against or favoured on any of these grounds.

The Anti-Discrimination Act (ADA) now in force was adopted in May 2004,<sup>18</sup> immediately after Slovakia joined the EU. The ADA meets the minimum standards required by the directives and goes beyond them in some instances.

The ADA prohibits discrimination on the grounds of sex, religion or belief, race, affiliation with nationality or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender<sup>19</sup> or other status, or for the reason of reporting criminality or other anti-social activity.<sup>20</sup> In addition to the ADA, several special laws in all the fields covered by the directives refer to the ADA, sometimes extending the scope of grounds

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*prieskumu zabezpečenia bezbariérového prístupu v budovách, ktoré sú sídlami útvarov Policajného zboru a klientskych centier* (Report on outcomes of the research on access to police buildings and their client's centres for the disabled); Office of the Public Defender of Rights (September 2016), *Bezbariérovosť v štátnych nemocniciach a iných zdravotníckych zariadeniach - správa o výsledkoch prieskumu* (Access to state-run hospitals and other health care facilities for the disabled - report on outcomes of the research), all available at: <http://www.vop.gov.sk/spravy-z-prieskumov-a-priority-za-rok-2016>.

<sup>15</sup> Office of the Public Defender of Rights (2019) *Sestém kontroly v zariadeniach sociálnych služieb so zameraním na seniorov: Výskum verejnej ochrany práv* (The system of the control in social services facilities: Research of the Public Defender of Rights); *Zariadenia pre seniorov: Správa z prieskumných návštev* (Facilities for seniors: report from research visits). Both reports are available at: <https://www.vop.gov.sk/spr-vy-z-prieskumov-a-priority-za-rok-2019-1>.

<sup>16</sup> In Slovak law, the word 'nationality' (národnosť) is separate and distinct from the word 'citizenship' (štátne občianstvo). Whereas 'citizenship' is understood as meaning nationality in the sense of having a legal affiliation with a particular state (i.e. being a national or citizen of the Slovak Republic), 'nationality' is understood as an affiliation with a particular 'nation' (a group of people defined by common language, geographical and cultural roots etc.) or ethnic group. Thus, 'nationality' is often understood as meaning 'ethnicity', including in the practice of state bodies and public institutions.

<sup>17</sup> See for example the findings of the Constitutional Court of the Slovak Republic, PL. ÚS 8/04-202, 18 October 2005 and No. III. ÚS 64/00-65, 31 January 2001.

<sup>18</sup> Act No. 365/2004 on Equal Treatment in Certain Areas and on Protection Against Discrimination (Anti-discrimination Act), as amended (zákon č. 365/2004 Z. z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (antidiskriminačný zákon) v znení neskorších predpisov).

<sup>19</sup> The Slovak word *rod* can be translated as either 'lineage' or 'gender'.

<sup>20</sup> Anti-discrimination Act, 365/2004, Section 2(1).

protected by it. Thus, in accordance with these other laws, discrimination is also prohibited on the grounds of unfavourable state of health, genetic features, trade union activities, or activities within associations. In some cases, these laws also contain special mechanisms for invoking the right to equal treatment. Some serious offensive and discriminatory behaviour is outlawed separately by the Criminal Code.

The ADA defines the principle of equal treatment not only as the prohibition of discrimination, but also as a duty to adopt measures to prevent it.<sup>21</sup> The principle of equal treatment applies to all fields covered by the directives (these are all contained in the ADA) and to all grounds covered by the ADA.

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

The ADA defines direct discrimination, indirect discrimination, harassment, sexual harassment, instruction to discriminate, incitement to discrimination,<sup>22</sup> and victimisation.<sup>23</sup> Except for incitement to discrimination (which is a form that goes beyond the scope of the directives and does not conflict with them), the definitions follow the patterns of both Directives 2000/43/EC and 2000/78/EC. Discrimination by association is also prohibited, but this only covers race, nationality (národnosť), ethnicity, religion and belief.<sup>24</sup> In determining whether discrimination has occurred or not, no account is taken of whether the reasons for discrimination were based on facts or on a false assumption.<sup>25</sup>

The ADA also imposes on employers the duty to provide reasonable accommodation. In particular, it obliges them to take appropriate measures to enable a person with a disability to have access to employment, promotion or other advancement at work, and to training. At the same time, accommodating the needs of a person with disabilities must not impose a disproportionate burden on an employer.<sup>26</sup>

An exception grounded on genuine and determining occupational requirements is permitted if it is justified in accordance with rules that are identical to those in the directives.<sup>27</sup>

The ADA also defines other exceptions to the principle of equal treatment. Discrimination on the ground of religion or belief is allowed for churches and religious organisations if a person's religion is fundamental to the exercise of a certain occupation.<sup>28</sup> The ADA stipulates that it does not apply to legal regulation of the status of third-country nationals<sup>29</sup> and states that, in the armed forces and security and rescue services, discrimination on the grounds of disability and age is allowed.<sup>30</sup>

Under special circumstances, several exceptions concern differences in treatment on the ground of age, such as setting age restrictions for access to employment, entitlement to certain social benefits in employment or for the provision of insurance services.<sup>31</sup> Differential treatment on the ground of disability is not considered to be discrimination in providing insurance services or in employment where the health requirements are essential for carrying out certain occupational activities.<sup>32</sup>

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<sup>21</sup> Anti-discrimination Act, 365/2004, Sections 2(1) and 2(3).

<sup>22</sup> An instruction to discriminate is defined as abusive conduct towards a person in a subordinate position for the purpose of discriminating against a third person. Incitement to discrimination can be in the form of persuading, affirming or inciting a person to discriminate against a third person.

<sup>23</sup> Anti-discrimination Act, 365/2004, Section 2a(1)-(8).

<sup>24</sup> Anti-discrimination Act, 365/2004, Sections 2a(11)(b) and 2a(11)(c).

<sup>25</sup> Anti-discrimination Act, 365/2004, Section 3(3).

<sup>26</sup> Anti-discrimination Act, 365/2004, Section 7.

<sup>27</sup> Anti-discrimination Act, 365/2004, Section 8(1).

<sup>28</sup> Anti-discrimination Act, 365/2004, Section 8(2).

<sup>29</sup> Anti-discrimination Act, 365/2004, Section 4(1)(a).

<sup>30</sup> Anti-discrimination Act, 365/2004, Sections 4(1)(b) and 4(1)(c).

<sup>31</sup> Anti-discrimination Act, 365/2004, Section 8(3).

<sup>32</sup> Anti-discrimination Act, 365/2004, Sections 8(6) and 8(5).

The existing legal rules and case law do not explicitly deal with situations of multiple discrimination.

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

The principle of equal treatment applies to all areas defined in the EU directives and overall goes beyond the scope of the directives.

In particular, the principle of equal treatment must be observed in the field of access to employment, occupation and other earning activity or function, including recruitment requirements, selection criteria and methods, vocational training, advanced vocational training and participation in active labour market policy programmes, including vocational guidance services, membership and activity in employees' organisations, employers' organisations and in organisations whose members carry out a particular profession, including benefits provided by such organisations, and in the fields of social services, social insurance, old-age pension insurance, supplementary pension insurance, state social support and social advantages, healthcare, education, and goods and services, including housing (explicitly, housing provided to the public by legal entities and natural persons who are entrepreneurs).<sup>33</sup> In all these fields, discrimination is prohibited on all the grounds listed in the ADA. The implementation of the ADA applies to both the private and the public sector. The Regional Court in Prešov, in its final landmark decision in a case of residential segregation of Roma, emphasised that it is the responsibility of Government institutions to prevent racial discrimination.<sup>34</sup>

#### **5. Enforcing the law**

Although anti-discrimination legislation is relatively progressive, its implementation is very weak in practice. Despite being poorly documented by the state and its bodies, discrimination seems to be widespread and present in all fields covered by the directives (and beyond) and seems to be taking place through more subtle forms than in the past, due to the introduction of non-discrimination language to the discourse. One of the reasons for the weak implementation of the legislation may be the fact that there is very low enforcement through legal procedures. According to the Ministry of Justice, out of 23 cases of alleged discrimination finally decided by domestic courts in 2019, the courts recognised discriminatory treatment in only two cases.<sup>35</sup> The extreme length of the court proceeding also represents a significant barrier in access to justice.

Anyone who considers himself/herself to have been wronged by a breach of the principle of equal treatment can bring the perpetrator to court. The person discriminated against (the claimant) can demand before a civil court (there are no special labour courts) that the person who breached the principle of equal treatment (the defendant) refrains from such conduct and, where possible, rectifies the illegal state of affairs. If the violation of the principle of equal treatment has considerably impaired the dignity, social status or social achievements of the victim, the victim may also seek financial compensation of non-pecuniary damage. The amount of compensation has no fixed scale.<sup>36</sup> It is up to the court to accept, reject or lower the proposed amount in each particular case. A claimant can, in principle, claim other remedies, such as the court declaring the treatment by a defendant to be discriminatory. A person who has been discriminated against may also request material damages, if it is proved that such damage was caused by discriminatory behaviour.<sup>37</sup>

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<sup>33</sup> Anti-discrimination Act, 365/2004, Sections 3(1), 5 and 6.

<sup>34</sup> Regional Court of Prešov, Decision No. 13 Co 38/2017, 20 March 2018.

<sup>35</sup> Response from the Ministry of Justice of 20 February 2020 to a request for information of 13 February 2020 (on file with the author).

<sup>36</sup> Anti-discrimination Act, 365/2004, Section 9(1)-(3), in conjunction with Section 11(1).

<sup>37</sup> Anti-discrimination Act, 365/2004, Section 9(4).

The existing case law shows that courts are rather reluctant to impose sanctions on perpetrators that would be effective, proportionate and dissuasive. This is especially true for financial compensation of non-pecuniary damage. The Regional Court in Košice in its final decision awarded financial compensation totalling EUR 600 (EUR 300 each) to a Roma couple who were found to have been discriminated against based on their ethnic origin in a local bar in Spišské Vlachy.<sup>38</sup> In 2018, the appeal court upheld the first instance court ruling in a case of discrimination against a Roma woman in access to employment and awarded her EUR 2 500 as non-pecuniary damage. This is a landmark decision as it was the first time that the domestic courts ruled in favour of a Roma victim of discrimination in a case of access to employment.<sup>39</sup>

There is a shift of the burden of proof in court proceedings once the claimant has communicated to the court facts giving rise to a reasonable presumption that violation of the principle of equal treatment has occurred. The defendant must prove that there has been no discrimination against the claimant or that the treatment was necessary and justifiable.<sup>40</sup> The implementation of this measure by Slovak courts is still problematic in practice. This has been also highlighted by the UN Committee on the Elimination of Racial Discrimination in its decision against Slovakia concerning an individual case of discrimination against a Roma woman in access to employment.<sup>41</sup>

A person affected by discrimination may be represented in court by the Slovak National Centre for Human Rights (the equality body) or by an organisation that has protection against discrimination as its aim (in practice such organisations are mainly NGOs, but in principle they could also be trade unions).<sup>42</sup>

Sometimes, in cases of discrimination that affect a larger or non-specified number of people or otherwise threaten the public interest, such an organisation, or the Slovak National Centre for Human Rights, can sue the discriminating entity in its own name (*actio popularis*).<sup>43</sup> So far, a few such cases have been initiated (all by NGOs),<sup>44</sup> although only one of them has been won and finalised (a case concerning the segregation of Roma children in education).<sup>45</sup>

There are few NGOs in Slovakia that provide legal assistance to people affected by discrimination.

According to the Labour Code, an employee may submit a complaint to an employer claiming infringement of the principle of equal treatment. The employer is obliged to respond to such a complaint without undue delay, perform restitution and abstain from the discriminatory conduct.<sup>46</sup> However, the effect of this kind of remedy is questionable because there is no official authority outside the employment relationship to handle the complaints and employees may be deterred from using the law in this way (due to fear of victimisation, for example).

Sanctions for discriminatory behaviour can also be imposed through the administrative imposition of fines. The labour, trade and school inspectorates are the bodies in charge.

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<sup>38</sup> Decision of the Košice Regional Court, No. 6 Co 833/2014 – 223, 28 June 2016.

<sup>39</sup> Decision of the Spišská Nová Ves District Court, No. 8 C 268/2016 – 523, of 23 March 2017 upheld by the decision of the Regional Court in Košice of 7 February 2018 (ref. No. 9Co 259/2017).

<sup>40</sup> Anti-discrimination Act, 365/2004, Section 11(2).

<sup>41</sup> See the opinion of the UN Committee on the Elimination of Racial Discrimination in the case of *V.S. v. Slovakia*, Communication No. 56/2014 of 16 December 2015, para. 7.4. and 9.

<sup>42</sup> Anti-discrimination Act, 365/2004, Section 10.

<sup>43</sup> Anti-discrimination Act, 365/2004, Section 9a.

<sup>44</sup> Centre for Civil and Human Rights and European Roma Rights Centre.

<sup>45</sup> Case *Poradňa pre občianske a ľudské práva vs Základná škola v Šarišských Michalánoch* (Centre for Civil and Human Rights vs Šarišské Michalany Primary School), decision of the District Court in Prešov of 5 December 2011, ref. No. 25C 133/10-229-, and decision of the Regional Court in Prešov of 30 October 2012, ref. No. 20Co 125/2012, 20Co 126/2012.

<sup>46</sup> See Act No. 311/2001 Labour Code (*zákon č. 311/2001 Z. z. Zákonník práce*), Section 13(5).

However, in practice, proceedings before inspectorates are still not much used to enforce the anti-discrimination provisions. Furthermore, no shift in burden of proof applies in such proceedings, and even if such proceedings take place, fines are either not imposed or their amount is insufficient and without dissuasive effect.

The ADA contains a provision enabling public administration bodies and other legal entities to adopt positive action measures (entitled 'temporary equalising measures'). The act stipulates that such measures should be aimed at removing disadvantages following from the grounds of racial or ethnic origin, affiliation with a national minority or an ethnic group, gender or sex, age or disability, and that their aim should be to guarantee equality of opportunity in practice.<sup>47</sup> Some positive action measures are in place with regard to the Roma. For example, the Healthy Communities programme implemented by organisation Healthy Regions subordinated to Ministry of Health employs 264 health mediators mostly of Roma origin in marginalised Roma communities (the mediators mostly come from these communities) who deal with access of Roma to health care, mostly delivered in a form of service provision. Employment legislation provides for special protection for people with disabilities and there is a special quota system established for employers who employ at least 20 employees.<sup>48</sup> More than 50 employers committed themselves to supporting diversity and avoiding discrimination in the workplace by signing a diversity charter.<sup>49</sup>

Some form of dialogue with NGOs is taking place through the Council of the Government of the Slovak Republic for Human Rights, National Minorities and Gender Equality - the Government's advisory body.<sup>50</sup> The functioning of the council has some systemic and practical drawbacks.

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

## 6. Equality bodies

The body designated for the promotion of equal treatment is the Slovak National Centre for Human Rights. The centre is an independent, non-judicial body, subsidised mainly through the state budget.<sup>51</sup>

The centre is empowered to draft expert opinions on compliance with the principle of equal treatment. It is also tasked with monitoring and evaluating the observance of human rights and of equal treatment and with collecting and providing information on racism, xenophobia and anti-Semitism, as well as with carrying out independent inquiries concerning discrimination. More generally, the centre is obliged to conduct research and surveys for the purpose of providing data in the field of human rights. The centre is also obliged to publish an annual report on the observance of human rights, including the principle of equal treatment, in Slovakia. It is also required to secure legal aid for people affected by discrimination under the ADA and is empowered to represent the victims of discrimination in court.<sup>52</sup> It may also file an *actio popularis* (see above). As the centre is

<sup>47</sup> Anti-discrimination Act, 365/2004, Section 8a.

<sup>48</sup> Pursuant to Act No. 5/2004 on Employment Services, Sections 63-65, any employer who employs at least 20 employees is obliged to ensure that people with disabilities make up at least 3.2 % of the workforce, provided that the local labour office has job seekers with disabilities on its register. Instead of employing a person with a disability, an employer can also decide to buy goods or services from a sheltered workshop or a sheltered workplace or a self-employed person with a disability.

<sup>49</sup> More information about this initiative is available at: <https://www.chartadiverzity.sk/>.

<sup>50</sup> Act No. 575/2001 on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration, as amended (*zákon č. 575/2001 Z. z. o organizácii činnosti vlády a organizácii ústrednej štátnej správy v znení neskorších predpisov*), Section 2(3). The website of the Council of the Government: [www.radavladyp.gov.sk/](http://www.radavladyp.gov.sk/).

<sup>51</sup> Act No. 308/1993 on Establishing the Slovak National Centre for Human Rights (*zákon č. 308/1993 Z. z. o zriadení Slovenského národného strediska pre ľudské práva*), Sections 1 and 2(1)-(3).

<sup>52</sup> Act No. 308/1993 on Establishing the Slovak National Centre for Human Rights, Sections 1(2)-(4).

competent to act in cases of discrimination defined by the ADA, it works on all the grounds defined by it.

In 2019, the centre dealt with 94 discrimination complaints, out of which: 6 concerned age, 9 ethnic origin, 2 gender, 9 sex, 9 disability, 2 sexual orientation, 1 political or other opinion, 1 religion, 1 education, 1 social origin and 4 on reporting criminality or other anti-social activity and 46 other status.<sup>53</sup> As regards the field of the complaints received, 57 concerned labour or similar relations, 11 the provision of goods and services, 11 social security, 7 education and 2 healthcare. Out of all the complaints received, the centre identified a violation of the principle of equal treatment in 23 complaints. In 2019, the centre issued 26 expert opinions assessing possible breaches of anti-discrimination legislation, provided legal representation to 4 people in court proceedings concerning discrimination and did not submit any *actio popularis* lawsuits.<sup>54</sup>

For a long time now, various sources have been reporting that the centre is not fulfilling its tasks efficiently and satisfactorily.<sup>55</sup> In 2011, the Slovak Government approved an analytical report on the functioning and status of the centre, the first (and last) of its kind. The report presented several findings, which resulted from a relatively complex data-gathering exercise. Following the findings of the report and further analyses, in 2018, the Ministry of Justice prepared a draft amendment to the Act on the Centre that was not passed in Parliament in 2019. On 8 December 2019, the executive director of the centre's mandate expired. The board has not elected a new executive director. Its election has repeatedly failed to produce a winner.

## 7. Key issues

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

<sup>53</sup> Based on the information provided by the centre, the complaints that the centre attributed to the ground of other status mainly concerned employees who could be discriminated against as a result of complaining about their employer and potential discrimination based on permanent residence and state citizenship.

<sup>54</sup> Response of the Centre for Human Rights of 7 February 2018 to a request for information of 30 January 2019 (on file with the author).

<sup>55</sup> See, for example, Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou* (Searching for barriers in access to effective legal protection from discrimination), Košice: Poradňa pre občianske a ľudské práva, pp. 110-112. Available at: <https://www.poradna-prava.sk/sk/dokumenty/diskriminacia-na-slovensku-hladanie-barier-v-pristupe-k-ucinnej-pravnej-ochrane-pred-diskriminaciou/>; Concluding Observations of the Human Rights Committee from October 2016, (CCPR/C/SVK/CO/4), para. 8. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSVK%2fCO%2f4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSVK%2fCO%2f4&Lang=en).

## INTRODUCTION

### The national legal system

The Slovak Republic has a parliamentary form of government and a statutory law system, its basic law being the Constitution,<sup>56</sup> which lays down the scope of guaranteed fundamental rights. International treaties on human rights and fundamental freedoms, international treaties for the exercise of which no other law is necessary, and international treaties that directly confer rights or impose duties on natural persons or legal persons and that were ratified by Slovakia and promulgated as prescribed by the law, take precedence over national laws.<sup>57</sup> Legally binding acts of the European Union take precedence over the laws of the Slovak Republic.<sup>58</sup> Regulations of the Government and generally binding legal regulations of ministries have to be in compliance with the Constitution, with international treaties that were promulgated as prescribed by the law, and with laws.<sup>59</sup>

In matters of local and regional self-governance and in the exercise of tasks stipulated by the law, municipalities and self-governing regions may adopt generally binding legal regulations.<sup>60</sup> In the field of non-discrimination, this has relevance mainly in the field of social protection (e.g. social services and social advantages), housing and education. Generally binding legal regulations of municipalities and self-governing regions must be in compliance with the Constitution, with international treaties that were promulgated as prescribed by the law, with laws, with governmental regulations, and with generally binding legal regulations of ministries.<sup>61</sup>

Together with the Constitution, the Act on Equal Treatment in Certain Areas and Protection against Discrimination (Anti-discrimination Act),<sup>62</sup> which was adopted on 20 May 2004 and came into force on 1 July 2004, establishes the basic legal framework of Slovak anti-discrimination law.

According to the Anti-discrimination Act, the statutory obligation to observe the principle of equal treatment within the areas stipulated by law applies to 'everyone'.<sup>63</sup> The duty to observe the principle of equal treatment is defined as comprising the prohibition of discrimination<sup>64</sup> on the prohibited grounds (sex, religion or belief, race, affiliation with a nationality or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity).<sup>65</sup> It also requires 'measures for protection against discrimination'<sup>66</sup> to be adopted.

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<sup>56</sup> The Constitution of the Slovak Republic No. 460/1992, as amended (*Ústava Slovenskej republiky č. 460/1992 Zb. v znení neskorších predpisov*), 1 September 1992. The version of Constitution effective until 31 December 2019 can be found (in Slovak) at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1992/460/20190701?ucinnost=31.12.2019>. All other laws published in the Collection of Laws from 1998 onwards can be found in Slovak at: <https://www.slov-lex.sk/domov>.

<sup>57</sup> Article 7(5) of the Constitution.

<sup>58</sup> Article 7(2) of the Constitution.

<sup>59</sup> Article 125(1)(b) of the Constitution.

<sup>60</sup> Article 71(2) of the Constitution.

<sup>61</sup> Article 125(1)(d) of the Constitution.

<sup>62</sup> Act No. 365/2004 on Equal Treatment in Certain Areas and Protection against Discrimination, amending and supplementing certain laws (Anti-discrimination Act), as amended (*Zákon č. 365/2004 Z. z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (Antidiskriminačný zákon) v znení neskorších predpisov*), 20 May 2004. The English text of the Anti-discrimination Act can be found at [http://www.snspl.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snspl.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf).

<sup>63</sup> Anti-discrimination Act, 365/2004, Section 3(1).

<sup>64</sup> Anti-discrimination Act, 365/2004, Section 2a(1). According to this section, discrimination can take the following forms: direct discrimination, indirect discrimination, harassment, sexual harassment, victimisation, instruction to discriminate and incitement to discriminate.

<sup>65</sup> Anti-discrimination Act, 365/2004, Section 2(1).

<sup>66</sup> Anti-discrimination Act, 365/2004, Section 2(3).



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

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

Title of the law: Act No. 460/1992 the Constitution of the Slovak Republic<sup>67</sup>

Date of adoption: 20 May 2004

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

Material scope: all areas covered by directives, broader than the directives.

Title of the law: Act No. 365/2004 on Equal Treatment in Certain Areas and Protection Against Discrimination (Anti-discrimination Act)<sup>68</sup>

Date of adoption: 20 May 2004

Grounds covered: sex, religion or belief, race, affiliation with a nationality or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act

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

Title of the law: Labour Code No. 311/2001<sup>69</sup>

Date of adoption: 02 July 2001

Grounds covered: sex, religion or belief, race, affiliation with a nationality or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act as well as trade union involvement, unfavourable state of health and genetic features

Material scope: employment

Title of the law: Act No. 245/2008 on Education (Schools Act)<sup>70</sup>

Date of adoption: 22 May 2008

Grounds covered: all grounds covered by the Anti-discrimination Act as well as social disadvantage

Material scope: education

Title of the law: Act No. 576/2004 on Healthcare<sup>71</sup>

Date of adoption: 21 October 2004

Grounds covered: all grounds covered by the Anti-discrimination Act

Material scope: healthcare

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<sup>67</sup> Constitution of the Slovak Republic, 460/1992, Article 12(2).

<sup>68</sup> Act No. 365/2004 on Equal Treatment in Certain Areas and Protection Against Discrimination (Anti-discrimination Act) (*zákon č. 365/2004 Z. z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (antidiskriminačný zákon)*).

<sup>69</sup> Labour Code No. 311/2001 (*zákon č. 311/2001 Z. z. Zákonník práce*).

<sup>70</sup> Act No. 245/2008 on Education (Schools Act) (*zákon č. 245/2009 Z. z. o výchove a vzdelávaní (školský zákon) a o zmene a doplnení niektorých zákonov*).

<sup>71</sup> Act No. 576/2004 on Healthcare, Services Related to the Provision of Healthcare and on amending and supplementing certain acts, as amended (*zákon č. Act No. 576/2004 Z. z. o zdravotnej starostlivosti, službách súvisiacich s poskytovaním zdravotnej starostlivosti a o zmene a doplnení niektorých zákonov*).



Title of the law: Act No. 308/1993 on Establishing the Slovak National Centre for Human Rights<sup>72</sup>

Date of adoption: 15 December 1993

Grounds covered: all grounds covered by the Anti-discrimination Act, as well as some other grounds contained in other acts (unfavourable state of health, genetic features, duties to family, membership of or involvement in a political party or a political movement, a trade union or other association)

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

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<sup>72</sup> 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*).

## 1 GENERAL LEGAL FRAMEWORK

### Constitutional provisions on protection against discrimination and the promotion of equality

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

- Article 12 – a general clause. Article 12(1) states that ‘people are free and equal in dignity and rights’. Article 12(2) stipulates that ‘fundamental rights and freedoms are guaranteed in the territory of the Slovak Republic to every person regardless of sex, race, skin colour, language, belief, religion, political affiliation or conviction, national or social origin, nationality or ethnic origin, property, lineage/gender<sup>73</sup> or any other status. No person shall be denied their legal rights, discriminated against or favoured on any of these grounds’.
- Article 12(3) of the Constitution guarantees free choice of ‘nationality’.<sup>74</sup> The right to be treated equally is an accessory right and can only be claimed in connection with the protection of particular fundamental rights and freedoms listed in the Constitution.<sup>75</sup> The list of prohibited grounds of discrimination in the Constitution is open-ended (‘any other status’) and the Constitutional Court has already declared that sexual orientation is a constitutionally prohibited ground of discrimination.<sup>76</sup> Given the fact that the list is open-ended, it can be argued that disability and age, as well as any other grounds covered by the legislation<sup>77</sup> or even not covered by generally binding Slovak legal acts, are also constitutionally protected grounds.<sup>78</sup>
- Article 24 – freedom of thought, conscience, religion and belief.
- Article 33 – the affiliation to any national minority or an ethnic group cannot be to the detriment of anyone.

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

These provisions are directly applicable, but only have vertical effect. The Constitutional Court held explicitly that Articles 12(1) and 12(2) of the Constitution do not have direct horizontal effect.<sup>79</sup>

Thus, these provisions cannot be enforced against private individuals (although they can be enforced against the state).

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<sup>73</sup> The Slovak Constitution uses the word *rod*, which is equivalent to both ‘lineage’ and ‘gender’. The Constitutional Court has not interpreted the concept of *rod* directly yet. However, it has already used the word *rod* in the sense of gender when it referred to the ‘gender context’ of one of the cases that it was deciding (minimum pay threshold stated by law for nurses), albeit without a direct reference to the word *rod* contained in the list of prohibited grounds of discrimination in Article 12(2) of the Constitution. See the finding of the Constitutional Court of the Slovak Republic, PL. ÚS 13/2012-90, 19 June 2013, paragraph 139).

<sup>74</sup> In Slovak law, the word ‘nationality’ (*národnosť*) is separate and distinct from the word ‘citizenship’ (*štátne občianstvo*). Whereas ‘citizenship’ is understood as meaning nationality in the sense of having a legal affiliation with a particular state (i.e. being a national or citizen of the Slovak Republic), ‘nationality’ is understood as an affiliation with a particular ‘nation’ (a group of people defined by common language, geographical and cultural roots etc.) or ethnic group. Thus, ‘nationality’ is often understood as meaning ‘ethnicity’, including in the practice of state bodies and public institutions.

<sup>75</sup> Finding of the Constitutional Court of the Slovak Republic, I. ÚS 17/99, 22 September 1999.

<sup>76</sup> See the Finding of the Constitutional Court of the Slovak Republic, PL. ÚS 8/04-202, 18 October 2005, available at <https://www.ustavnysud.sk/vyhľadavanie-rozhodnuti#!DecisionsSearchResultView>.

<sup>77</sup> Such as marital and family status, which are covered, for example, by the Anti-discrimination Act or by the Labour Code.

<sup>78</sup> The Constitutional Court has already stated that the fact of being a minister of a certain church constitutes just such ‘another status’ and hence such a person cannot be advantaged or disadvantaged on this ground. See the finding of the Constitutional Court of the Slovak Republic, No. III. ÚS 64/00-65, 31 January 2001.

<sup>79</sup> See the Finding of the Constitutional Court, PL. ÚS 8/04-202, 18 October 2005, paragraph 13.

## 2 THE DEFINITION OF DISCRIMINATION

### 2.1 Grounds of unlawful discrimination explicitly covered

The grounds of discrimination explicitly prohibited in the main legislation transposing the two EU anti-discrimination directives (listed in the Introduction, above) are outlined below.

Grounds explicitly covered by the Constitution: sex, race, skin colour, language, belief, religion, political affiliation or conviction, national or social origin, nationality or ethnic origin, property, lineage/gender or any other status.<sup>80</sup> The Constitutional Court has also confirmed that sexual orientation is a constitutionally prohibited ground of discrimination.<sup>81</sup>

Grounds explicitly covered by the Anti-discrimination Act (relevant for the fields of 'labour relations and related legal relations, social security, healthcare, provision of goods and services and in education') are:<sup>82</sup> sex, religion or belief, race, affiliation with nationality or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity.<sup>83</sup>

Grounds explicitly covered by other laws (in addition to those listed in the Anti-discrimination Act) are, for example, trade union activities,<sup>84</sup> unfavourable state of health<sup>85</sup> and genetic features.<sup>86</sup>

#### 2.1.1 Definition of the grounds of unlawful discrimination within the directives

##### a) Racial or ethnic origin

The terms racial origin and ethnic origin are used in the provisions of many laws (especially in connection with anti-discrimination provisions or provisions prohibiting racism and intolerance), albeit without any legal definitions.

Criminal law literature and commentaries state that race means a group of people differing from others due to various typical features, especially physical ones (e.g. colour of skin), regardless of the fact that the members of the race concerned live within the territory of the state.

Criminal law literature characterises an 'ethnic group' as a

'historically formed group of people connected by common history, distinct cultural features (mainly language) and common mentality, traditions, and possibly a distinct way of life. Representatives of a given ethnic group have their own name ... and have an understanding of mutual belonging and at the same time distinctiveness from other communities. An ethnic group usually exists beyond the borders of one state. In Slovakia an example would be the Roma.'<sup>87</sup>

The Supreme Court confirmed in 2013 that the Roma represent an ethnic group.<sup>88</sup>

<sup>80</sup> See Article 12(2) of the Constitution.

<sup>81</sup> See the Finding of the Constitutional Court of the Slovak Republic, PL. ÚS 8/04-202, 18 October 2005.

<sup>82</sup> Anti-discrimination Act, 365/2004, Section 3(1).

<sup>83</sup> Anti-discrimination Act, 365/2004, Section 2(1).

<sup>84</sup> Act No. 311/2001 Labour Code, as amended (*zákon č. 311/2001 Z. z. Zákonník práce v znení neskorších predpisov*), 1 April 2002, Section 13(2).

<sup>85</sup> See Labour Code, 311/2001, Article 1 of the Basic Principles.

<sup>86</sup> See Labour Code, 311/2001, Article 1 of the Basic Principles and Section 13(2).

<sup>87</sup> Samaš, O., Stiffel, H, Toman, P (2006), *Trestný zákon – Stručný komentár* (The Criminal Code: a brief commentary), Bratislava, Iura Edition, spol. s r. o., pp. 301-302.

<sup>88</sup> Decision of the Supreme Court of the Slovak Republic, 4 Tdo 49/2012, 19 March 2013, pp. 7-8.

The Slovak courts have a strong tendency to interpret the concept of (Roma) ethnicity, in the context of hate speech and hate crimes, narrowly. Evidence of this can also be found in the decision of the Supreme Court of 2013.<sup>89</sup> The Supreme Court argued, inter alia, that the word 'Gypsy' (both as a noun and as an adjective) belongs to a group of words that are frequently used as a part of the codified state language, and that the usage of this word alone cannot indicate that a crime of defamation of nation, race and conviction pursuant to Section 423(1) of the Criminal Code has been committed.<sup>90</sup> In 2019, the Slovak National Centre for Human Rights (the Slovak equality body) issued its expert opinion on the ground of ethnic and racial origin, mostly summarising the international legal framework and case law in this field. The centre did not provide further explanation of how the concept of 'ethnic and racial origin' should be interpreted.<sup>91</sup>

#### b) Religion and belief

Slovak law provides no definition of the terms religion and belief. The Criminal Code instead uses the expression 'confession/creed', which is explained in law commentaries as 'the active or passive relation to a particular religion as to the general theory of the interpretation of the world presented by a particular faith'.<sup>92</sup>

Act 308/1991 on Freedom of Religious Belief and the Status of Churches and Religious Societies uses the concept of religious belief but fails to define it. For the purposes of the act, any person professing a religion is considered to be a believer. The agreement on religious education<sup>93</sup> between the Slovak Republic and the registered churches and religious societies deals only with 'religion' as defined by the doctrine of churches or religious societies registered in Slovakia

'religion and religious education is taught according to the educational programmes and curricula approved by a registered church or religious society after receiving an opinion of the Ministry of Education of the Slovak Republic'.<sup>94</sup>

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

Both the Constitution and the Anti-discrimination Act state explicitly that discrimination against a person without a religion shall be deemed to be discrimination on the ground of religion or belief. In 2001, the Constitutional Court also stated that the fact that someone is a minister of a certain church constitutes 'another status' (a formulation at the end of the list of prohibited grounds of discrimination contained in the Slovak Constitution) and hence such a person must not be advantaged or disadvantaged on this ground.<sup>95</sup>

Act 308/1991 on Freedom of Religious Belief and the Status of Churches and Religious Societies stipulates rules for the registration of churches and religious societies in Slovakia. Under these rules, a church or a religious society can be registered only when it submits a statutory declaration from 50 000 adult members confirming their membership of the church or religious society, their permanent residency in Slovakia and Slovak citizenship. The registration process is important, since only registered churches and religious societies

<sup>89</sup> Decision of the Supreme Court of the Slovak Republic, 4 Tdo 49/2012, 19 March 2013.

<sup>90</sup> Decision of the Supreme Court of the Slovak Republic, 4 Tdo 49/2012, 19 March 2013, pp. 6-7.

<sup>91</sup> Slovak National Centre for Human Rights (2019), *Expert opinion on protected ground of racial and ethnic origin*, available at [http://www.snsip.sk/CCMS/files/Odborn%C3%A9\\_stanovisko\\_k\\_obsahu\\_chr%C3%A1nen%C3%A9ho\\_d%C3%B4vodu\\_rasy\\_a\\_etnicity.pdf](http://www.snsip.sk/CCMS/files/Odborn%C3%A9_stanovisko_k_obsahu_chr%C3%A1nen%C3%A9ho_d%C3%B4vodu_rasy_a_etnicity.pdf).

<sup>92</sup> See e.g., Stiffel, H., Kočica, J. (2001), *Trestný zákon: Stručný komentár* (The Criminal Code: A Brief Commentary), Bratislava, p. 403.

<sup>93</sup> Agreement between the Slovak Republic and Registered Churches and Religious Societies regarding Religious Education, published in the Collection of Laws under No. 395/2004.

<sup>94</sup> Agreement between the Slovak Republic and Registered Churches and Religious Societies regarding Religious Education, 395/2004, Article 2(7).

<sup>95</sup> See the finding of the Constitutional Court of the Slovak Republic, III. ÚS 64/00-65, 31 January 2001.

are legally acknowledged by the state. The registered churches and religious societies have significant advantages (with regard to the legal and economic environment in which they operate) in comparison with those that are not registered, which can lead to discrimination against individuals belonging to non-registered churches and religious societies.<sup>96</sup> In 2010, the Slovak Constitutional Court dismissed a complaint submitted by the general prosecutor and concluded that the legislation on registered churches, especially the condition to submit statutory declarations from a certain number of adults in order to be registered, does not constitute discrimination.<sup>97</sup>

### c) Disability

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

The Labour Code defines an 'employee with a disability' as an employee who is officially acknowledged as disabled on the basis of the Social Insurance Act<sup>98</sup> and who submits to their employer a decision proving entitlement to a disability pension.<sup>99</sup> The Social Insurance Act defines the following conditions to qualify for a disability pension:

- at least 40 % loss of the ability to work (when compared to a 'healthy' person);
- attainment of a sufficient number of years of pension insurance;
- long-term unfavourable state of health, i.e. state of health causing a loss of ability to perform gainful activities, which is expected, on the basis of medical assessment, to last at least one year.<sup>100</sup>

In addition, Article 1 of the Basic Principles of the Labour Code and Section 13(2) of the Labour Code prohibit discrimination on the ground of unfavourable state of health and on the ground of genetic characteristics.

A similar test for determining whether someone has a disability is used by the Employment Services Act,<sup>101</sup> which regulates the system of institutions and measures to support and help participants in the labour market. This act considers a person with a disability to be a citizen who is officially registered disabled in accordance with the Social Insurance Act and who can also prove their disability with a decision or a notification from the Social Insurance Agency.<sup>102</sup>

The Act on Benefits for Compensation of Serious Disability<sup>103</sup> uses the term 'serious disability' and defines it as a 'disability with a level of functional impairment of at least 50 %'.<sup>104</sup> 'Functional impairment' is defined as a lack of physical ability, sensory ability or mental ability with a prognosis in excess of 12 months.<sup>105</sup>

<sup>96</sup> Only registered churches and religious societies can legitimately claim state support (including payment of clergy or exemption from taxation), organise religious education in schools, establish their own schools (partly funded by the state), and establish and run hospitals and social services facilities etc. Small churches that cannot be registered do not exist legally; they can only be established as civil society organisations.

<sup>97</sup> Finding of the Constitutional Court of the Slovak Republic, PL. ÚS 10/08-70, 3 February 2010

<sup>98</sup> Act. No. 461/2003 on Social Insurance, as amended (*Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov*), 30 October 2003.

<sup>99</sup> Labour Code, 311/2001, Section 40(8).

<sup>100</sup> Social Insurance Act, 461/2003, Sections 70-72.

<sup>101</sup> Act No. 5/2004 on employment services and on changing and supplementing other laws, as amended (*Zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*), 4 December 2003.

<sup>102</sup> Employment Services Act, 5/2004, Section 9.

<sup>103</sup> Act No. 447/2008 on Benefits for Compensation of Serious Disability, amending and supplementing certain laws, as amended (*Zákon č. 447/2008 Z. z. o peňažných príspevkoch na kompenzáciu ťažkého zdravotného postihnutia a o zmene a doplnení niektorých zákonov, v znení zákona č. 8/2009 Z. z.*), 29 October 2008.

<sup>104</sup> Act on Benefits For Compensation Of Serious Disability, 447/2008, Section 2(3).

<sup>105</sup> Act on Benefits For Compensation Of Serious Disability, 447/2008, Section 2(4).

It is possible that state authorities, as well as courts, will in some cases base their understanding of the concept of 'disability' on the legal definitions listed above when interpreting and applying the Anti-Discrimination Act. This may become problematic, especially in cases where the concept of disability being defined falls outside the scope of employment. However, it must be considered that the Anti-discrimination Act also prohibits discrimination on the grounds of past disability and presumed disability ('discrimination against a person who could be presumed, based on external signs, to have a disability').<sup>106</sup> It should also be borne in mind that Slovakia signed and ratified the Convention on the Rights of Persons with Disabilities (CRPD), which, in conjunction with Article 7(5) of the Slovak Constitution, takes precedence over Slovak laws, and the Supreme Court has already confirmed this principle in a case that concerned the right of a child with a disability to inclusive education.<sup>107</sup> Therefore, for anti-discrimination purposes, the concept of disability should be understood much more broadly than the restrictive legal definitions that apply in fields covered by specific laws, mainly in the context of employment and social insurance.

Neither the Constitutional Court nor the Supreme Court has provided any explicit and comprehensive interpretative framework for the concept of disability as yet. However, in a case concerning an individual with psychosocial and intellectual disabilities,<sup>108</sup> which were not temporary, the Constitutional Court took it as a given that the complainant had a disability (without examining the complainant's circumstances in relation to national, EU and international legal definitions of disability).<sup>109</sup> The Constitutional Court also included an obiter dictum in this particular decision, which, while not defining disability, provided some hints on the court's perception of the legal definition of disability as a social concept. In particular, the Constitutional Court stated

'experts nowadays (and in Slovakia, it is more jurisprudence and legal theory – a [court's] note) perceive disability as well as the rights of people with disabilities differently from in the past. Today, disability is not only understood within a medical (individual) framework but the meanings of the social and legal framework are also increasing – which, when compared to the past, integrate the values that represent the substrate of human rights, such as respect and the protection of dignity (...).'<sup>110</sup>

In a case that concerned the right of a child with special educational needs stemming from a combination of disabilities and disadvantages (Down's syndrome, an intellectual disability, a hearing impairment and a belated talking ability), the Supreme Court implicitly took it as a given that the claimant had a disability.<sup>111</sup>

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<sup>106</sup> Anti-discrimination Act, 365/2004, Section 2a(11)(d).

<sup>107</sup> Decision of the Supreme Court of the Slovak Republic, ref. No. 7Sžo/83/2014, 24 September 2015, available at [http://diskriminacia.sk/wp/wp-content/uploads/rozsudok\\_NS\\_2015\\_inkluzivne\\_vzdel.pdf](http://diskriminacia.sk/wp/wp-content/uploads/rozsudok_NS_2015_inkluzivne_vzdel.pdf). The Supreme Court held that the CRPD 'was incorporated into the Slovak legal order, and hence is a part of it, with a regime of preferential application in relation to the national law (Article 7(5) of the Constitution). ... Due to the [CRPD's] legal force, it was the duty of the administrative bodies to interpret the particular provisions of the [Slovak] Schools Act in accordance with the Convention on the Rights of Persons with Disabilities, or the administrative bodies could directly apply the rules of international law contained in the Convention' (p. 9 of the decision).

<sup>108</sup> However, the disability of the complainant concerned was not clear from the decision – the Constitutional Court did not deal with the particular type of disability and the courts of first and second instance used disability terminology confusingly, randomly and interchangeably (in a literal translation, the courts of first and second instance used the terms 'psychiatric disorder' and 'mental disability'). The expert opinions issued during the proceedings, and to which the courts of first and second instance referred, used the terms (in a literal translation) 'psychiatric disorder' and 'mental retardation'.

<sup>109</sup> Finding of the Constitutional Court of the Slovak Republic, I. ÚS 313/2012-52, 28 November 2012.

<sup>110</sup> Finding of the Constitutional Court of the Slovak Republic, I. ÚS 313/2012-52, 28 November 2012, paragraph 34.

<sup>111</sup> Decision of the Supreme Court of the Slovak Republic, ref. No. 7Sžo/83/2014, 24 September 2015.

The Schools Act,<sup>112</sup> regulating legal relations in the field of primary and secondary education and in related facilities, defines a 'child with a disability or a pupil with a disability' in section 2(l) as a child or a pupil with a

'mental<sup>113</sup> disability, hearing impairment, visual impairment, physical impairment, communication ability disorder, autism, or with other pervasive developmental disorders, or with multiple disabilities'.

The Schools Act also uses the term 'health disadvantage'. A child or a pupil with a 'health disadvantage' is defined, in section 2(k), as a child or a pupil: with a 'disability'; or who is 'ill or their health is impaired'; or who has 'developmental disorders', or a 'behavioural disorder'.

In 2019, the Slovak National Centre for Human Rights (the Slovak equality body) issued its expert opinion on the ground of disability, mostly summarising the international legal framework and case law in this field. The centre did not provide any guidance on how to interpret the concept of 'disability' for the purposes of non-discrimination law.<sup>114</sup>

d) Age

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

e) Sexual orientation

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

### 2.1.2 Multiple discrimination

In Slovakia, multiple discrimination is not prohibited by law.

There are no legal rules or case law that would explicitly deal with situations of multiple discrimination. The concept sometimes appears in policy documents but its use is more often theoretical rather than relating to the proposal and implementation of specific measures.

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

In Slovakia, limited case law deals with multiple discrimination. The multiple discrimination element has either not been dealt with by the courts, or the cases are still pending.

The only known cases where multiple discrimination has been invoked were cases relating to multiple discrimination against Roma women (with the multiple grounds of discrimination being sex/gender and ethnicity) initiated by the Centre for Civil and Human Rights (Poradňa pre občianske a ľudské práva),<sup>115</sup> an NGO based in Košice.

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<sup>112</sup> Act No. 245/2008 on Education (Schools Act), as amended (*zákon č. 245/2009 Z. z. o výchove a vzdelávaní (školský zákon) a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*), 22 May 2008.

<sup>113</sup> In Slovak, the act uses the word 'mental' (and not, for example, 'intellectual').

<sup>114</sup> Slovak National Centre for Human Rights (2019), *Expert opinion on protected ground of disability*, available at [http://www.snsip.sk/CCMS/files/odbornestanovisko\\_zdravpost.pdf](http://www.snsip.sk/CCMS/files/odbornestanovisko_zdravpost.pdf).

<sup>115</sup> See <https://www.poradna-prava.sk/en/>.

The Centre for Civil and Human Rights initiated a case, using the concept of *actio popularis* (to sue the state) against a provision in the Act on Childbirth Allowance<sup>116</sup> that conditions the provision of such subsidy on the woman not leaving the healthcare facility (in practice, a maternity hospital) upon giving birth without the consent of the healthcare facility. The Centre for Civil and Human Rights argued that the provision is specifically discriminatory against Roma women who are in very vulnerable positions and who, for various reasons, including ill-treatment by the maternity hospitals, often leave the hospital upon giving birth without being given the consent of the hospital. The case was dismissed by the court of first instance in May 2014<sup>117</sup> and by the appeal court in September 2017.<sup>118</sup> The case is now pending before the Slovak Supreme Court. The lower courts in their reasoning focused only on argumentation regarding the form of discrimination (indirect discrimination), but did not provide any specific argumentation regarding discriminatory grounds. See also section 3.2.7 of this report.

In 2013, the Centre for Civil and Human Rights submitted an *actio popularis* against a state-run hospital in Eastern Slovakia and at the same time against the Ministry of Health and the Slovak Republic.<sup>119</sup> The *actio popularis* concerns segregation of Roma women in maternity hospitals and qualifies it as discrimination on the (multiple) grounds of ethnicity and sex. The case is still pending before the first instance court.

### 2.1.3 Assumed and associated discrimination

#### a) Discrimination by assumption

In Slovakia, discrimination based on a perception or assumption of a person's characteristics, is prohibited in national law.

Discrimination based on perception or assumption of what a person is, is prohibited by the Anti-discrimination Act, Section 3(3) and Section 2a(11)(d) (assumed discrimination on the ground of disability). There is no case law addressing assumed discrimination.

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

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

#### b) Discrimination by association

In Slovakia, discrimination based on association with persons with particular characteristics, is prohibited in national law.

Discrimination based on association with persons with particular characteristics is prohibited by the Anti-discrimination Act, Sections 2a(11)(b) and (c).

There is no case law dealing with discrimination by association.

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<sup>116</sup> Act No. 383/2013 on Childbirth Allowance and on Allowance on More Concurrently Born Children and on changing and supplementing other laws (*zákon č. 383/2013 Z. z. o príspevku pri narodení dieťaťa a príspevku na viac súčasne narodených detí a o zmene a doplnení niektorých zákonov*), 23 October 2013. The relevant provision against which the Centre for Civil and Human Rights filed its lawsuit is Section 3(4)(b).

<sup>117</sup> Decision of the District Court Bratislava I, ref. No. 12C 231/2010-132, of 16 May 2014.

<sup>118</sup> Decision of the Regional Court in Bratislava, ref. No. 14 Co 552/2014 – 180, of 26 September 2017.

<sup>119</sup> The case is conducted before the District Court Bratislava III under ref. No. 14 C 288/2014.



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

These rules are, in principle, in compliance with the judgment in *Coleman v Attridge Law and Steve Law*,<sup>120</sup> although the Anti-discrimination Act does not explicitly refer to association with a person with a disability (or to association with people possessing or presumed to possess other characteristics covered by the other prohibited grounds of discrimination contained in the Anti-discrimination Act).

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

### **a) Prohibition and definition of direct discrimination**

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

The Anti-discrimination Act prohibits direct discrimination in Section 2a(1). For such discrimination to occur it has to take place in connection with a prohibited ground or grounds, listed in Section 2(1) (see also section 2.1 of this report).

There have been several cases of direct discrimination decided and pending before national courts. However, in their decisions, the courts have not based their reasoning on this form of discrimination, but have focused instead on general reasoning about the violation of the principle of equal treatment (for more details on relevant cases see sections 3.2 and 12.2 of this report).

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

### **b) Justification for direct discrimination**

The Anti-discrimination Act does not permit any general justification of direct discrimination.

There are a number of specific exceptions, called 'permissible differential treatment',<sup>121</sup> which will be dealt with in sections 4 and 5 of this report.

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

### **a) Prohibition and definition of indirect discrimination**

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

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

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

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<sup>120</sup> Court of Justice of the EU, C-303/06 *S. Coleman v Attridge Law and Steve Law*, 17 July 2008.

<sup>121</sup> Anti-discrimination Act, 365/2004, Sections 8 and 8a.

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

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

The second difference is that, whereas the directives require a 'particular disadvantage' to take place in order to qualify certain treatment as indirectly discriminatory, the definition of indirect discrimination contained in the Slovak Anti-discrimination Act only requires a 'disadvantage'. It can thus be argued that, with regard to the concept of disadvantage, the Slovak definition may be even more favourable than the concept of 'particular disadvantage' as interpreted by the CJEU in *CHEZ*.<sup>122</sup> However, judicial interpretation of the concept of 'disadvantage' in cases of indirect discrimination is still lacking in Slovakia.

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

Although several cases of alleged indirect discrimination are pending before domestic courts, the decisions of the courts do not offer specific reasoning on the definition of indirect discrimination. For example, in a case of discrimination against a Roma child in access to education, the District Court in Malacky in its decision of 17 May 2018 did not provide any specific arguments on the definition of indirect discrimination as regards the state policy of placing Roma children in special classes and schools, but only generally stated that in the claimant's individual case it did not find discrimination. The decision is not final as it has been appealed.<sup>123</sup>

#### b) Justification test for indirect discrimination

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

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

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<sup>122</sup> CJEU, Case C-83/14 *CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia*, judgment of 16 July 2015, para 109.

<sup>123</sup> Decision of District Court in Malacky, 17 May 2018, n. 5C/212/2014.

are appropriate and necessary. The court's decision lacks any justification test for indirect discrimination.<sup>124</sup>

The decision of the first instance court has been confirmed by the appeal court, which fully complied with the reasoning of the first instance court. The appeal court considered the lawsuit to be based on hypothetical assumptions and concerned unspecified cases of alleged discrimination against Roma mothers, stating that the alleged indirect discrimination could be claimed before a court only by directly affected individuals. This would enable the court to thoroughly assess whether specific persons were discriminated against by the challenged legal provision. The appeal court only examined whether the challenged legal provision fulfilled a legitimate aim, but did not consider its adequacy and necessity with regard to the documented negative impact on Roma women from socially disadvantaged environments and their children.<sup>125</sup> The case is now pending before the Slovak Supreme Court.

### **2.3.1 Statistical evidence**

#### **a) Legal framework**

In Slovakia, there is legislation regulating the collection of personal data.

The collection of personal data is regulated by the Act on Protection of Personal Data, transposing the EU General Data Protection Regulation.<sup>126</sup>

According to Section 16(1) of the Act on Protection of Personal Data, the 'processing of personal data which reveal racial or ethnic origin, political opinion, religious belief, philosophical beliefs, trade unions membership, genetic data, biometric data, data concerning health or data concerning a natural person's sex life or sexual orientation is prohibited'. However, the legislation in Section 16(2) lists the conditions under which such data can be collected. The listing is fully in line with Article 9(2) of the GDPR in terms of the listed conditions though it does not provide for its exact wording.

In Slovakia, statistical evidence may be admitted in order to establish indirect discrimination. The use of statistical evidence before the courts follows the general admissibility conditions of evidence set by legislation.

#### **b) Practice**

In Slovakia, statistical evidence is used in practice in order to establish indirect discrimination, as well as other types of discrimination, such as segregation.

However, the use of statistical evidence is very scarce. One reason for this may be the lack of sufficient volumes of relevant data collected by the state, under its international and national human rights obligations (the fact that there is no data means that such data cannot be used in court). Equally, the Slovak National Centre for Human Rights (the national equality body), which is obliged, among other things, to monitor the situation in the field of equality and (non)discrimination, is not fulfilling its duty in a satisfactory manner (see section 7 below for more detail). Furthermore, in general, neither public institutions nor employers collect statistics. Some statistics or other sets of data have been collected by NGOs and academics.

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<sup>124</sup> Decision of the District Court Bratislava I, No. 12 C 231/2010 of 16 May 2014.

<sup>125</sup> Decision of the Regional Court in Bratislava, n. 14Co/552/2014 – 180 of 26 September 2017.

<sup>126</sup> Slovakia, Act No. 18/2018 on Protection of Personal Data and on changing and supplementing other laws, (*zákon č. 18/2018 Z. z. o ochrane osobných údajov a o zmene a doplnení niektorých zákonov*).

When the concept of indirect discrimination does start to be invoked,<sup>127</sup> the Slovak courts are likely to look to other countries and/or the CJEU and/or the ECtHR for inspiration. However, since the concept of indirect discrimination is individualised under Slovak legislation (see section 2.3.1(a)), as compared to the group approach adopted in most jurisdictions, inspiration taken from European or foreign courts could in practice lead to an unjustifiably and illegitimately restrictive interpretation of the Slovak legislation in force (the courts may seek more 'solid' statistical evidence than might be required by the Slovak legislation, which relies on an individualised rather than a group approach to indirect discrimination).<sup>128</sup>

The relevant cases, with legal representation provided by the Centre for Civil and Human Rights, concerned discrimination claims connected to a refusal by an office of labour, social affairs and family to pay a childbirth allowance to Roma women, pursuant to a law that was, as the Centre for Civil and Human Rights argued, indirectly discriminatory (see section 3.2.7 for more details). The Centre for Civil and Human Rights used its own statistical data, obtained through fact-finding and surveys (e.g. figures on ethnicity of patients from hospitals in Eastern Slovakia, and numbers of refusals by offices of labour, social affairs and family in regions with a large Roma population). Although the courts ruled in administrative court proceedings in favour of the Roma women and ordered the offices of labour, social affairs and family to pay the childbirth allowance and the Supreme Court upheld the decisions, none of the courts dealt with the alleged indirectly discriminatory nature of the claim or the statistics submitted, and the proposal to bring a preliminary question before the CJEU was also ignored. Thus, in 2010, the Centre for Civil and Human Rights submitted an *actio popularis* on the same matter, using the same statistical data (the centre sued the Slovak Republic for adopting a provision that is discriminatory – see sections 2.1.2 and 2.3). The case is pending before the Slovak Supreme Court after it was dismissed by the first instance and appeal courts.<sup>129</sup>

In some of its other cases, the Centre for Civil and Human Rights has also relied on data collected by public institutions. From experience, the centre has found that many primary schools tend to collect their own unofficial data about the number of Roma pupils based on third-party identification made by school personnel, although they may be reluctant to provide such data. The centre is currently litigating three *actio popularis* lawsuits before Slovak courts addressing the segregation of Roma children in education, while relying on the ethnic data from Atlas of Roma Communities 2013<sup>130</sup> and subsequently also on its updated version from 2019 (a large sociographic mapping of Roma communities)<sup>131</sup> and/or data obtained directly from the relevant schools based on written requests. So far, the relevance of this data has never been questioned in the court proceedings.<sup>132</sup> However,

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<sup>127</sup> So far, there have been only very few instances when claimants have claimed indirect discrimination – and in these few cases the courts held correctly that indirect discrimination had not taken place; on the other hand, there have been a few cases where indirect discrimination, although not claimed by claimants, was identified by courts, but in only one of the cases was the identification correct (for more information, see Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, (Searching for barriers in access to effective legal protection from discrimination) Košice: Poradňa pre občianske a ľudské práva, pp. 78-79, available at: <https://www.poradna-prava.sk/sk/dokumenty/diskriminacia-na-slovensku-hladanie-barier-v-pristupe-k-ucinnej-pravnej-ochrane-pred-diskriminaciou/>.

<sup>128</sup> See for example the restrictive interpretation in the decision of the Regional Court in Bratislava, No. 14 Co 552/2014 – 180 from 26 September 2017.

<sup>129</sup> Decision of the District Court Bratislava I, No. 12C 231/201016, May 2014; decision of the Regional Court in Bratislava, No. 14 Co 552/2014 – 180, 26 September 2017.

<sup>130</sup> *Atlas rómskych komunit na Slovensku 2013* (Atlas of Roma Communities in Slovakia 2013) (2013), Available at: [http://www.minv.sk/?atlas\\_2013](http://www.minv.sk/?atlas_2013).

<sup>131</sup> The overall unprocessed data of the *Atlas of Roma Communities 2019* is available at <https://www.minv.sk/?atlas-romskych-komunit-2019>.

<sup>132</sup> For example, in an *actio popularis* submitted to the District Court Bratislava III, No. 11 C 351/2015, 29 April 2015, the Centre for Civil and Human Rights claims segregation of Roma children in education that is taking place through educating these children in an ethnically homogeneous school and through financing and constructing a so-called 'container school' ('container schools' have a strong element of racial segregation – see section 3.2.8 for more details). On 6 October 2016, the district court dismissed the lawsuit, but data

the centre did not claim indirect discrimination in these cases and addresses racial segregation of Roma children as a form of direct discrimination.

## **2.4 Harassment (Article 2(3))**

### **a) Prohibition and definition of harassment**

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

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

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

It should be noted that the definition of harassment does not explicitly stipulate that the conduct must be unwanted. This may lead to interpretations under which courts or defendants would require the application of 'objectivity tests' with regard to the capacity of the environment in question to meet the required statutory characteristics. The full material scope of protection against harassment of both directives is covered by domestic anti-discrimination legislation.

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

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

### **b) Scope of liability for harassment**

In Slovakia, where harassment is perpetrated by an employee, the employer is liable and the employee would also probably be liable according to the share of liability established in the proceedings set by judicial interpretation.

The Anti-discrimination Act does not provide a direct answer as to who is to be held liable for unlawful actions breaching the principle of equal treatment; it only uses the term 'the person violating the principle of equal treatment'.<sup>133</sup> Section 11(1) of the act further states that 'the claimant is obliged to identify the person who has allegedly violated the principle of equal treatment'.

The liability rules (although not explicit) are universal with regard to all forms of discrimination contained in the Anti-discrimination Act and to the duty to carry out measures to prevent discrimination (Section 2(3) of the Anti-discrimination Act). The basic

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about ethnic composition on the given school has not been questioned. The case is currently pending before the Regional Court in Bratislava.

<sup>133</sup> Anti-discrimination Act, 365/2004, Section 9(2).

interpretative frameworks to answer the above question are provided by two specific provisions of the Anti-discrimination Act.

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

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

Also relevant is the content of Section 5(2) of the Anti-discrimination Act, which stipulates that the principle of equal treatment must be applied in the fields of 'access and provision of' social security, healthcare, education and goods and services including housing. Thus, it follows from the quoted provision that both persons who access as well as persons who provide the specified items are entitled to protection against violations of the principle of equal treatment, and those who interact with them in these environments should be held liable for the breaches (as 'everyone' is obliged to observe the principle of equal treatment). However, the wording of Section 6(1) of the Anti-discrimination Act, which states that discrimination shall be prohibited in 'employment relationships, similar legal relationships, and in related legal relationships' is confusing in the framework of that interpretation. As labour legislation does not define any of the terms 'employment relationship, similar legal relationship, and related legal relationships' and legal theory defines legal relationships basically as relationships between employers and employees,<sup>134</sup> it is hard to state unambiguously whether there is individual liability for discrimination between co-workers – especially given that the Labour Code does not specify the duty to observe the principle of equal treatment/prohibition of discrimination among the explicit responsibilities of the employee.<sup>135</sup> The situation in respect of executive employees is different because it is easier to argue that they are also personally liable for discrimination (in any form). Although the duty to act in accordance with the principle of equal treatment is not made explicit by legislation in the case of executive employees either, the Labour Code contains various specific duties of executive employees from which the duty to observe the principle of equal treatment can be undoubtedly inferred (at least to some extent).<sup>136</sup>

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<sup>134</sup> See for example Barancová, H., Schronk, R. (2007), *Pracovné právo* (Labour Law), Bratislava, Sprint, pp. 197-208.

<sup>135</sup> See Labour Code, 311/2001, Sections 81 and 82 respectively.

<sup>136</sup> See Labour Code, 311/2001, Section 82, which lists the fundamental obligations of executive employees and reads as follows: 'An executive employee, apart from the obligations stipulated in Section 81 [general obligations of an employee], shall also be obliged in particular: to manage and check the work of employees; to create favourable working conditions and ensure safety and health protection at work;

There are also some additional statutory provisions that apply to liability for discrimination/other breaches of the principle of equal treatment. According to the general provisions of the Civil Code regarding liability for damages,<sup>137</sup> the damage is caused by a legal entity or a natural person provided it was caused during the performance of their business and by the people engaged to perform the business. It is of no importance whether the person engaged performs an activity in the context of an employment relationship, self-employment or on the basis of another type of legal relationship. According to the Civil Code, individuals acting on behalf of a legal entity or a natural person are not liable for damages without prejudice to their liability for damage as stipulated by labour regulations. Moreover, Section 192 of the Labour Code makes the employer responsible in relation to the employee for damage occurring to the employee due to a breach of legal regulations or due to intentional behaviour in breach of good morals during the performance of work or in direct connection with such behaviour. The employer is liable to the employee for damages occurring due to a breach of legal obligations by the personnel performing the tasks of the employer on behalf of the employer.

A harassment case decided by domestic courts concerned a Roma woman who claimed to be discriminated against in her workplace on the ground of her Roma ethnic origin in March 2009 when - unlike non-Roma employees in comparable working positions - she was transferred to an inconvenient office room placed in the basement, which caused her health problems. Later in 2010, her workplace was transferred to the segregated Roma ghetto where she was again placed in an inconvenient office room negatively impacting her health. She also claimed that the employer did not give her any bonus to her salary and was harassing her, and she pointed out that direct discrimination and harassment against her also resulted from victimisation after she repeatedly complained to the employer about how she was treated. The District Court Košice II dismissed the lawsuit by its judgment no. 20C68/2012-350 of 8 September 2015, reasoning that no discrimination occurred. As for harassment, the first instance court concluded that the conduct of the employer did not result or could not result in an intimidating, unfriendly, shameful, humiliating, insulting, degrading or offensive environment, the purpose or effect of which is or can be violation of freedom or human dignity of the claimant. According to the court, under the definition of the harassment there is a need to identify a person in a comparable situation to the claimant (a comparator), as the subjective perception of a specific person is not sufficient to assess harassment. The claimant in her appeal asked the appeal court to refer the case to the CJEU for a preliminary ruling. The claimant found the identification of a comparator when assessing discrimination in the form of harassment clearly impossible and legally groundless. The Regional Court in Košice, sitting as the appeal court, by its decision, no 2Co/657/2015 - 379 of 13 December 2016 rejected the request for a referral to the CJEU reasoning that it is not necessary to resolve the issue of the requirement to identify a comparator when assessing harassment, because the evidence provided in this case by the respondent sufficiently disproved the alleged harassment and reaffirmed the first instance court decision.<sup>138</sup> This judicial practice of finding a need to identify a comparator in a case of harassment is contrary to the directives.

## **2.5 Instructions to discriminate (Article 2(4))**

### **a) Prohibition of instructions to discriminate**

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

<sup>137</sup> Civil Code (as amended), 40/1964, Section 420(2).

<sup>138</sup> Decision of the District Court Košice II, No. 20C68/2012-350 of 8 September 2015 and decision of the Regional Court in Košice, No. 2Co/657/2015 - 379 of 13 December 2016.

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

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

The Anti-discrimination Act also defines incitement to discriminate as 'persuading, affirming or inciting a person to discriminate against a third person'.<sup>139</sup> Under Section 2a(1) of the Anti-discrimination Act, incitement to discriminate is considered a form of discrimination.

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

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

#### b) Scope of liability for instructions to discriminate

In Slovakia, the instructor and the discriminator are liable according to their share of liability established in the case.

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

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

The Civil Service Act<sup>140</sup> stipulates that a civil servant has the right to refuse to carry out a civil task (a task to be carried out pursuant to this act) that is in conflict with generally legally binding legal regulations<sup>141</sup> (which also includes anti-discrimination legislation). A civil servant is also obliged to respect inter alia the Constitution and laws (which includes the duty to observe the principle of equal treatment) and apply them to the best of their knowledge and belief, and to respect and protect human dignity and human rights.<sup>142</sup> Civil servants are also obliged to follow the instructions of their superiors unless these instructions are in conflict with generally binding legal regulations<sup>143</sup> (which includes all anti-discrimination legislation). If a civil servant believes that an instruction given by their superior is in conflict with generally binding legal regulations, she or he is obliged to notify the superior in question of that fact before starting to follow the instruction. If the superior nevertheless insists on the civil servant following the instruction, she or he is obliged to notify them of that fact in writing.<sup>144</sup>

<sup>139</sup> See Anti-discrimination Act, 365/2004, Section 2(7).

<sup>140</sup> Act No. 55/2017 on Civil Service and on Changing and Supplementing Some Other Laws, (*zákon č. 55/2017 Z. z. o štátnej službe a o zmene a doplnení niektorých zákonov*).

<sup>141</sup> Civil Service Act, 55/2017, Section 111(3).

<sup>142</sup> Civil Service Act, 55/2017, Section 111(1)(a).

<sup>143</sup> Civil Service Act, 55/2017, Section 111(1)(i).

<sup>144</sup> Civil Service Act, 55/2017, Section 111(3).



According to the knowledge of the author of this report, the only case in which an instruction to discriminate was partially involved is that of a Roma man, I.H., who sued a mobile operator. The domestic courts dismissed the claim, reasoning that the defendants were not responsible for the discriminatory treatment. As for a possible instruction to discriminate on the basis of an agency contract (zmluva o obchodnom zastúpení) the Supreme Court concluded that a violation of the principle of equal treatment has a personal character and that the employee of the company which provides services under a contract with the mobile operator has an obligation to refuse to act in accordance with potentially discriminatory instructions given by the mobile operator, which is why the mobile operator cannot be found responsible for discrimination.<sup>145</sup>

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

- a) Implementation of the duty to provide reasonable accommodation for people with disabilities in the area of employment

In Slovakia, the duty to provide reasonable accommodation for people with disabilities is included in the law and is defined.

Under Section 7 of the Anti-discrimination Act, an employer is obliged to take measures to enable a person with a disability to have access to employment, to exercise certain activities at work, to promotion or other advancement in employment or to training. This does not apply if the adoption of such measures would impose a disproportionate burden on the employer.<sup>146</sup> To determine whether the measures give rise to a disproportionate burden, account must be taken of:

- the benefit that the adoption of the measure would mean for the person with a disability;
- the financial resources of the employer, including the possibility of obtaining funding or any other assistance for the adoption of the measure; and
- the possibility of attaining the purpose of the measure referred to in paragraph 1 in a different, alternative manner.<sup>147</sup>

The measure will not be considered as giving rise to a disproportionate burden if its adoption by the employer is mandatory under separate provisions.<sup>148</sup>

Employers' duties in this regard are also prescribed by the Labour Code: third sentence of Article 8 of the basic principles and Section 158 of the Labour Code state that

'employers shall be obliged to employ persons with disabilities in suitable positions, to enable them to receive training or to study with a view to acquiring necessary skills and shall also be obliged to support the upgrading of these skills. Furthermore, employers shall be obliged to create conditions for employees to have the possibility of applying themselves in work, and shall improve workplace facilities in order to enable these employees to obtain, wherever possible, the same work results as other employees, and to facilitate their work as best as they can.' (Section 158(1))

As regards employees with disabilities who cannot be employed under usual working conditions, employers 'may set up for them sheltered workshops or sheltered workplaces' (Section 158(2)). Moreover, 'employers shall enable their employees with disabilities to receive theoretical or practical training (retraining) aimed at maintaining, upgrading, expanding or changing their qualifications, or adapting to technological progress with a

<sup>145</sup> Decision of the Slovak Supreme Court, No. 3 Cdo 405/2015 – 773 of 8 December 2016.

<sup>146</sup> Anti-discrimination Act, 365/2004, Section 7(1).

<sup>147</sup> Anti-discrimination Act, 365/2004, Section 7(2)(a)-(c).

<sup>148</sup> Anti-discrimination Act, 365/2004, Section 7(3).

view to safeguarding their employment'. Employers must cooperate with trade unions or employee representatives in these activities.

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

#### b) Practice and case law

There is no case law yet on the duty to provide reasonable accommodation in employment. In one case that has been litigated, the claimant was working as a nursing assistant and asked her employer to shift her to another working position, as due to her disability she could no longer fulfil the tasks required by the job. The first instance court in its decision<sup>149</sup> did not provide any interpretation of the duty to provide reasonable accommodation, as it dismissed the claim stating that the statute of limitation had expired. The claimant in the case is being legally represented by the Slovak National Centre for Human Rights (the equality body). On 27 October 2017, the Regional Court in Bratislava decided on the claimant's appeal and quashed the decision of the court of first instance.<sup>150</sup> The case is now pending again before the court of first instance and there were no updates in 2019.<sup>151</sup>

However, in 2015, the Supreme Court decided a case on the right to inclusive education of a child with a disability and held that a refusal to provide reasonable accommodation is a form of discrimination.<sup>152</sup> Although the case primarily applies to reasonable accommodation in education, it will probably have wider applicability in relation to reasonable accommodation in employment (and in other fields) given that the Supreme Court applied the CRPD and reiterated the constitutional principle that the CRPD is a part of the national legal order, has priority over national legislation, and is even directly applicable.

#### c) Definition of disability and non-discrimination protection

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

A definition of an employee with disability is included in the Labour Code. According to this definition, an employee with a disability is an employee recognised as disabled according to social security legislation and who provides a decision on their entitlement to disability pension to their employer (Labour Code, Section 40(8)). However, its only purpose is to identify a duty to provide reasonable accommodation and not to claim protection from discrimination in general (Labour Code, Section 158).

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

'mental<sup>153</sup> disability, hearing impairment, visual impairment, physical impairment, communication ability disorder, autism, or with other pervasive developmental disorders, or with multiple disabilities.'<sup>154</sup>

<sup>149</sup> Decision of the District Court Bratislava II, No. 19 C/445/2015 – 86, 1 March 2016.

<sup>150</sup> Decision of the Regional Court in Bratislava, No. 8Co/248/2016-123, 27 October 2017 which quashed the decision of the District Court Bratislava II, No. 19 C 446/2015 – 86, 1 March 2016.

<sup>151</sup> See information provided by the Slovak National Centre for Human Rights to the author of this report on 7 February 2019, updated on 21 January 2020.

<sup>152</sup> Decision of the Supreme Court of the Slovak Republic, No. 7Sžo/83/201424, September 2015.

<sup>153</sup> In Slovak, the act uses the word 'mental' (and not, for example, intellectual').

<sup>154</sup> Schools Act, 245/2008, Section 2(I).

The Schools Act also uses the term 'health disadvantage'. A child or a pupil with a 'health disadvantage' is defined as a child or a pupil with a 'disability' or who is 'ill or their health is impaired' or who has 'developmental disorders', or a 'behavioural disorder'.<sup>155</sup> The same definition of disability is used also for the purpose to identify a duty to provide reasonable accommodation.

Please see section 2.1.1 for further details.

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

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

A breach of the employer's duty to provide reasonable accommodation for a person with a disability as well as a refusal or failure to take certain measures is considered to be a breach of the principle of equal treatment.<sup>156</sup>

It is regarded as a violation of this principle (which is broader than the prohibition of discrimination in its individual forms and encompasses also the duty to adopt measures to prevent discrimination) and it does not equate to direct or indirect discrimination. However, this does not mean that, in specific situations, the actions or omission of an employer cannot at the same time also fall under definitions of the specific forms of discrimination as defined by the Slovak Anti-discrimination Act – mainly direct discrimination, indirect discrimination or harassment.

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

Given that the duty to provide reasonable accommodation is a part of the duty to observe the principle of equal treatment, it is judicially enforceable in accordance with Sections 9 to 11 of the Anti-discrimination Act, and all procedural rules contained in these sections apply, including the shift in burden of proof. In principle, this applies not only to the duty to provide reasonable accommodation in employment entrenched in the Anti-discrimination Act (see section 2.6(a) above), but also to fields falling outside the scope of employment given that the duty to adopt measures to prevent discrimination applies across all fields and grounds falling under the scope of the Anti-discrimination Act, and given that the Supreme Court has already held – referring to the CRPD and applying it – that the failure to provide reasonable accommodation is a form of discrimination.

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

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<sup>155</sup> Schools Act, 245/2008, Section 2(k).

<sup>156</sup> Anti-discrimination Act, 365/2004, Section 7(4).

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

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

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

There are also some specific duties contained in other pieces of legislation. For example, the Schools Act contains special provisions designed to accommodate the needs of children and pupils with disabilities in kindergartens, primary and secondary schools and in school facilities.<sup>157</sup> A special provision is also included in the Act on Higher Education, guaranteeing reasonable accommodation for students with specific needs, including financial support in certain circumstances.<sup>158</sup>

In 2015, the Supreme Court decided a case on the right to inclusive education of a child with a disability and held that a refusal to provide reasonable accommodation is a form of discrimination.<sup>159</sup>

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

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

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

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

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<sup>157</sup> Act No. 245/2008 on Education (Schools Act), as amended (*zákon č. 245/2008 Z. z. o výchove a vzdelávaní (Školský zákon) a o zmene a doplnení niektorých zákonov*).

<sup>158</sup> Act on Higher Education, 131/2002, Sections 16a, 57, 96 and 100.

<sup>159</sup> Decision of the Supreme Court of the Slovak Republic, No. 7Sžo/83/2014, 24 September 2015.

The Anti-discrimination Act sets out in its basic provisions the general characteristics of the principle of equal treatment. According to this provision (Section 2(3) of the Anti-discrimination Act) compliance with this principle will also (apart from prohibition of discrimination on the specified grounds) involve the adoption of measures to prevent discrimination. From this principle it can be inferred that the duty to provide reasonable accommodation applies not only to employers and people with disabilities in the area of employment (for which a specific reasonable accommodation duty exists in the Anti-discrimination Act),<sup>160</sup> but to all other areas and grounds that are regulated by the existing laws prohibiting discrimination. Therefore, the duty to provide reasonable accommodation applies in the fields of employment, social security (including social advantages), healthcare, and provision of goods and services (including housing and education). It applies to the grounds of sex, religion or belief, race, affiliation with nationality (národnosť) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity (grounds protected under the Anti-discrimination Act), and in principle also to additional grounds contained in other legislation where the duty to observe the principle of equal treatment is entrenched. However, this general duty to provide reasonable accommodation following from the duty to prevent discrimination is definitely not of the same quality for all grounds, since for grounds other than disability, neither legislation nor case law provides any detail on how the duty is supposed to be fulfilled or whether justification is possible. To the best knowledge of the author of this report, no public or academic discussion has been conducted in Slovakia on those issues. Furthermore, there are no publicly reported documented instances where reasonable accommodation has been made for the other grounds.

No guidelines have been issued by the equality body or by any other body on how the duty to prevent discrimination should be carried out.

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<sup>160</sup> Anti-discrimination Act, 365/2004, Section 7(4).

### 3 PERSONAL AND MATERIAL SCOPE

#### 3.1 Personal scope

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

In Slovakia, there are no residence or citizenship/nationality requirements for protection under the relevant national laws transposing the directives. In other words, protection against discrimination in the national legal system is not conditional on a person's citizenship or nationality and the Anti-discrimination Act has no specific requirements in this regard. Therefore it can be concluded that persons with irregular status are entitled to the protection provided under this act.

However, Section 4(1)(a) of the Anti-discrimination Act explicitly stipulates that the provisions of the act will not apply to differences of treatment resulting from the requirements for entry and residence for foreigners in Slovakia, including the treatment of these foreigners provided for under separate provisions,<sup>161</sup> except for citizens of EU Member States, a state which is party to the European Economic Area Agreement, Swiss citizens and stateless persons and their family members.

According to the Act on the Residence of Foreigners, a foreigner is anybody who is not a citizen of the Slovak Republic.<sup>162</sup>

In addition, separate acts set out the requirement to be a citizen of the Slovak Republic for specific professions or employment.<sup>163</sup>

Article 35 of the Constitution guarantees the right to choose a profession and appropriate training freely, the right to conduct entrepreneurial or other gainful activity, as well as the right to work and to material welfare for those who, through no fault of their own, are unable to enjoy the right to work. Article 35(4) states that the law may provide a different regulation of these rights for foreigners.<sup>164</sup>

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

###### a) Protection against discrimination

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

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

'a failure to comply with the principle of equal treatment in relation to this person on the grounds of discrimination listed in Section 2(1) of the Anti-discrimination Act<sup>165</sup> with respect to its members, associates, shareholders, members of its bodies,

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<sup>161</sup> E.g. Act No. 404/2011 on the Residence of Foreigners and on amending and supplementing certain laws, as amended (*zákon č. 404/2011 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*); Act No. 480/2002 on Asylum and on amending and supplementing certain laws, as amended (*zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

<sup>162</sup> Act on the Residence of Foreigners, 404/2011, Section 2(2).

<sup>163</sup> Senior state officials, prosecutors, constitutional judges, judges, police officers, customs officers, fire and rescue service members, mountain rescue service members and professional soldiers.

<sup>164</sup> For example: Act on the Residence of Foreigners, 404/2011 and Asylum Act 480/2002.

<sup>165</sup> Sex, religion or belief, race, affiliation with nationality or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity.

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

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

b) Liability for discrimination

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

Section 3(1) of the Slovak Anti-discrimination Act introduced a general provision according to which the principle of equal treatment is binding on 'everyone'. This means that in terms of liability for discrimination, the Anti-discrimination Act does not distinguish between natural and legal persons. The only explicit exception is housing where the duty to apply the principle of equal treatment does not apply to natural persons who are not entrepreneurs.<sup>166</sup> There is no case law on the issue.

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

a) Protection against discrimination

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

With regard to the protection of legal persons, the Anti-discrimination Act does not distinguish between the private and the public sector, protecting in principle all bodies in both sectors.

The national provisions comply with the directives, although there is no case law on the issue, and the issue of protection of public bodies has not yet been subject to public discussion in Slovakia.

b) Liability for discrimination

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

The Anti-discrimination Act does not distinguish between public and private bodies in terms of liability. This can be inferred from the general rule contained in Section 3(1) of the Anti-discrimination Act, which stipulates that the principle of equal treatment is binding on 'everyone', and also from Sections 5 and 6 of the Anti-discrimination Act, which provide details on the material scope of the act (fields covered) without specifying what kind of bodies they cover (e.g. whether public or private). The only explicit exception where the liability does not apply to a part of the 'private sector' is housing, where the duty to apply the principle of equal treatment does not apply to natural persons who are not entrepreneurs.<sup>167</sup>

However, it is questionable whether some statutory duties that are carried out by public bodies and are generally perceived as services to the public (such as the provision of information on request by public bodies, or aid provided by the state in case of emergencies) can be perceived as 'services' in the sense of the directives.

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<sup>166</sup> Anti-discrimination Act, 365/2004, Section 5(2)(d).

<sup>167</sup> See Anti-discrimination Act, 365/2004, Section 5(2)(d).

## 3.2 Material scope

### 3.2.1 Employment, self-employment and occupation

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

Section 6(1) of the Anti-discrimination Act stipulates that the principle of equal treatment must be applied in employment relationships, similar legal relationships and related legal relationships.<sup>168</sup> Section 6(2)(a) states further that the principle of equal treatment will be applied only in connection with rights of persons provided for under special laws regulating mainly the field of employment, occupation and other gainful activities or functions, and contains a footnote referring (through a non-exhaustive list) to the Labour Code (which regulates the whole sphere of private employment and a part of public employment) and to the Act on Public Service (which regulates the sphere of public service). Accordingly, employment for the purpose of the Anti-discrimination Act means a complex set of legal relations resulting from labour, service, contractual and other relations relating to gainful activities.

Section 3(1) of the Anti-discrimination Act states that the obligation to observe the principle of equal treatment applies to 'everybody' in the field of (inter alia) employment relationships and related legal relationships. Thus, it covers the entire sphere of employment, self-employment and occupational relationships in the private and public spheres, including customs officers, soldiers performing military service, police officers, members of the Slovak intelligence service, the prison and court guard, railway police officers and members of the fire and rescue service performing civil service.<sup>169</sup>

Article 1 of the general principles of the Labour Code stipulates the right of natural persons to free choice of their employment, to fair and satisfying working conditions, and to protection against arbitrary dismissal in accordance with the principle of equal treatment enshrined in the Anti-discrimination Act. Section 13 of the Labour Code stipulates the duty of an employer to treat employees in accordance with the principle of equal treatment constituted by the Anti-discrimination Act. The duty to observe the principle of equal treatment (with reference to the Anti-discrimination Act) in relation to civil servants is enshrined in Article 6 of the general principles of the Civil Service Act.

Act 455/1991 on Licensed Trades (the Small Business Act), states in Section 5a that the rights provided for in the act are guaranteed equally to all persons in conformity with the principle of equal treatment in labour relations and similar legal relations provided for under separate provisions of the Anti-discrimination Act. However, this act only regulates the conditions for licensed trades for self-employed persons in relation to the state – i.e. for setting up and running their business. It does not regulate the relations between the freelancers and their purchasers, which are regulated either by the Civil Code<sup>170</sup> or the Commercial Code.<sup>171</sup> However, neither the Civil Code nor the Commercial Code contain an anti-discrimination clause with regard to entering into contracts, and, interpreted also in

<sup>168</sup> Neither the Anti-discrimination Act nor case law stipulates the meaning of 'similar legal relationships and related legal relationships'. However, given the content of Section 6(2) and references to other pieces of legislation contained therein (by means of footnotes), it is arguable that 'similar legal relationships and related legal relationships' comprise a broad range of relationships in the field of paid work (such as the public service, employment services – such as vocational training or counselling provided to jobseekers, or legal relationships connected to membership and functioning in employees' or employers' organisations, or in professional organisations (such as legal or medical professionals' bars)).

<sup>169</sup> The most relevant acts are Labour Code, 311/2001; Civil Service Act, 55/2017, and some special laws on performing public service in special fields (the judiciary, military service, Police Corps, Slovak Information Service, etc.).

<sup>170</sup> Civil Code, 40/1964.

<sup>171</sup> Commercial Code, 513/1991.



the light of Section 6(2) of the Anti-discrimination Act (the applicability of the Anti-discrimination Act only in connection with the rights of persons provided for under special laws – see above), it is debatable what rights self-employed persons (or businesses in general) have as against those of potential purchasers, especially in the period prior to the start of a contract relationship or after it has ceased. It is true that Section 5(2) of the Anti-discrimination Act stipulates the duty to observe the principle of equal treatment in access to and providing social security services and insurance and social advantages, healthcare, education and services, including housing (which is moreover again only in connection with the rights of persons provided for under special laws), but the wording of the provision applies most likely to 'contracting parties', meant in the sense of service receivers, entitled to proper and non-discriminatory services by their providers.

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

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

In Slovakia, national legislation prohibits discrimination in relation to conditions for access to employment, self-employment or occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy for the five grounds in both private and public sectors as described in the directives.

Under Sections 6(1) and 6(2)(a)(b) of the Anti-discrimination Act, the principle of equal treatment is applicable (on all the grounds prohibited by the Anti-discrimination Act – see section 2.1 of this report) to the rights of persons under the provisions of acts regulating access to employment, occupation, other gainful activities or functions, including job specifications, selection criteria, recruitment conditions and promotion. In other words, the Anti-discrimination Act refers to the existing laws in the area of employment, self-employment and occupation without making any distinction between legal relationships in the private and the public sector. At the same time, all laws regulating the public and the private sector employment refer to the Anti-discrimination Act and/or are based on it and/or supplement it. The applicable provisions (apart from the ones contained in the Anti-discrimination Act) are, for example, Article 6 (on the basic principles) and Section 41 of the Labour Code, Article 9 (on the basic principles) of the Civil Service Act, and Section 5a of the Small Business Act.<sup>172</sup>

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

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

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

Section 6(2)(b) of the Anti-discrimination Act expressly covers, for the whole area of employment relationships, similar relationships and related legal relationships, and on all the grounds contained in the Anti-discrimination Act (see section 2.1 above), 'the performance of employment<sup>173</sup> and working conditions, including remuneration, promotion and dismissal', in which the principle of equal treatment applies (Section 6(1) of the Anti-discrimination Act).

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<sup>172</sup> Small Business Act, 455/1991.

<sup>173</sup> The term 'employment' includes occupation, other gainful activity or function.

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

As far as equal pay is concerned, Section 119a(1), first sentence of the Labour Code provides that 'wage conditions must be agreed without any form of sex discrimination'. This applies to 'all remuneration for work and benefits that are paid or will be paid in relation to employment according to the other provisions of this act or special regulations'.<sup>174</sup> According to Section 119a(2), 'women and men have the right to equal pay for equal work or for work of equal value'. These provisions also apply to employees of the same sex if they carry out equal work or work of equal value.<sup>175</sup> Therefore it can be argued that these provisions apply equally to all other prohibited grounds of discrimination.

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

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

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

By defining 'further education' in Section 2(3), the Act on Lifelong Learning<sup>176</sup> indirectly defines what is to be understood under the term 'vocational training'. Further education is defined as

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

The Act on Lifelong Learning does not contain any equality/anti-discrimination clause or any reference to the Anti-discrimination Act.

The Act on Higher Education, regulating university education, stipulates that the rights provided under the act will be guaranteed in accordance with the principle of equal treatment.<sup>177</sup>

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

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<sup>174</sup> Labour Code, 311/2001, Section 119a(1), second sentence.

<sup>175</sup> Labour Code, 311/2001, Section 119a(4).

<sup>176</sup> Act No. 568/2009 on Lifelong Learning and amending and supplementing certain laws, as amended (*zákon č. 568/2009 Z. z. o celoživotnom vzdelávaní a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

<sup>177</sup> Higher Education Act, 131/2002, Section 55(2).

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

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

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

There is no case law regarding the issue.

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

In Slovakia, national legislation prohibits discrimination in relation to social protection, including social security and healthcare as formulated in the Racial Equality Directive.

Sections 5(1) and 5(2)(a)(b) of the Anti-discrimination Act prohibit discrimination on all the grounds contained in the Anti-discrimination Act (see section 2.1 above) in conjunction with special laws existing in the area of access to and provision of social assistance (now redefined as social services in the relevant legislation),<sup>178</sup> social insurance, old-age pension insurance, supplementary pension insurance, state social support, social advantages and healthcare.

In the field of 'state social support', the Act on Aid in Material Need<sup>179</sup> regulates, among other things, the provision of financial aid to those who are deemed to be in material need.<sup>180</sup> Material need is defined as a situation where the income of members of a household does not reach the level of the 'minimum living threshold' (a sum stipulated by a special law;<sup>181</sup> in 2019, the sum for one adult was EUR 210.20 per month). The allowance (financial aid in material need) is supposed to secure basic living conditions.<sup>182</sup>

The act contains a provision (Section 10(3)) that reduces the payment of the material need allowance by a sum of EUR 64.70 per each adult person (living in a household which is in consideration for a payment of the allowance) who does not carry out some kind of 'work in the public interest' (for example, works organised by municipalities to maintain public

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<sup>178</sup> Act No. 448/2008 on Social Services and on amending and supplementing Act No. 455/1991 on Licensed Trades (Small Business Act), as amended (*zákon č. 448/2008 Z. z. o sociálnych službách a o zmene a doplnení zákona č. 455/1991 Z. z. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov*).

<sup>179</sup> Act No. 417/2013 on Aid in Material Need and on changing and supplementing other laws, as amended (*zákon č. 417/2013 Z. z. o pomoci v hmotnej núdzi a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

<sup>180</sup> See Act on Aid in Material Need, 417/2013, Section 1(1).

<sup>181</sup> Act No. 601/2003 on the Living Minimum and on changing and supplementing other laws, as amended (*zákon č. 601/2003 Z. z. o životnom minime a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

<sup>182</sup> Act on Aid in Material Need, 417/2013, Section 10(1,2). Under the act, the basic sum of this allowance for an adult living alone is EUR 67.70 per month, for a couple without children it is EUR 112.50 per month, for an individual with one to four children it is EUR 123.10 per month, for a couple with one to four children it is EUR 168.40 per month and so on (with the principle being the more people who are assessed together, the lower the average payment per person).

premises), some kind of voluntary work (pursuant to a special law on voluntarism)<sup>183</sup> or some kind of work that prevents or solves emergency situations, for 32 hours per month. This provision was presented by Government representatives as a way of motivating the Roma to work and 'deserve' the payments that they receive from the state, and to prevent people from getting something from the state 'for free'. There is also no doubt that Roma represent a significant group of people who are in material need in Slovakia, due to structural discrimination in all fields including education, employment and housing – therefore it is also very clear on whom the provision has impact.

The provision was very heavily criticised by civil society and NGOs<sup>184</sup> and in 2014 led also to the submission of a constitutional complaint by the Public Defender of Rights (the Slovak ombudswoman) alleging the infringement of, among other rights, the right to equality and the right not to be subject to forced labour. The Constitutional Court rejected the case, arguing, quite unpersuasively, that the Public Defender of Rights was not entitled to submit it.<sup>185</sup>

The basic law on the state social security scheme is the Social Insurance Act.<sup>186</sup> An integral part of the state social security system is also formed by the old-age pension scheme. The Social Insurance Act states that policyholders have rights in the exercise of social insurance in compliance with the principle of equal treatment in social security established in the Anti-discrimination Act.

The same applies to police officers, professional soldiers and soldiers in preparatory service under the Act on Social Security for Police Officers and Soldiers.<sup>187</sup>

The Social Services Act<sup>188</sup> regulates legal relations in connection with the provision of social services.<sup>189</sup> The Social Services Act contains a principle of equal treatment clause and refers to the Anti-discrimination Act, as does the Act on Benefits for Compensation of Serious Disability,<sup>190</sup> which regulates legal relationships connected with providing financial contributions aimed at compensating for the social consequences of 'serious disabilities'.

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<sup>183</sup> Act No. 406/2011 on Volunteerism and on changing and supplementing other laws (*zákon č. 406/2011 Z. z. o dobrovolníctve a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

<sup>184</sup> See, for example, Balážová, G., Gallová Kriglerová, E., Chudžíková, A., Lajčáková, J., Kadlečíková, J. (2017), *Riešenie nezamestnanosti Romov, Od mýtov k praxi a späť*, available at [http://cvek.sk/wp-content/uploads/2017/04/Nezamestnanost-Romov\\_studia.pdf](http://cvek.sk/wp-content/uploads/2017/04/Nezamestnanost-Romov_studia.pdf); Balážová, G., Gallová Kriglerová, E., Chudžíková, A., Lajčáková, J., Surová, S., Števelová, Z. (2013), *Menšinová politika na Slovensku v roku 2013 : Výročná správa* (Minority Policies in Slovakia in 2013 : Annual Report), Centrum pre výskum etnicity a kultúry, 2013, pp. 65-78, available at <http://cvek.sk/mensinova-politika-na-slovensku-v-roku-2013-vyroczna-sprava/>.

<sup>185</sup> Decision of the Constitutional Court of the Slovak Republic, No. PL. ÚS 36/2015, 10 June 2015.

<sup>186</sup> Act No. 461/2003 on Social Insurance as amended (*zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov*).

<sup>187</sup> Act No. 328/2002 on Social Security for Police Officers and Soldiers and on amending and supplementing certain acts as amended (*zákon č. 328/2002 Z. z. o sociálnom zabezpečení policajtov a vojakov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

<sup>188</sup> Act No. 448/2008 on Social Services and on amending and supplementing Act No. 455/1991 on Licensed Trades (Small Business Act), as amended (*zákon č. 448/2008 Z. z. o sociálnych službách a o zmene a doplnení zákona č. 455/1991 Z. z. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov*).

<sup>189</sup> A social service is defined as 'expert activity, service activity or other activity or activities aimed at a) the prevention of the development of an unfavourable social situation, resolving an unfavourable social situation or mitigating the unfavourable social situation of a natural person, family or community; b) sustaining, renewing or developing the capacity of a natural person to conduct an independent life and supporting their integration into society; c) maintaining the conditions necessary to satisfy the basic needs of a natural person; d) resolving a critical social situation affecting a natural person and their family; e) the prevention of social exclusion of a natural person and their family; f) ensuring childcare due to the situation in the family that requires childcare assistance'. See Social Services Act, 448/2008, Section 2(1).

<sup>190</sup> Act on Benefits for Compensation of Serious Disability, 447/2008.

The Act on Old-Age Pension Saving contains a prohibition of discrimination clause formulated as a referral to the Anti-discrimination Act.<sup>191</sup> Similarly, according to the Act on Supplementary Pension Saving, discrimination in the performance of supplementary pension saving is prohibited in compliance with the Anti-discrimination Act, unless the Act on Supplementary Pension Saving states otherwise.<sup>192</sup>

The right to healthcare guaranteed under the Act on Healthcare, like the right to social security, goes beyond the scope of Directive 2000/43 in terms of the grounds covered. The act contains a principle of equal treatment clause and refers to the Anti-discrimination Act (for grounds, see section 2.1 above).<sup>193</sup>

Policyholders (in the field of health insurance) have rights in the exercise of public health insurance in accordance with the principle of equal treatment in healthcare regulated in the Anti-discrimination Act.<sup>194</sup>

The only case dealing with multiple discrimination in the field of social protection, social security and healthcare decided by a national court based on anti-discrimination legislation is the case on the discrimination against Roma women in state social support/social advantages in connection with child birth benefits decided by District Court Bratislava I and confirmed by the Regional Court in Bratislava (see section 3.2.7 below), now pending before the Slovak Supreme Court.<sup>195</sup> Another case of discrimination against Roma women in the provision of healthcare (segregation in maternity hospitals) is still pending before the first instance court.

#### a) Article 3(3) exception (Directive 2000/78)

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

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

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

Section 5(2)(a) (to be read in conjunction with Section 5(1)) of the Anti-discrimination Act prohibits discrimination on all the grounds contained within it (see section 2.1 above) in

<sup>191</sup> Act No. 43/2004 on Old-Age Pension Saving and amending and supplementing certain laws, as amended (*zákon č. 43/2004 Z.z. o starobnom dôchodkovom sporení a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*), Section 9.

<sup>192</sup> Act on Supplementary Pension Saving, 650/2004, Section 7(1). The purpose of supplementary pension saving is to enable a participant in the pension scheme to acquire a supplementary retirement income in old age and a supplementary retirement income after termination of a hazardous occupation (in accordance with the legal classifications), or after termination of work as a dance artist or a musician playing a wind instrument. Within the framework of supplementary pension insurance, an employer pays, on the ground of a contract, a regular contribution for employees to a supplementary pension company.

<sup>193</sup> Act No. 576/2004 on Healthcare, Services Related to the Provision of Healthcare and on amending and supplementing certain acts, as amended (*zákon č. 576/2004 Z. z. o zdravotnej starostlivosti, službách súvisiacich s poskytovaním zdravotnej starostlivosti a o zmene a doplnení niektorých zákonov*), Section 11(2)-(6).

<sup>194</sup> Act No. 580/2004 on Health Insurance and on amendment and supplementation of Act No. 95/2002 on Insurance and on amending and supplementing certain laws, as amended (*zákon č. 580/2004 Z. z. o zdravotnom poistení a o zmene a doplnení zákona č. 95/2002 Z. z. o poisťovníctve a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*), Section 29.

<sup>195</sup> Decision of the District Court Bratislava I, No. 12C 231/2010, 16 May 2014 confirmed by the decision of the Regional Court in Bratislava, No. 14Co/552/2014-180, 26 September 2017.

the area of, inter alia, access to and provision of social advantages. However, the duty to observe the principle of equal treatment in the area of social advantages only applies 'in connection with special laws' in this field (see below for a more detailed explanation).

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

Social housing could also fall under the concept of social advantages, but judicial interpretation would be needed in this regard. In Slovakia, social housing is defined in Slovak legislation<sup>196</sup> as housing procured by using public funds intended for securing adequate and human dignified housing of natural persons who cannot obtain their own housing and fulfilling the conditions set down in law. Social housing in the Slovak Republic includes various forms of support, such as rental housing owned by towns and municipalities, social housing as part of social services (dormitory, shelter, halfway houses, emergency housing, low-threshold day centre), housing allowance as part of a system of assistance in material need or a one-off allowance for young adults from children's homes. Taking care of the needs of citizens in the field of housing in Slovakia is within the competence of towns and municipalities. They face a shortage of municipal rental apartments and the construction of these flats is decreasing.<sup>197</sup>

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

Section 3(4)(b) of the act conditions a payment of a state childbirth allowance upon not leaving the maternity hospital in a way that conflicts with a legal regulation on releasing a patient from a healthcare facility.<sup>198</sup> The provision referred to is the Act on Healthcare, which stipulates that in situations when a release is not medically substantiated, healthcare providers are obliged to release a patient from a healthcare facility if the patient requests them to do so.<sup>199</sup> However, the formulation of the relevant provisions, the lack of mechanisms guaranteeing that requests for release are handled by the hospital staff, and the common and normalised practice of detaining all women in maternity hospitals for three to five days after childbirth, all create an impression that women must follow a special procedure when they wish to leave a maternity hospital, or that they have special duties to fulfil in order to leave a hospital. Such legal regulation creates situations of uncertainty and a power imbalance that prevents women from deciding freely and voluntarily on the length of their stay in a maternity hospital after childbirth. The situation has a disproportionate effect on Roma women, who, in many cases, leave the hospital because of caring responsibilities for other children and as a result of discrimination and hostility in the hospital – afterwards they come back to collect their child.<sup>200</sup>

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<sup>196</sup> Act No. 443/2010 on subsidies for housing development and social housing, as amended.

<sup>197</sup> Supreme Audit Office of the Slovak Republic (2018), 'Analytical material - Social housing as a tool for solving bad social situation'. Available at <https://www.nku.gov.sk/documents/10157/2509c132-e727-416f-b872-65fd99f4b55e>.

<sup>198</sup> This is the wording of Section 3(4)(b) as of 30 June 2014 (after an amendment of Act No. 185/2014). Before this amendment, Section 3(4)(b) of Act 383/2013 on Childbirth Allowance and on Allowance for More Concurrently Born Children, stipulated that a woman who leaves her child in the maternity hospital following his or her birth, without prior consent from the maternity hospital, has no right to childbirth allowance.

<sup>199</sup> Healthcare Act, 576/2004, Section 9(6)(c). Section 9(6)(c) of the Healthcare Act reads as follows: '[A healthcare provider shall release a person from facility-based care] upon her own request, or upon the request of her legal representative if she, despite an adequate amount of information received, refuses the facility-based care, unless the facility-based care is ordered by a court or unless a facility-based care the legality of which is decided upon by a court is at stake.'

<sup>200</sup> If women want to leave maternity hospital, they are often told that they may leave, but that the child has to remain in the hospital (which is, of course, against the law).

The challenged provision is now subject to proceedings initiated by an *actio popularis* that was filed by the Centre for Civil and Human Rights (see section 2.1.2). The case is pending before the Slovak Supreme Court, after having been dismissed by the first instance and appeal courts.<sup>201</sup>

Other provisions of the same act can also be held to be discriminatory towards Roma women (but they can also be discriminatory towards other women). For example, Section 3(4)(a) of the act states that entitlement to the childbirth allowance only exists if the mother has visited a gynaecologist once a month from the fourth month of her pregnancy until giving birth. For the reasons outlined above (discrimination against Roma women in healthcare facilities, caring responsibilities etc.), this provision is equally discriminatory and should be abolished.<sup>202</sup>

In 2015, the Centre for Civil and Human Rights issued analyses of specific provisions of domestic legislation that are incompatible with anti-discrimination legislation and constitute indirect discrimination. Aside from the provisions mentioned above, the centre also identified other discriminatory provisions, specifically Section 4(3) of the Parental Care Allowance Act, 571/2009 and Article 12a of the Child Allowance Act, 600/2003.<sup>203</sup> In this regard it should be noted that the UN Committee on the Rights of the Child in its concluding observations from July 2016 called on Slovakia to amend the discriminatory legislation making the rates of payment of child benefit, parental care allowance and child birth allowance conditional on compliance with preventive measures. The Committee has stated that this legislation is largely ineffective and has a disproportionately negative effect on the socioeconomic wellbeing and right to social security of marginalised Roma families and their children.<sup>204</sup>

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

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

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

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

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<sup>201</sup> Decision of the District Court Bratislava I, No. 12C 231/2010, 16 May 2014. Decision of the Regional Court in Bratislava, No. 14Co/552/2014-180, 26 September 2017.

<sup>202</sup> It is also discriminatory against all women in principle, as it interferes with their right to decide freely on various aspects of their reproductive health.

<sup>203</sup> Poradňa pre občianske a ľudské práva (Centre for Civil and Human Rights) (2015), *Monitoring vybraných právnych predpisov a analýza ich nesúlady s antidiskriminačným právom* (The monitoring of specific legislation and analyses of their incompatibility with anti-discrimination law) available in Slovak at <https://www.poradna-prava.sk/sk/dokumenty/monitoring-vybranych-pravnych-predpisov-a-analyza-ich-nesuladu-s-antidiskriminacnym-pravom/>; see also European Roma Rights Centre and Centre for Civil and Human Rights (2015), *Written Comments Concerning Slovakia for Consideration by the Committee on the Rights of the Child at the 72nd Pre-Sessional Working Group (5 - 9 October 2015)* available at <https://www.poradna-prava.sk/en/documents/written-comments-for-the-un-committee-on-the-rights-of-the-child/>.

<sup>204</sup> UN Committee on the Rights of the Child (2016), *Concluding observations of the Committee on the Rights of the Child on the combined third to fifth periodic reports of Slovakia*. CRC/C/SVK/CO/3-5. para. 43a.



Sections 5(1) and 5(2)(c) of the Anti-discrimination Act stipulate the duty to observe the principle of equal treatment and prohibit discrimination on all the grounds contained within the act, including in the area of education.

The Schools Act establishes 'equal access to education, taking into account the special educational needs of the individual and her/his responsibility for her/his education',<sup>205</sup> as well as the 'prohibition of all forms of discrimination, and especially segregation',<sup>206</sup> as two of the principles on which education should be based. The act also defines 'school integration' as 'education of children and pupils with special educational needs in school classes and school facilities designed for children or pupils without special educational needs'.<sup>207</sup> There is no particular definition of segregation in Slovak legislation. The National programme for the development of upbringing and education 2018–2027 adopted by the Slovak Government stresses the importance of strengthening inclusion and integration in the Slovak educational system.<sup>208</sup>

#### a) Pupils with disabilities

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

Sections 94-102 of the Schools Act contain provisions on children and pupils with a 'health disadvantage'. A child or pupil with a 'health disadvantage' is defined, in Section 2(k) of the act, as a child or pupil with a 'disability', who is 'ill or their health is impaired', who has 'developmental disorders', or a 'behavioural disorder'. A child or a pupil with disability is defined in Section 2(l) to mean a child or a pupil with a 'mental'<sup>209</sup> disability, hearing impairment, visual impairment, physical impairment, communication ability disorder, autism, or with other pervasive developmental disorders, or with multiple disabilities'. Section 94 states that the education of children and pupils with health disadvantage should take place in schools for children with health disadvantages (called 'special schools') or in other schools (kindergarten, primary school, secondary schools, practical schools and training institutions), either in special classes or in classes or educational groups together with other children/pupils of the school (in which case the child/pupil can have an individual educational programme).

The act itself does not state on what criteria the choice between these three forms of schooling for children/pupils with health disadvantages should be made. In 2019, a coalition of domestic NGOs promoting the rights of persons with disabilities submitted an alternative report to the UN Committee on the Rights of Persons with Disabilities and raised a range of on-going shortcomings concerning the education of children with disabilities. Referring to the recent European Agency Statistics on Inclusive Education, the alternative report stresses that the percentage of children with disabilities in special education in Slovakia is four times higher than the average in the EU. It clearly indicates that many children are put in special schools unnecessarily, and in breach of the principle of inclusive education and non-segregation. The report further notes that Slovakia is lacking a comprehensive strategy to reform the educational system and to organise the transition

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<sup>205</sup> Schools Act, 245/2008, Section 3(c).

<sup>206</sup> Schools Act, 245/2008, Section 3(d).

<sup>207</sup> Schools Act, 245/2008, Section 2(s). However, the act does not define in more detail what such integration would mean.

<sup>208</sup> Národný program rozvoja výchovy a vzdelávania (National programme for the development of upbringing and education 2018–2027), adopted by the Government of the Slovak Republic on 27 June 2018. Available at <https://rokovania.gov.sk/RVL/Material/23025/1>.

<sup>209</sup> In Slovak, the act uses the word 'mental' (and not, for example, 'intellectual').



from segregated schools to inclusive education.<sup>210</sup> School premises, facilities and staff are not adapted to the needs of children with disabilities.

Another matter of serious concern is diagnostics. A type of institution authorised to carry out diagnostics is a centre for special pedagogical counselling; such centres are often attached to special schools or are staffed by employees of special schools. This raises serious concerns about the possibility of a conflict of interests.<sup>211</sup>

In 2015, the Supreme Court decided an important case regarding the right to inclusive education of children with disabilities.<sup>212</sup> The claimant was a female child with an intellectual disability and a hearing impairment who was refused enrolment at a mainstream primary school.

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

Following the decision of the Supreme Court, the school had an obligation to enrol the applicant, but parents refused this, as, in the meantime, the child had already started to attend another mainstream school where she was satisfied. However, the parents, on behalf of their child, had also submitted a civil claim based on the Anti-discrimination Act to the District Court Bratislava III. The case is still pending before the first instance court.<sup>213</sup>

On 17 May 2018, the District Court in Malacky decided a case regarding the alleged illegal placement of a Roma child in a special school in a village called Plavecký Štvrtok. The court dismissed the claim in all parts. It held that the claimant (a Roma boy) did not prove that he had been discriminated against. The case is now pending before the appeal court.<sup>214</sup>

#### b) Trends and patterns regarding Roma pupils

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

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<sup>210</sup> Coalition of Slovak NGOs promoting the rights of people with disabilities (2019), *Alternative report for the UN CRPD*, July 2019. Available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fICS%2fSVK%2f35652&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fICS%2fSVK%2f35652&Lang=en).

<sup>211</sup> See for example Farenzenová, M., Kubánová, M., Salner, M. (2013), *Cestovná mapa pre riešenie nadmerného zastúpenia rómskych detí v špeciálnom školstve* (Travel map to address an overrepresentation of Roma children in special education), Slovak Governance Institute, p. 44. available at: <http://stary-web.governance.sk/assets/files/publikacie/cestovna-mapa.pdf>.

<sup>212</sup> Judgment of the Supreme Court of the Slovak Republic, No. 7Sžo/83/2014, 24 September 2015.

<sup>213</sup> Information provided by the legal representative of the applicant Maroš Matiaško, by email of 30 March 2020 to the author of this report.

<sup>214</sup> Decision of District Court in Malacky, 17 May 2018, n. 5C/212/2014.

The segregation of Roma children in education is a very widespread problem, already documented in many reports by national and international NGOs,<sup>215</sup> as well as by the reports of the Slovak National Centre for Human Rights (the equality body).<sup>216</sup> The report by the Slovak Public Defender of Rights also concludes that measures taken by the Ministry of Education in recent years have not led to obvious progress and calls on the Government authorities to introduce and implement desegregation measures that are as specific and sustainable as possible.<sup>217</sup>

As a result of on-going discrimination against Roma children in special and mainstream education systems, Slovakia faces infringement proceedings by the European Commission for violating the EU Racial Equality Directive. Following the letter of formal notice sent to the Slovak Government by the European Commission in April 2015, in October 2019 the Commission delivered a reasoned opinion to Slovakia. After carefully assessing the measures and monitoring the situation on the ground, the Commission concluded that they are not yet sufficient to resolve the problem. School discrimination on the ground of ethnic origin remains a serious issue. Slovak authorities had two months to respond to the reasoned opinion and to take the relevant action; otherwise, the Commission may decide to refer the matter to the Court of Justice of the EU. The response of the Government is not publicly available.<sup>218</sup>

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

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

The Schools Act stipulates that 'a child or a pupil whose educational needs stem exclusively from their development in a socially disadvantaged environment cannot be placed in special schools or special classes' (meaning special schools or special classes for children

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<sup>215</sup> See e.g. Centre for Civil and Human Rights (2019), *NGO's submission to the UN Economic, Social and Cultural Rights concerning the third periodic report of Slovak Republic*, September 2019, pp. 4-7. Available at <https://www.poradna-prava.sk/sk/dokumenty/alternativna-sprava-vyboru-osn-pre-hospodarske-socialne-a-kulturne-prava/>. Amnesty International, European Roma Rights Centre (2017), *A Lesson in Discrimination: Segregation of Romani Children in Primary Education in Slovakia*, available at: <https://www.amnesty.org/en/documents/eur72/5640/2017/en/>.

<sup>216</sup> See Slovak National Centre for Human Rights (2018), *Správa o dodržiavaní ľudských práv vrátane zásady rovnakého zaobchádzania v Slovenskej republike za rok 2017* (Report on the observance of human rights including the observance of the principle of equal treatment in the Slovak Republic for the year 2017), pp. 56-63, available in English at: <http://www.vop.gov.sk/files/Sprava%20VOP-Vzdelavanie%20Romov.pdf>.

<sup>217</sup> Public Defender of Rights (2018), *Správa verejnej ochránkyne práv o stave prijatia navrhovaných opatrení z rokov 2013, 2014 a 2015 v oblasti výchovno- vzdelávacieho procesu na Slovensku s cieľom zlepšovania ochrany a dodržiavania základných práv a slobôd osôb* (Report of the Public Defender of Rights on the progress in the implementation of measures from years 2013, 2014 and 2015 in the educational process in Slovakia to improve the protection and observance of basic rights and freedoms), Available at [http://www.vop.gov.sk/files/EN\\_SPRAVA\\_VOP\\_vn%C3%BAtorny\\_audit\\_skolstvo.pdf](http://www.vop.gov.sk/files/EN_SPRAVA_VOP_vn%C3%BAtorny_audit_skolstvo.pdf).

<sup>218</sup> The European Commission gave formal notice about starting infringement proceedings against Slovakia on 29 April 2015 and on 10 October 2019 sent reasoned opinion INF 19/5950 to the Slovak Government. See [https://ec.europa.eu/commission/presscorner/detail/EN/INF\\_19\\_5950](https://ec.europa.eu/commission/presscorner/detail/EN/INF_19_5950).

with disabilities or a health disadvantage – see the previous section),<sup>219</sup> and the education of children from socially disadvantaged environments must be pursued through ‘individual conditions’, meaning the adjustments of the organisation of education on the one hand and the environment in which education is taking place on the other, as well as the use of special methods and forms of education.<sup>220</sup> Children from socially disadvantaged backgrounds are to be placed into classes ‘together with other children or pupils’. This rule, however, does not apply to cases of placing pupils in a ‘specialised class’ pursuant to Section 29(11).<sup>221</sup> In 2019, amendments to the Schools Act were introduced, which will come into effect from 2021 (see below).

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

Recent quantitative data drawn from research conducted by the Ministry of Finance in 2018, which were published early in 2019, show that Roma children from marginalised communities remain severely overrepresented in the special education system. More than 16 % of Roma children are educated in special education, which is five times more than in the overall Slovak population. They account for 63 % of all children educated in special classes and 42 % of all children educated in special schools.<sup>222</sup> Special classes/special schools for children with intellectual disabilities follow reduced curricula and thus offer very limited opportunities for subsequent education. The poor diagnostics leading to the placement of Roma children in these classes/schools results from, for example: universal diagnostic tools not being adjusted to the specific social circumstances and needs of Roma children; the relative inability of Roma people to speak the official language of Slovakia; the fact that their social skills may not be adapted to the conventions of the majority population; the general cultural bias of the diagnostic tests and the lack of time that the person conducting the diagnostic tests has for each child.<sup>223</sup> Due to various factors (such as fear of discrimination and stigmatisation and hence poor performance, distance from the mainstream school and so on), sometimes parents also support the education of their children in special schools. Another factor contributing to the segregation of Roma children in special schools/classes is the system of subsidies for children in special schools/classes, in which the subsidies are higher than the subsidies for children in mainstream schools.<sup>224</sup> In the 2018/2019 State School Inspectorate report on inclusion in schools noted that there are still cases where children are placed in the system of special education when they clearly do not belong there.<sup>225</sup>

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<sup>219</sup> Schools Act, 245/2008, Section 107(2).

<sup>220</sup> Schools Act, 245/2008, Section 107(1).

<sup>221</sup> Schools Act, 245/2008, Section 107(3).

<sup>222</sup> Ministry of Education, Science, Research and Sport of the Slovak Republic (2019) *Revízia výdavkov na skupiny ohrozené chudobou a sociálnym vylúčením: Priebežná správa* (Revision of expenses for groups threatened by poverty and social exclusion: Interim report), January 2019. p. 21, available at: <https://www.minedu.sk/data/att/14208.pdf>.

<sup>223</sup> On racially discriminatory diagnostics, see the report of the Slovak ombudswoman of 2014 - Public Defender of Rights (Verejná ochrankyňa práv) (2014), *Správa verejnej ochrankyne práv: Vplyv testovania školskej spôsobilosti na základné práva dieťaťa z nepodnetného prostredia s kultúrnou, sociálnou, jazykovou bariérou, najmä z rómskej národnostnej menšiny* (Report of the Public Defender of Rights: The Impact of Testing of the School Eligibility on the Fundamental Rights of the Child from a Non-Challenging Environment with a Cultural, Social, Language Barrier, Mainly from the Roma National Minority), p. 9, available at: <http://www.vop.gov.sk/files/Sprava%20VOP%20FINALNA%20VERZIA.pdf>.

<sup>224</sup> Every year, each school receives a certain amount of money per pupil from the public funds. This represents the main source of income for schools to enable their everyday functioning.

<sup>225</sup> State School Inspectorate (2019) *Správa o podpore inkluzívneho vzdelávania žiakov ZŠ v SR v školskom roku 2018/2019* (The report on the support of inclusive education of pupils in primary schools in the school year 2018/2019), p. 16. Available at [https://www.ssiba.sk/admin/fckeditor/editor/userfiles/file/Dokumenty/SPRAVY/2019/Inkluzia\\_Sprava%20SR\\_129\\_fin.pdf](https://www.ssiba.sk/admin/fckeditor/editor/userfiles/file/Dokumenty/SPRAVY/2019/Inkluzia_Sprava%20SR_129_fin.pdf).

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

This type of segregation also happens because school authorities are afraid, due to the racial bias/hatred that is omnipresent in society, of losing non-Roma children and thereby the subsidies from the state that are based on the numbers of children on school rolls. It is also not unusual to find purely Roma schools.<sup>226</sup> The on-going segregation of Roma children in standard mainstream schools and classes was mapped by recent quantitative research by the Ministry of Finance, which was published in 2019.<sup>227</sup> The ministry notes that the separate education of marginalised Roma children in separate mainstream classes, school buildings or other school facilities like school canteens has been previously documented. It also points at the existence of Roma-only schools, stating that this form of segregation in education may result from residential segregation of Roma communities or by the creation of school catchment areas concentrating Roma children in some schools. By using the established research method of 'dissimilarity index', the report explores the proportion of Roma children and children from the majority in mainstream classes of primary schools. The results show that, particularly in regions with a higher population of marginalised Roma, the placement of Roma children in the first-grade classes in primary schools is highly disproportionate; the proportional difference increases in higher grades, particularly in the fifth and sixth grades, when the exclusion of Roma children from mainstream school classes statistically peaks.<sup>228</sup> The rate of exclusion of Roma children in primary schools within cities is even higher than their exclusion in classes within one school. The situation differs from town to town, but the report notes that achieving a proportionate representation of children throughout primary schools would currently, for instance, require the transfer of almost half of the Roma children to another school. Based on these findings, the report concludes that in mainstream primary education in Slovakia, a significant proportion of Roma children are educated separately from children from the majority population.<sup>229</sup>

In 2019, the Government of the Slovak Republic adopted an updated action plan to implement the Strategy of the Slovak Republic for the Integration of Roma for 2019-2020, including the area of education, which acknowledges the existing segregation of Roma children in special and mainstream education. Among the goals it sets is an increase in the percentage of Roma children receiving education in mainstream education and the prevention of the creation of Roma-only segregated schools. Measures to be implemented in this regard include supporting preschool education, improving the psychological assessment of marginalised Roma children reflecting their social disadvantage and

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<sup>226</sup> For more information on the segregation of Roma children in education, see also Centre for Civil and Human Rights (2016), *Written Comments concerning Slovakia for Consideration by the UN Human Rights Committee*, pp. 7 - 9. Available online at <https://www.poradna-prava.sk/en/documents/we-submitted-the-written-comments-to-the-un-human-rights-committee/>. Centre for Civil and Human Rights (2017), *Alternative Report concerning Eleventh and Twelfth Periodic Report of Slovakia*, pp. 8 -10, available at: <https://www.poradna-prava.sk/en/documents/the-report-for-the-un-committee-on-the-elimination-of-racial-discrimination/>. See also Rafael, V. (ed.); various authors (2011), *(De)segregation of Roma pupils in Slovak educational system: Questions and answers*, Bratislava, Nadácia otvorenej spoločnosti, available at: <https://eduroma.sk/docs/odpovede-na-otazky-desegregacie.pdf>.

<sup>227</sup> Ministry of Finance of the Slovak Republic (2019) *Revízia výdavkov na skupiny ohrozené chudobou a sociálnym vylúčením: Priebežná správa* (Revision of expenses for groups threatened by poverty and social exclusion: Interim report), January 2019, pp. 42 - 58, available at: <https://www.minedu.sk/data/att/14208.pdf>.

<sup>228</sup> The report defines the exclusion of Roma children as a continuum ranging from full exclusion, where Roma children are completely segregated, to no exclusion, where Roma children and children from the majority are educated in joint classes and school pupil numbers are proportionate.

<sup>229</sup> Ministry of Finance of the Slovak Republic (2019) *Revízia výdavkov na skupiny ohrozené chudobou a sociálnym vylúčením: Priebežná správa* (Revision of expenses for groups threatened by poverty and social exclusion: Interim report), January 2019, pp. 42 - 48, available at: <https://www.minedu.sk/data/att/14208.pdf>.

conducting a pilot project of creating school catchment areas on a non-segregational basis in selected localities.<sup>230</sup> However, according to the assessment of the author of this report, the measures presented by the Government in 2019 fail to address the system and remain highly insufficient given the extent and structural character of this problem in Slovakia alongside the factual necessity to reform the whole primary educational system to make it more inclusive.

In recent years the State School Inspectorate, as the administrative body responsible for overseeing the quality of education in schools, has intensified its efforts to uncover the practices of discrimination against Roma children in education. According to reported information, in the school year 2018-2019, the inspectorate conducted inspections and identified four primary schools that did not place Roma children and children from the majority in classes proportionally, thus indicating their segregation of Roma children in education. The inspectorate generally concludes that deficiencies in the education of Roma children from marginalised Roma communities in primary schools persist and that Roma children are still excluded from the educational process.<sup>231</sup>

On 27 June 2019 the Slovak Parliament passed an act amending the Schools Act, which will come into force on 1 January 2021.<sup>232</sup> The amendments introduced specific measures to improve the equal access of Roma children to education. Notably, it introduced compulsory preschool education for all children from the age of 5, which had been promoted in recent years by the Government's Plenipotentiary for Roma Communities as a priority measure for his office. The measure, which will take effect in 2021, addresses the fact that only a third of Roma children from marginalised communities attend kindergartens for at least a year. The Roma Plenipotentiary noted the measure could contribute to reducing the number of Roma children in special education and increase their chances of succeeding in the educational process. It considers the introduction of compulsory preschool attendance as the basis from which to introduce a range of other measures, such as building up kindergartens and hiring sufficient numbers of teachers and assistants.<sup>233</sup> Further, the amendment also removed from the legislation the possibility of creating zero-grade classes. In practice, such classes were widely established by schools as preparatory classes for children who were not expected to be able to absorb the standard curriculum as a result of their social and linguistic environment. The year of compulsory kindergarten is supposed to prepare Roma children from marginalised environments to start attending a primary school directly in the first grade, together with the other children. According to the assessment of the author of this report, the positive impacts of these measures may be limited in school practice if not accompanied by the introduction of systemic measures promoting inclusive education in primary schools.

Furthermore, the Government continues to ignore other practices of segregation of Roma children in education that exist in Slovakia, including 'container schools' – schools of a lighter building structure that are relatively easy and fast to build. These schools have been built in segregated Roma settlements especially in localities where the capacities of the existing schools do not meet the educational needs of the child population and where public

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<sup>230</sup> Slovak Republic (2019) 'Aktualizované akčné plány Stratégie Slovenskej republiky pre integráciu Rómov do roku 2020 na roky 2019 - 2020 v oblastiach vzdelávania, zamestnania, zdravia, bývania a finančnej inklúzie' (The updated action plans of the Strategy of the Slovak Republic for the Integration of Roma up to 2020 for the period of 2019–2020 in areas of education, employment, health, housing and financial inclusion), adopted on 17 January 2019 by the the Slovak Government. Available at <https://rokovania.gov.sk/RVL/Material/23492/2>.

<sup>231</sup> State School Inspectorate (2018), *Správa o stave a úrovni výchovy a vzdelávania v základných školách a školských zariadeniach v Slovenskej republike v školskom roku 2018/2019* (Report on the state and level of education in primary school in the school facilities in a school year 2018/2019), available at [https://www.ssiba.sk/admin/fckeditor/editor/userfiles/file/Dokumenty/velka\\_sprava/sprava\\_18\\_19.pdf](https://www.ssiba.sk/admin/fckeditor/editor/userfiles/file/Dokumenty/velka_sprava/sprava_18_19.pdf).

<sup>232</sup> Act No. 209/2019 amending the Act No. 245/2008 on Education (Schools Act).

<sup>233</sup> Office of the Plenipotentiary of the Slovak Government for Roma Communities (2019) 'Parlament schválil povinnú predškolskú výchovu pre päťročné deti' (The parliament adopted compulsory preschool education for 5-years children), press release. Available at: [https://www.minv.sk/?spravy\\_rk&sprava=parlament-schvalil-povinnu-predskolsku-vychovu-pre-patrocne-deti](https://www.minv.sk/?spravy_rk&sprava=parlament-schvalil-povinnu-predskolsku-vychovu-pre-patrocne-deti).



money is used for the school's construction.<sup>234</sup> In the view of the author of this report, the Government is ignoring a practice that perpetuates further segregation of Roma children, instead of supporting solutions that would include the children in mainstream education.

Another existing practice is that of establishing external branches to vocational schools that are already a part of the official secondary education system (known as vocational education and training - VET - schools). Many of these external branches are placed very close to segregated Roma settlements.<sup>235</sup> Apart from the geographical and ethnic segregation, the problem is that such schools offer courses/programmes with very low employability prospects (and some of them only last for two years), which often perpetuate gender stereotypes and stereotypes about the Roma (for example, one of the courses, called 'practical woman', is aimed at teaching, among other things, 'the basics of hygiene', 'keeping and maintaining a household', 'basic principles of household economy', 'correct ways of storing and processing foodstuffs and preparing meals', 'correct upbringing and caring for children', etc.), and are generally of very poor quality.<sup>236</sup> In January 2019, a coalition of domestic NGOs following this issue reported that the number of these external branches has been rising since 2015.<sup>237</sup> According to the list of school facilities published by the Ministry of Education, there were 73 such branches in 31 August 2019.<sup>238</sup> In the school year 2018-19, the State School Inspectorate conducted inspections in 15 of these external branches and its summary report pointed at the serious shortcomings identified during these checks, including insufficient material and space, lack of expertise of the pedagogic personnel and the poor quality of the education.<sup>239</sup>

The first, and so far the only final case on the segregation of Roma children in education, was decided by the District Court in Prešov in December 2011 and the Regional Court in Prešov in October 2012, based on the *actio popularis* lawsuit filed by the NGO Centre for Civil and Human Rights.<sup>240</sup> The courts decided that the education of Roma children in separate mainstream classes amounts to racial discrimination and undermines the human dignity of segregated Roma children.

The decision of the regional court also addressed the wider societal context and offered its views and arguments on why segregation is unacceptable, on the meaning of human dignity in the context of (non-)segregation, on the importance and benefits of inclusive education, and on the importance of *actio popularis*.

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<sup>234</sup> The project of container schools introduced by the Government in 2013 was also criticised by Amnesty International in its article from March 2015 based on its realised field monitoring, available at: <https://www.amnesty.org/en/latest/news/2015/03/slovakia-segregation-of-roma-schoolchildren-worsens/>. The Centre for Civil and Human Rights is litigating a case against this type of school segregation, by an *actio popularis*, decided by the District Court Bratislava III, No. 11 C 351/2015, on 6 October 2016.

<sup>235</sup> For details about the policy and its implementation, see Balážová, Z. (2015), *Elokované pracoviská stredných odborných škôl pri marginalizovaných rómskych komunitách: Cesta k začleneniu alebo vylúčeniu rómskej mládeže?* (Elocated Branches Of Secondary Trade Schools Situated Near Marginalised Romani Communities: A path toward inclusion or exclusion of Romani youth?), CVEK – Centrum pre výskum etnicity a kultúry, available at: <http://cvek.sk/publikacie/>.

<sup>236</sup> Balážová, Z. (2015) *Elokované pracoviská stredných odborných škôl pri marginalizovaných rómskych komunitách: Cesta k začleneniu alebo vylúčeniu rómskej mládeže?* (Elocated Branches Of Secondary Trade Schools Situated Near Marginalised Romani Communities: A path toward inclusion or exclusion of Romani youth?), CVEK, pp. 62-64.

<sup>237</sup> European Commission (January 2019), *Civil Society Monitoring Report on Implementation of the National Roma Integration Strategy in Slovakia: Evaluation of the progress in key areas of the strategy*, p. 76.

<sup>238</sup> List of the external branches of vocational schools is available at [https://www.cvtisr.sk/buxus/docs/JH/siet\\_ss.pdf](https://www.cvtisr.sk/buxus/docs/JH/siet_ss.pdf).

<sup>239</sup> State School Inspectorate (2019) *Správa o stave a úrovni personálnych, priestorových a materiálo-technických podmienok elokovaných pracovísk v strednej odbornej škole v školskom roku 2018/2019 v SR* (The report on the situation and standard of personal, space and material-technical conditions of external branches of vocational schools in the school year 2018/2019 in SR). The summary report of the State School Inspection. Available at [https://www.ssiba.sk/admin/fckeditor/editor/userfiles/file/Dokumenty/147\\_TI\\_EP.pdf](https://www.ssiba.sk/admin/fckeditor/editor/userfiles/file/Dokumenty/147_TI_EP.pdf).

<sup>240</sup> The English translation of the decisions of the first and second instance courts is available online at <https://www.poradna-prava.sk/en/documents/?type=decisions>.

Currently, there are several *actio popularis* claims addressing different forms of segregation of Roma children in education pending before domestic courts. Two of those cases address the segregation of Roma children in segregated mainstream schools. The third case challenges the decision of a regional school office that has organised a local school district in a way that concentrates Roma children in one school, instead of supporting their integration in other local schools.

One of the cases was dismissed by the District Court in Bratislava on 6 October 2016.<sup>241</sup> In that case, the Centre for Civil and Human Rights argued that by not adopting effective measures to eliminate the segregation in a primary school in the town Stara Ľubovňa, the municipality and the responsible State authorities, including the Ministry of Education, are violating domestic and international anti-discrimination legislation. Instead of adopting remedial measures to eliminate discrimination, they expanded the capacity of this primary school by adding a new container following the Government project mentioned above. In its decision, the district court reasoned that Roma children are not segregated at the school since they are educated there based on their permanent residence in a given school district and not based on their ethnic origin. According to the court, no evidence had been presented that would prove Roma children are treated less favourably than children in other schools and thus are disadvantaged. The case is now pending before the appeal court.

In March 2019, the District Court in Prešov dismissed another of the *actio popularis* cases. The Centre for Civil and Human Rights (a claimant) argued that some Roma children at the primary school in a village called Terňa faced segregation due to the decisions of the state authorities responsible for setting up the locality's school catchment area as well as due to their inactivity in preventing existing segregation. The authorities arguably did not take into account the limited spatial capacities of the school and set up the local school catchment area in such way that the school was unable to accommodate all Roma children from a nearby village (Malý Slivník) alongside the children from the majority and had to start educating some Roma children in the second afternoon shift and in separate Roma-only classes. The court reasoned that the claimant did not prove that the disputed decisions of the state authorities had violated the principle of equal treatment and had disadvantaged Roma children in comparison to children from the majority. It essentially concluded that the state authorities were not eligible to interfere with the organisation of the education process, which was fully the responsibility of the school. The court disregarded the third party submission of the Slovak Public Defender of Rights that supported the reasoning of the claimant. The case is now pending before the appeal court. The claimant requested that the Court of Appeal refer the case to the Court of Justice of the EU for a preliminary ruling (for more details see section 12.2. of this report).

In addition, there are two cases currently pending before Slovak courts that specifically address the illegal placement of Roma children in the special educational system, which have been initiated directly by the affected individuals based on the Anti-discrimination Act. The Centre for Civil and Human Rights provides representation for three Roma children arguing their illegal enrolment in special classes in the primary school in a village Hermanovce. The case is still pending before the first instance court.

Another case addresses the illegal placement of a Roma child in a special school in a village called Plavecký Štvrtok. On 17 May 2018, the District Court in Malacky dismissed the claim in all parts. It held that the claimant did not prove that he had been discriminated against. The court did not find the school responsible, as it had only followed existing legislation. According to the court, the school could not influence the current domestic legislation and the claimant's assessed abilities. The court did not agree with the claimant that his psychological assessment was biased as it did not take into account the fact that the

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<sup>241</sup> Decision of the District Court Bratislava III in the case brought by the Centre for Civil and Human Rights against the State represented by the Ministry of Education and the city of Stará Ľubovňa from 6 October 2016. No. 11C/351/2015-387.

claimant grew up in Roma family whose first language was Roma with a west Slovakian dialect and that his knowledge of the Slovak language was poor. According to the court it had been proved during the proceedings that the claimant had a proper knowledge of the Slovak language. The case is pending before the appeal court.<sup>242</sup>

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

In Slovakia, national legislation in principle prohibits discrimination in access to and the supply of goods and services as formulated in the Racial Equality Directive, although judicial interpretation is required regarding goods and services provided on the basis of legislation/regulations other than laws (in practice, this would be mainly the case of public services provided by municipalities and self-governing regions). The national legislation in this area does not cover the protection from discrimination in access to goods/services that are provided by natural persons, who are not entrepreneurs.

Sections 5(1) and 5(2)(d) of the Anti-discrimination Act prohibit discrimination on all the grounds contained in the Anti-discrimination Act (see section 2.1 above) in conjunction with special laws in the area of access to and provision of 'goods and services including housing which are provided to the public by legal entities and natural persons [who are] entrepreneurs'. The formulation 'in conjunction with special laws' is very problematic, since it may potentially exclude goods and services provided on the basis of legal acts of lower legal force than laws (e.g. governmental regulations or ordinances of ministries) or generally binding regulations of municipalities or self-governing regions (see section 3.2.7 above for more details). However, such discriminatory legal acts can be challenged in administrative proceedings before the Slovak Trade Inspectorate, as well as before the various prosecution offices under their duty to review the legality of generally binding regulations. In practice, the second option remains theoretical due to the lack of relevant expertise, particularly among prosecutors.

#### **a) Distinction between goods and services available publicly or privately**

In Slovakia, national law distinguishes between goods and services that are available to the public (e.g. in shops, restaurants and banks) and those that are only available privately (e.g. those restricted to members of a private association).

The wording of Sections 5(1) and 5(2)(d) of the Anti-discrimination Act (see the introductory text to this section, above) clearly shows that the application of the prohibition of discrimination will be limited to the sale of goods and provision of services carried out in public and targeted at the public. The provisions of the Anti-discrimination Act do not apply to goods and services offered or provided on a private basis (e.g. providing or offering goods to members of a private association, family etc).

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

In Slovakia, national legislation in principle prohibits discrimination in the area of housing as formulated in the Racial Equality Directive, although judicial interpretation is required regarding housing provided on the basis of legislation/regulations other than laws. This prohibition does not apply to housing provided by natural persons, who are not entrepreneurs. In practice, it may narrow the possibilities of challenging discrimination in specific cases that have been documented in Slovakia, such as Roma people being denied the opportunity to rent a flat or house by a natural person, who is the property owner.<sup>243</sup>

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<sup>242</sup> Decision of the District Court in Malacky, No. 5C/212/2014, 17 May 2018.

<sup>243</sup> The information are based from field monitoring of the Slovak grassroots NGO Centre for Civil and Human Rights provided by programme coordinator Stefan Ivanco on 18 June 2019.



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

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

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

#### a) Trends and patterns regarding housing segregation for Roma

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

The issue of Roma housing segregation has been increasing in scope and severity in recent years and comprises various aspects.

The Office of the Plenipotentiary for Roma Communities in cooperation with the Institute of Work and Family carried out data collection for the Atlas of Roma Communities 2019. The new atlas contains data on 405 024 Roma living in 949 concentrations - urban settlements. The atlas maps the living conditions of marginalised Roma communities in detail. The new atlas is currently being finalised for the 164 indicators monitored, including 35 indicators that are comparators with the previous atlas.<sup>244</sup>

According to the finalized data of Atlas of Roma Communities from 2013, out of the 400 000 Roma living in Slovakia, only 46.5 % live scattered among the majority population. The rest live concentrated inside municipalities (11.5 %), at the edge of municipalities (23.6 %), or in segregated settlements (18.4 %).<sup>245</sup> Altogether there are 231 segregated settlements,<sup>246</sup> with the average distance from the closest municipality being 900 m (and the biggest distance being 7 km). Of the people living in the settlements, 11 % do not have access to drinking water. There are 75 settlements that have only gravel or other country roads that lead to them.<sup>247</sup> The further away a settlement with Roma inhabitants is from a municipality, the poorer the housing conditions of its inhabitants.<sup>248</sup>

The Slovak Constitution does not entrench the right to housing, and the Slovak Republic opted out of the provision on the right to housing in the Revised European Social Charter.

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<sup>244</sup> Slovak Republic (2019) Návrh Trinástej periodickej správy Slovenskej republiky o implementácii Medzinárodného dohovoru o odstránení všetkých foriem rasovej diskriminácie (The Proposal of the Thirteenth periodic report of the Slovak Republic on the implementation of the International Convention on Elimination of Racial Discrimination). September 2019. p 2. The overall unprocessed data of the Atlas of Roma Communities 2019 is available at <https://www.minv.sk/?atlas-romskych-komunit-2019>.

<sup>245</sup> *Atlas rómskych komunit na Slovensku 2013* (Atlas on Roma Communities in Slovakia 2013) (2013), Available at: [http://www.minv.sk/?atlas\\_2013](http://www.minv.sk/?atlas_2013).

<sup>246</sup> The term 'Concentration' is used in the *Atlas on Roma Communities in Slovakia 2013*.

<sup>247</sup> *Prvé výsledky ATLASU rómskych komunit na Slovensku 2013* (The First Results of the Atlas on Roma Communities in Slovakia 2013) (2013). The first results provided selected summarised data from the Atlas. The document is available at [http://www.minv.sk/?atlas\\_2013](http://www.minv.sk/?atlas_2013).

<sup>248</sup> See for example Filadelfiová, J.(2013), *Situačná analýza vybraných aspektov životnej úrovne domácností vylúčených rómskych osídlení* (Situational Analysis of Selected Aspects of the Living Standard in Excluded Roma Settlement Households), Bratislava, UNDP, p. 8.; [http://www.ivo.sk/buxus/docs/publikacie/subory/A\\_Situational\\_Analysis\\_of\\_Selected\\_Aspects\\_Marginalized\\_Roma\\_Settlements.pdf](http://www.ivo.sk/buxus/docs/publikacie/subory/A_Situational_Analysis_of_Selected_Aspects_Marginalized_Roma_Settlements.pdf).

Furthermore, Roma in Slovakia living in segregated settlements face an increased threat of forced eviction. This is due to changes in land-ownership and limited legal protection against forced evictions. In the past many Roma built their houses on state-owned property. However, due to the processes of land privatisation and decentralisation in the last three decades, from which Roma rarely benefitted, these lands are now owned by private persons or municipalities, who may initiate demolition proceedings at any time.<sup>249</sup>

In recent years the Government authorities have made efforts to address the issue of illegal Roma settlements that are situated on private land. In 2016, a national project to provide assistance to municipalities of villages with Roma communities in solving the possibly complex legal issues related to privately owned land on which the Roma communities live, was introduced.<sup>250</sup> As of April 2019, 143 municipalities had joined this project and asked for the assistance.<sup>251</sup> In September 2019, the project finished its first phase of realisation.<sup>252</sup> No preliminary evaluation of the project and the changes achieved has been reported.

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

Another problem is that municipalities and towns often develop their local planning policies in a manner that promotes ethnic segregation. In February 2018, civil society organisations reported deliberate and systemic practices that effectively prevent Roma from being able to move out of segregated, impoverished and often illegally occupied areas.<sup>253</sup> In 2019, the Slovak equality body published a research report mapping the implementation of the right to housing in Slovakia. The report also raises issues concerning the right to housing in relation to Roma living in marginalised communities.<sup>254</sup>

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

In connection with lower-standard social housing and its almost exclusive availability to Roma people only, it is also important to note that the overall funding for this type of housing provided by the Government has been dramatically reduced in the last few years.

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<sup>249</sup> See European Roma Rights Centre (2018), *Written comments for the consideration of the Committee on Economic, Social and Cultural Rights* for its pre-sessional working group. available at: <http://www.errc.org/cms/upload/file/slovakia-cerd-submission-5-november-2017.pdf>.

<sup>250</sup> Additional information about this project is available at <https://www.minv.sk/?oznamenie-2>.

<sup>251</sup> Office of the Plenipotentiary of the Government for Roma Communities (2018) 'Splnomocnenec pre rómske komunity hodnotí rok 2018 ako úspešný' (Plenipotentiary for Roma communities evaluates the year 2018 as successful), press release. Available at <https://www.minv.sk/?tlacove-spravy&sprava=splnomocnenec-pre-romske-komunity-hodnoti-rok-2018-ako-uspesny>.

<sup>252</sup> Office of the Plenipotentiary of the Government for Roma Communities (2019) *Správa o činnosti Splnomocnenca vlády SR pre rómske komunity za rok 2018* (The report on the activity of the Plenipotentiary of the Government for Roma communities for a year 2018). p. 14. Available at <https://www.minv.sk/?romske-komunity-uvod>.

<sup>253</sup> European Commission (2018), *Civil Society Monitoring Report on Implementation of the National Roma Integration Strategy in Slovakia*, February 2018, p. 34.

<sup>254</sup> Riečanský, M., Paľovčíková, G., Ujházyová, M. (2019), *Právo na bývanie: Výskumné sondy v oblasti uplatňovania práva na bývanie na Slovensku* (Right to Housing: Research probes on the implementation of the right to housing in Slovakia). Bratislava: Slovenské národné stredisko pre ľudské práva. The report is available in Slovak at <http://www.snslp.sk/SnslpWeb.html#menu=1419>.

Also, the requirements on the standards for such housing are reducing (e.g. a reduction in the minimum size of the apartments, a lowering of the requirements in relation to equipment and sanitation etc). When considered together with the fact that it is almost exclusively the Roma who are provided with this type of social housing, it is clear that the regulation and practice is, at least, indirectly discriminatory.

In 2019, the Government of the Slovak Republic adopted an updated action plan to implement the Strategy of the Slovak Republic for the Integration of Roma for 2019-2020 including the area of housing, which reiterates the importance of reducing the residential segregation of marginalised Roma communities and supporting their integration through building a system of multi-staged social housing. The action plan includes a goal to set the methodology for such a system and introduce it in practice. The other goals concern the on-going effort to legalise private lands on which the Roma communities are sited, improving infrastructure in marginalised Roma communities or supporting rental housing in villages with marginalised Roma communities. However, the updated plan lacks a goal to explicitly tackle residential segregation.<sup>255</sup>

In 2018, a case alleging discrimination in housing was decided by national courts and the decision became final.<sup>256</sup> The case concerns moving Roma families who previously lived in the centre of the town of Sabinov (Eastern Slovakia) in commercially attractive houses (mainly by virtue of their location) to social housing owned by the municipality in a new location one kilometre from the town boundary. The new area chosen by the municipality was totally isolated from the town and had very poor infrastructure. Construction of the social housing was subsidised by the Ministry of Transport and Construction of the Slovak Republic.

The Prešov Regional Court confirmed the decision of the first instance court from October 2012 and fully agreed with its reasoning as well as respecting a reasoning of the Supreme Court on the merits of the case from April 2017.<sup>257</sup> The regional court concluded that only Roma were moved to social housing in a segregated area of town, so they were treated differently from the other inhabitants and thus faced discriminatory treatment on the ground of their ethnic origin, for which the town is responsible. The regional court further stated that the implementation of anti-discrimination legislation by state authorities and municipalities in practice is not sufficient. In this context, the Ministry of Transport as a state authority had the duty to protect human rights not only in theory, but also in practice. According to the court, the Ministry of Transport was obliged to examine circumstances under which the subsidy was supposed to be used in a broader context and to consider whether use of the subsidy eventually led to the segregation of the Roma minority. In line with the decision of the Supreme Court, the regional court pointed out the positive obligation of the state authorities to prevent discrimination. As for the amount of non-pecuniary damage, the regional court concluded that amount of EUR 1 000 awarded to each of the eight claimants was adequate for the violations that occurred.

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<sup>255</sup> Slovak Republic (2019) 'Aktualizované akčné plány Stratégie Slovenskej republiky pre integráciu Rómov do roku 2020 na roky 2019 - 2020 v oblastiach vzdelávania, zamestnania, zdravia, bývania a finančnej inklúzie' (The updated action plans of the Strategy of the Slovak Republic for the Integration of Roma up to 2020 for the period of 2019–2020 in the areas of education, employment, health, housing and financial inclusion) Adopted on 17 January 2019 by the the Slovak Government. Available at <https://rokovania.gov.sk/RVL/Material/23492/2>.

<sup>256</sup> Decision of the Regional Court of Slovak Republic, No. 13 Co 38/2017, 20 March 2018.

<sup>257</sup> Decision of the Supreme Court of the Slovak Republic, No. 5 Cdo 18/2015 – 202, 19 April 2017.

## **4 EXCEPTIONS**

### **4.1 Genuine and determining occupational requirements (Article 4)**

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

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

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

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

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

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

Section 8(2) of the Anti-discrimination Act stipulates that

'in the case of registered churches, religious societies and other legal entities whose activities are based on religion or belief, differences of treatment based on religion or belief shall not constitute discrimination where they are related to employment by or to carrying out activities for such organisations and where, by reason of the nature of occupational activities or the context in which they are carried out, a person's religion or belief constitute a fundamental legitimate<sup>258</sup> and justified occupational requirement.'

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

There is no case law on the issue.

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

In Slovakia there are no specific provisions that would explicitly deal with conflicts between rights of organisations with an ethos based on religion or belief and other rights to non-discrimination in the context of employment (e.g. conflicts in respect of sexual orientation or another ground in organisations with an ethos based on religion). However, the absence of any provisions enabling religious organisations to exercise exceptions that would impact

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<sup>258</sup> A comma is missing between the words 'fundamental' and 'legitimate' in the act.

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

As regards organisations with a special ethos connected with their religion or belief, the relevant legislation states that there will be no right to interfere with such an organisation's internal matters.<sup>259</sup>

However, internal orders of religious organisations should not violate generally binding legal acts (including the Constitution and the Anti-discrimination Act). There is one known case relating to the conflict between the rights (and rules) of churches, religious or similar organisations and the rights of individuals who enter into real or potential relationships with such organisations. The case, decided by the Constitutional Court in 2001,<sup>260</sup> concerned a priest of the Roman Catholic Church, who had made a claim related to his employment rights (right to remuneration)<sup>261</sup> before the ordinary courts against his church, which was also his employer. The ordinary courts (district and regional courts in Nitra) dismissed the case, stating that they could not deal with it and apply Slovak labour legislation, due to the fact that ecclesiastical law has priority in this case.

The Constitutional Court refused this argumentation, confirming that all citizens have the right to access courts that make rulings pursuant to the laws of Slovakia (and not to, for example, religious rules),<sup>262</sup> and holding that the district and regional courts in Nitra violated the applicant's right to seek the protection of his rights before an independent and impartial court without discrimination (in accordance with Article 46(1) of the Constitution).

– Religious institutions affecting employment in state-funded entities

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

In addition to a teaching qualification, teachers of religion in state schools must obtain authorisation from the church or a religious society, issued by the relevant church/religious authorities. This follows the Agreement between the Slovak Republic and the Holy See on Catholic Upbringing and Education.<sup>263</sup> Subsequently, an agreement between the Slovak Republic and Registered Churches and Religious Societies on Religious Upbringing and Education was signed with identical provisions regarding religious education in state schools.<sup>264</sup> Due to the strict rules for the registration of churches and religious societies in Slovakia (see section 2.1.1 above), only Christian and Jewish churches and organisations are currently registered. Students at state secondary schools have the right to choose between religious education and ethics. The authorisation of teachers of religious education is exercised mostly by the two biggest churches – the Roman Catholic Church and the Evangelical Church.

There is no case law on the issue.

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<sup>259</sup> Act on Freedom of Religious Belief and Status of Churches or Religious Societies, 308/1991, Section 5(2) stipulates that 'Churches and religious societies administer their own affairs and, in particular, appoint their bodies, their priests and establish orders and other institutions independently of state authorities'.

<sup>260</sup> Decision of the Constitutional Court of the Slovak Republic, No. III. ÚS 64/00-65, 31 January 2001.

<sup>261</sup> However, the decision of the Constitutional Court does not make it clear whether the original labour dispute was discrimination-related.

<sup>262</sup> The Constitutional Court stated that '...[i]f a spiritual activity is carried out in the framework of a legal relationship, this kind of employment relationship, similar or civil relationship is ruled by the respective laws of the Slovak Republic and the internal rules of churches and religious societies can be applied only within its framework'.

<sup>263</sup> Published in the Collection of Laws under No. 394/2004.

<sup>264</sup> Published in the Collection of Laws under No. 395/2004.

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

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

Section 4(1)(b) of the Anti-discrimination Act stipulates that the provisions of the Anti-discrimination Act do not apply to 'differential treatment based on disability or age that follows from provisions of special legal acts regulating the service of armed forces, armed security services, armed corps, the National Security Office, the Slovak Information Service and the Fire and Rescue Service.'

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

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

'differential treatment based on disability or age that follows from provisions of special legal acts regulating the training for the defence of the State by soldiers of voluntary military training, the training for the exercise of extraordinary service in the armed forces of the Slovak Republic, and the exercise of tasks of armed forces by reservists who are categorised as active reservists.'

### **4.4 Nationality discrimination (Article 3(2))**

a) Discrimination on the ground of nationality

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

Differential treatment based on a person's nationality (meaning 'citizenship' under Slovak legislation) is permitted under the Anti-discrimination Act, insofar as it results from the legal requirements for the entry and residence of foreigners in Slovakia, including the treatment of these foreigners, which is provided for under separate legal regulations.<sup>265</sup> This is not applicable to citizens of the European Union, citizens of any state that is party to the European Economic Area Agreement, Swiss citizens and stateless persons and their family members.<sup>266</sup>

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

In Slovakia, nationality (as in citizenship) is not explicitly mentioned as a protected ground in national anti-discrimination law, but is prohibited as mentioned above under the open-ended list of prohibited grounds of discrimination contained in the Anti-discrimination Act. Judicial interpretation is required in this regard.

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<sup>265</sup> Act on the Residence of Foreigners, 404/2011 and Asylum Act 480/2002. Both of these acts regulate legal status, conditions for granting permission for business activities, employment, study and stay of foreigners and asylum seekers.

<sup>266</sup> Anti-discrimination Act, 365/2004, Section 4(1)(a).

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

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

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

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

#### **4.5 Health and safety (Article 7(2) Directive 2000/78)**

In Slovakia, there are exceptions in relation to disability and health and safety as allowed under Article 7(2) of the Employment Equality Directive.

Under Section 8(5) of the Anti-discrimination Act, objectively justified differential treatment grounded in specific health requirements in relation to access to a job or to performing certain activities in a particular job, do not constitute discrimination on the ground of disability, provided that this is required by the character of the job or job activity.

The Labour Code provides some extra protection to workers with disabilities, for example there are special conditions for employers when giving the notice to an employee with a health disability and in setting working times.<sup>267</sup>

There is no case law yet on the issue of health and safety exceptions related to disability.

There are no exceptions for grounds other than disability with regard to health and safety.

#### **4.6 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)**

##### **4.6.1 Direct discrimination**

In Slovakia, national law provides for specific exceptions for direct discrimination on age.

The exception for age is provided both within the framework of genuine and determining occupational requirements (Section 8(1) of the Anti-discrimination Act – see section 4.1 above) and under Section 8(3) of the Anti-discrimination Act, which allows for differential treatment on the ground of age, provided that objective justification exists and provided that other conditions are met (see below for further details).<sup>268</sup>

a) Justification of direct discrimination on the ground of age

In Slovakia, national law provides for justification for direct discrimination on the ground of age. The test as stipulated by the legislation (Section 8(3) of the Anti-discrimination Act – see below for more details) almost follows the wording of Article 6 of Directive 2000/78 and hence is compliant with the test in Article 6, Directive 2000/78 (and probably also with the CJEU case law – although there is still very limited case law that would interpret the Slovak legislative provisions).

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<sup>267</sup> Labour Code, 311/2001, Sections 66, 68 (3), 87(3), 158 and 159.

<sup>268</sup> See, for example, Decision of District Court Banská Bystrica, No. 8C/119/2006 – 107, 20 November 2007 in conjunction with decision of Regional Court Banská Bystrica, No. 12 Co/6/08, 27 March 2008.

b) Permitted differences of treatment based on age

In Slovakia, national law permits differences of treatment based on age for any activities within the material scope of Directive 2000/78.

The exception for age is provided both within the framework of genuine and determining occupational requirements (Section 8(1) of the Anti-discrimination Act – see section 4.1 above) and under Section 8(3) of the Anti-discrimination Act. Section 8(3) of the Anti-discrimination Act reads as follows:

‘differential treatment on the ground of age shall not be deemed to constitute discrimination if it is objectively justified by a legitimate aim and if it is necessary and appropriate for the achievement of that aim and if this is provided for by a specific legal regulation. Differences of treatment on grounds of age shall not be deemed to constitute discrimination if they consist of:

- fixing a minimum or maximum age as a recruitment criterion;
- setting special conditions for access to employment or vocational training, and special conditions for employment, including remuneration and dismissal, for persons of a certain age bracket or persons with caring responsibilities, where such special conditions are intended to promote work integration or protection of such persons;
- fixing minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment.’

From the structure and content of the above-quoted provision, it is not quite clear whether each of the exceptions specified in the three points must, in a particular case, meet the general test of justification provided by the introductory sentence to Section 8(3) of the Anti-discrimination Act, or whether the introductory sentence simply provides a general context for the exceptions specified in the three points (and perhaps further in other pieces of legislation).

The additional requirement of the need for a specific legal regulation set by Section 8(3) of the Anti-discrimination Act means that discriminatory measures not provided for by law (e.g. those made by private employers) are not justifiable in any way.

Depending on the character of the relevant legislation, and also depending on the (limited) judicial practice that has developed on the issue over the course of time (the courts have ruled on only one case on this matter, see below), it is more likely that the second approach (where the introductory sentence simply provides a general context for the exceptions specified in the three points) will apply under the current wording of Section 8(3) of the Anti-discrimination Act. For example, according to Section 5(1)(a) of Act 385/2000 on Judges and Lay Judges, only a citizen who has reached at least 30 years of age can be appointed as a judge. The provision is of a cogent nature and as such seems to offer no room for justification in the light of the introductory sentence of Section 8(3) of the Anti-discrimination Act (which, per se, does not necessarily mean that the transposition of the 2000/78 Directive is incorrect in this point).

An example confirming the interpretation outlined above is a judgment of the District Court Banská Bystrica of 20 November 2007<sup>269</sup> (upheld by a judgment of the Regional Court Banská Bystrica of 27 March 2008),<sup>270</sup> where the claimant sued a potential employer for discrimination on the ground of age. The claimant was a 38-year-old unemployed man who

<sup>269</sup> District Court Banská Bystrica, No. 8C/119/2006 – 107, 20 November 2007.

<sup>270</sup> Regional Court Banská Bystrica, No. 12 Co/6/08, 27 March 2008. The court probably made a mistake in the official judgment as it states the date of issue of the judgment of the regional court as 27 March 2007. However, this would not have been possible as the district court issued its decision on 20 November 2007 and regional court decisions always follow district court ones.



saw a violation of the prohibition of discrimination in the publication of a job advertisement by the defendant in which the defendant sought to fill a vacancy for a technician. The condition for the technician job was that the applicant must be a 'disadvantaged job seeker under the age of 25'. This was in accordance with the defendant's contract with an office of labour, social affairs and family (concluded under the Act on Employment Services) under which the defendant had committed to create four jobs for 'disadvantaged applicants' (i.e. for applicants under the age of 25 who have completed their training for an occupation through a daily form of study less than two years ago and have not yet acquired their first regularly paid job) and the labour office committed to grant non-returnable financial support to create these jobs. The claimant alleged that the age condition contained in the job advertisement was the only reason that had deterred him from applying for the job.

The court arrived at the decision that the defendant had not breached the Anti-discrimination Act. For the court, the fact that the defendant acted in accordance with a contract with a labour office (and hence also legislation providing for exceptions based on age) was in itself sufficient reason to state that 'the defendant has therefore pursued a legitimate aim and acted in accordance with special regulations' (i.e. the court did not question the nature of the legislatively provided exception as such).

It is also worth noting that, for example, Section 77(6) of Act 131/2002 on Higher Education stipulates that employment of university teachers terminates at the end of the academic year in which they reach 70 years of age, although extension of the employment relationship is possible for one year (even repeatedly, but with no details on the criteria for doing so). It is very likely that the provision is in violation of CJEU case law on exceptions relating to age (see sections 4.6.4(c) and (f) below for more details). In addition, the provision also has the potential to be indirectly discriminatory on the ground of sex/gender, as the apparently neutral provision may have a greater impact on women, mainly due to their generally lower positions in academic hierarchies.

There are other similar cases in the Slovak legal system where an employment relationship must or may be terminated on reaching the age of 65 (see section 4.6.3). Social partners, however, are not authorised by law to agree the age at which an employment contract must or can be terminated (so the decision of the CJEU in *Prigge*<sup>271</sup> is not applicable to Slovakia).

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

In Slovakia, national law allows occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by Article 6(2).

With regard to occupational social security schemes, differences of treatment in such schemes on grounds of age will not be considered as discrimination where they consist of fixing age limits for entitlement to old age pensions and disability pensions, including the fixing of different age limits in such schemes for employees or groups of employees, and the use of different calculation methods for these pensions based on age criteria, provided that this does not result in discrimination on the ground of sex.<sup>272</sup> Also, under Section 8(6) of the Anti-discrimination Act, differences of treatment on grounds of age or disability in the provision of insurance services will not be deemed to constitute discrimination where such treatment results from different levels of risk, verifiable by statistical or similar data, and where the terms of insurance services adequately reflect such risk. Different treatment on the ground of age is permitted in areas regulating the service of members of the armed forces, armed security services, armed corps, the National Security Office, the Slovak Information Service, the Fire and Rescue Service, voluntary military training, training for

<sup>271</sup> CJEU, C-447/09 *Reinhard Prigge and Others v Deutsche Lufthansa AG*, judgment of 13 September 2011.

<sup>272</sup> Anti-discrimination Act, 365/2004, Section 8(4).

the exercise of extraordinary service in the armed forces, and the exercise of tasks of armed forces by reservists who are categorised as active reservists.<sup>273</sup>

#### **4.6.2 Special conditions for young people and older workers**

In Slovakia, there are special conditions set by law for older and younger workers in order to promote their vocational integration.

According to Sections 171-173 of the Labour Code, an employer is obliged to create favourable conditions for the overall development of the physical and mental capabilities of young employees (the Labour Code uses the term 'juvenile employees'), including by adapting their working conditions. A young employee is, according to Section 40(3) of the Labour Code, defined as an employee under the age of 18. Any notice given to a young employee, or termination of employment with immediate effect on the employer's initiative, must be brought to the attention of the young employee's legal guardian. Employers may only assign young employees to jobs that are appropriate to their physical and mental development and do not jeopardise their morality. In addition, they must provide them with enhanced care at work.<sup>274</sup>

Sections 174-175 of the Labour Code stipulate the prohibition of night work and standby duty for young employees. Young employees over the age of 16 may exceptionally perform night work not exceeding one hour if it is necessary for their vocational training. The employer must not apply a system of wages and benefits that could endanger the health and safety of young employees, due to increased work performance. A young employee must not be assigned to work that is inadequate, dangerous or harmful to their health, due to their age-related, specific anatomical, physiological and psychological features. Lists of the kinds of work and workplaces forbidden for young employees are set out by a government regulation.<sup>275</sup>

#### **4.6.3 Minimum and maximum age requirements**

In Slovakia, there are exceptions permitting minimum and maximum age requirements in relation to access to employment and training.

General rules for the justification of direct discrimination in employment on the ground of minimum or maximum age requirements are set in Section 8(3)(a) of the Anti-discrimination Act (see section 4.6.1 above).

There are several laws stipulating minimum or maximum ages in employment relationships. None of the laws have been subject to specific public discussion or judicial review as to whether they are compatible with Directive 2000/78.

The Constitution of the Slovak Republic regulates the requirements applicable to the holders of high public office, including their age. This applies to the President of the State, for whom a minimum age of 40 has been set, to judges, judges of the Constitutional Court, the ombudsperson and members of Parliament (the National Council of the Slovak Republic).<sup>276</sup>

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<sup>273</sup> Anti-discrimination Act, 365/2004, Sections 4(1)(b) and 4(1)(c).

<sup>274</sup> Labour Code, 311/2001, Sections 172 and 173.

<sup>275</sup> Government Regulation No. 286/2004 regulating the list of work and workplaces forbidden for juvenile employees and setting certain duties of employers regarding the employment of juvenile employees (*nariadenie vlády č. 286/2004 Z.z., ktorým sa ustanovuje zoznam prác a pracovísk, ktoré sú zakázané mladistvým zamestnancom, a ktorým sa ustanovujú niektoré povinnosti zamestnávateľom pri zamestnávaní mladistvých zamestnancov*).

<sup>276</sup> Constitution of the Slovak Republic, Articles 74, 103, 134, 145 and 151a.

Other laws regulate, for example, the minimum age for: a work assistant for a person with a disability (18 years);<sup>277</sup> a prosecutor (25 years);<sup>278</sup> the general prosecutor (40 years);<sup>279</sup> and judges (30 years – see also section 4.6.1 above).<sup>280</sup> The President may, upon a recommendation of the Judicial Council, withdraw a judge who has reached the age of 65.<sup>281</sup> Seventy is the maximum age limit for a university teacher to be in an employment relationship with a university (although extensions are allowed – see section 4.6.1 above). The Labour Code stipulates a minimum age of 15 for a natural person to be subject to the rights and duties of an employee. However, the employer must not agree upon a starting day for work before the applicant has completed compulsory school education.<sup>282</sup> Civil servants must be at least 18 years old. The law also stipulates a minimum age for obtaining a permit to run a business (18 years).<sup>283</sup>

Although the law does not say anything about age requirements for training connected to some of the professions described above, it follows logically that if training is designed for people in these professions only, then de facto age limits apply with regard to training as well.

In accordance with the Employment Services Act, the Government may provide a job seeker under the age of 26 who has completed secondary school or university studies with a 'practical training allowance', aimed at widening the opportunities for this person to find a job within the labour market.<sup>284</sup>

#### 4.6.4 Retirement

##### a) State pension age

In Slovakia, there is a state pension age, at which individuals are entitled (but not obliged) to collect their state pensions. The pensionable age in Slovakia is capped at the age of 64, which means that all individuals are entitled to start collecting their state pensions at the age of 64 at the latest. Women are able to collect their state pension earlier if they have raised a child.

If an individual wishes to work beyond the state pension age, she or he can collect a pension and still work (however, this does not fully apply to early pensions). Therefore, although a pension can be deferred in principle, if an individual wishes to work longer (since no-one can be compelled to collect their pension), pensions are not deferred in practice because receiving income from a wage or salary and a pension simultaneously is allowed.

The age of entitlement to a state pension is fixed by law. The constitutional amendment was passed by Parliament on 28 March 2019 and entered in force on 1 July 2019.<sup>285</sup> The minimum pensionable age in Slovakia is capped at the age of 64. Women are able to collect their state pension earlier if they have raised a child. Women who have raised one child, are able to collect their state pension at the age of 63.5, while those with two children are eligible for the pension at the age of 63 and those with three or more children at the age of 62.5. The Slovak National Centre for Human Rights (the equality body) has assessed the condition caused by the intersection of two legal provisions, which means that women

<sup>277</sup> Employment Services Act, 5/2004, Section 59(3).

<sup>278</sup> Act No. 154/2001 on Prosecutors and Prosecutor Candidates, as amended (*zákon č. 154/2001 Z. z. o prokurátoroch a právnych čakateloch prokuratúry v znení neskorších predpisov*), Section 6.

<sup>279</sup> Act No. 153/2001 on Prosecution, as amended (*zákon č. 153/2001 Z. z. o prokuratúre v znení neskorších predpisov*), Section 7(3).

<sup>280</sup> Act No. 385/2000 on Judges and Lay Judges and on amending and supplementing certain acts, as amended (*zákon č. 385/2000 Z. z. o sudcoch a prísediacich a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*), Section 11.

<sup>281</sup> Constitution of the Slovak Republic, Article 147(2)(b).

<sup>282</sup> Labour Code, 311/2001, Section 11.

<sup>283</sup> Small Business Act, 455/1991, Section 6.

<sup>284</sup> Employment Services Act, 5/2004, Section 51.

<sup>285</sup> Constitutional Act No. 9/2019 on amending Constitution of the Slovak Republic, Article 39(2)(3).

born between 1958 and 1959 find themselves in a kind of 'intermediate' position, in which the upbringing of two children is not taken into account in the determination of their pension age. According to the equality body, this is a legal status that is contrary to the anti-discrimination normative guaranteed by the Constitution as one of the basic prerequisites for the equal exercise of human rights.<sup>286</sup> The case is currently pending before the Constitutional Court where a group of MPs and a group of affected women submitted their constitutional complaint.<sup>287</sup>

Pensionable age and collection of a pension does not prevent someone from working if they wish to continue their employment or start a new one. Thus, a person entitled to a state pension can work and collect their old age pension from the social security scheme and a wage from their employer.

In special circumstances an individual can start to collect their pension early.<sup>288</sup> The simultaneous collection of an early pension and a wage or salary (including payments for services carried out by people who are self-employed) that is subject to compulsory pension insurance, is not possible, with some minor exceptions.<sup>289</sup>

There is no case law on any of these issues yet.

#### b) Occupational pension schemes

In Slovakia, there is a standard age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements. In general, that is the age when they become entitled to receive old age or early pension or reach 64 years.

An individual can collect an occupational ('supplementary') pension and still work, unless she or he collects an early occupational pension, which excludes the option to work. Therefore, although a payment from an occupational pension scheme can be deferred in principle, if an individual wishes to work longer (since no-one can be compelled to collect their occupational pension), these payments are not deferred in practice because gaining income from a wage or salary and an occupational pension scheme simultaneously is allowed.

Occupational pension schemes and their corresponding entitlements do not represent the main and compulsory source of pensionable income (this role is fulfilled by the state social security scheme) but are a supplementary source of income based on a voluntary agreement between employers and employees. For this reason, an individual can collect a pension and still work.

The functioning of the occupational social security schemes in Slovakia is regulated by Act 650/2004 on Supplementary Pension Saving.<sup>290</sup>

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<sup>286</sup> Slovak National Centre for Human Rights (2019), 'Expert opinion', available at [http://www.snslp.sk/CCMS/files/Odborn%C3%A9\\_stanovisko\\_-\\_K\\_diskrimin%C3%A1cii\\_%C5%BEien\\_naroden%C3%BDch\\_v\\_rokoch\\_1958\\_a\\_1959.pdf](http://www.snslp.sk/CCMS/files/Odborn%C3%A9_stanovisko_-_K_diskrimin%C3%A1cii_%C5%BEien_naroden%C3%BDch_v_rokoch_1958_a_1959.pdf).

<sup>287</sup> *Zeny v Meste* (2020) 'Nepravodlivý výpočet dôchodku poškodení viac ako 100 tisíc žien. Tie sa búria' (Unfair pension calculation damages more than 100 thousand women. They are rioting) 4 February 2020, available at <https://www.zenyvmeste.sk/odchod-do-dochodku-zeny-rocnik-1958-1959-1960>.

<sup>288</sup> Social Insurance Act, 461/2003, Section 67. The general conditions are that an individual was insured for at least 15 years, that she or he is supposed to reach the regular statutory pensionable age in no more than two years, and that the sum of the early pension she or he would acquire is no less than 1.2 times the 'living minimum' per one adult person as stipulated by a special law.

<sup>289</sup> See Social Insurance Act, 461/2003, Section 67(4), in conjunction with Section 4(1)(d).

<sup>290</sup> Act No. 650/2004 on Supplementary Pension Saving and on amending and supplementing certain laws, as amended (*zákon č. 650/2004 Z. z. o doplnkovom dôchodkovom sporení a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*), see Section 2(2).

Under Section 16(1) of the Act on Supplementary Pension Saving, a participant in this supplementary pension saving scheme who asks to receive payments from a supplementary pension can receive a supplementary pension in the event that they become entitled to receive old age pension (see section 4.6.4(a) above), in the event that they become entitled to receive an early pension according to Section 67 of the Social Insurance Act (see section 4.6.4(a) above), or when they reach 64 years of age. An individual who collects an early pension, and hence is entitled to a supplementary pension, cannot work and at the same time collect a supplementary pension (apart from some minor exceptions), because supplementary pension entitlement is conditioned upon early pension entitlement, and an early pension entitlement is conditioned upon the person concerned not working.

#### c) State imposed mandatory retirement ages

In Slovakia, there is no state-imposed mandatory retirement age. However, with respect to some professions in the field of public service, some de facto exceptions apply.

A de facto state-imposed mandatory age for retirement is stipulated by Section 77(6) of Act 131/2002 on Higher Education, which specifies that employment of university teachers terminates at the end of the academic year in which they reach the age of 70. Although this provision allows the employment relationship of university teachers who are over 70 to be extended for one year (even repeatedly, but with no details on the criteria for doing so), a university teacher whose contract is not extended has practically no option other than to retire (see section 4.6.3 above for more details).

A state-imposed mandatory retirement age can, in certain circumstances, also apply to judges. Although there is no mandatory retirement age for judges, the President can, upon a proposal from the Judicial Council, remove a judge from office if they have reached the age of 65. The Judicial Council uses this power in practice. For example, in 2019, the President removed 12 judges from their office on the grounds that they had reached the age of 65.<sup>291</sup> There are no criteria in the Constitution or in law for the President to follow when deciding whether to remove from office a judge who has reached the age of 65.<sup>292</sup> Furthermore, according to the decision of the Constitutional Court, it is at the discretion of the President of the Republic to decide whether to remove a judge once he or she reaches 65.<sup>293</sup>

A similar situation emerges with prosecutors. The Prosecutor General can, in accordance with Section 15(3)(b) of Act 154/2001 on Prosecutors and Legal Trainees of the Prosecutor's Office, remove a prosecutor from office if they have reached the age of 65. The law does not stipulate any further conditions for the Prosecutor General to decide whether or not to remove the prosecutor concerned from office.<sup>294</sup>

There are otherwise no state-imposed mandatory retirement ages.

There is no case law on the issue.

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<sup>291</sup> See denník SME (2019) 'Kiska odvolal kvôli veku 12 sudcov' (SME newspaper article: Kiska (president) removed 12 judges due to their age), 23 May 2019, available at <https://domov.sme.sk/c/22127959/kiska-odvolal-kvoli-veku-dvanast-sudcov.html>.

<sup>292</sup> See: Constitution of the Slovak Republic, Article 147(2)(b) and Slovakia, Act on Judges and Lay-Judges, 385/2000, Section 18(2)(b) and Section 18(3).

<sup>293</sup> Decision of the Slovak Constitutional Court, n. II ÚS 125/2017 from 14 February 2017.

<sup>294</sup> See Act on Prosecutors And Prosecutor Candidates, 154/2001, Sections 14-17 for more detailed information.

d) Retirement ages imposed by employers

In Slovakia, national law does not permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract, collective bargaining or unilaterally.

e) Employment rights applicable to all workers irrespective of age

The law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment after attaining pensionable age or another age.

An employer may not therefore terminate a contract after an employee attains pensionable age on the ground of age alone. This means that anyone can continue in employment so long as they enjoy sufficient capacity (except for the age limitations mentioned above and in section 4.6.3, the limitations connected to early pensions – see section 4.6.4(a) and, of course, except for cases such as incompetence or misconduct, which are generally legally accepted grounds for job termination by an employer). Thus, the state pensionable ('retirement') age stipulated by Slovak legislation simply refers to pension entitlement that a worker can collect while still working.

The Anti-discrimination Act explicitly states that objectively justified differences of treatment on the ground of sex where they consist of fixing different retirement ages for men and women are not considered to be discriminatory.<sup>295</sup>

f) Compliance of national law with CJEU case law

In Slovakia, national legislation listed in section 4.6.4(c) above, which provides de facto mandatory retirement for some professions is not in line with the CJEU case law on age regarding mandatory retirement.

In the case of all the occupations listed in section 4.6.4(c) (university teachers, judges, prosecutors), the law might be following a legitimate aim (quality of performance of public service, generational balance etc.). However, it does not require that the person affected by the compulsory dismissal be entitled to an old-age pension, which is in conflict with CJEU case law on age regarding compulsory retirement (e.g. *Palacios de la Villa*).<sup>296</sup> In addition, the conditions for non-renewal of a labour contract (in the case of university teachers) or for removing a judge or prosecutor from office, are arbitrary and non-transparent, which certainly does not meet the requirement for reasonableness of the measures in question and the condition for proportionality of the means used.

#### **4.6.5 Redundancy**

a) Age and seniority taken into account for redundancy selection

In Slovakia, national law does not permit age or seniority to be taken into account in selecting workers for redundancy.

b) Age taken into account for redundancy compensation

In Slovakia, national law provides compensation for redundancy. Such compensation is not directly affected by the age of the worker.

In principle, the redundancy payment does not depend on the age of the employee concerned. However, as the calculations of the redundancy payment depend on the length

<sup>295</sup> Anti-discrimination Act, 365/2004, Section 8(7)(a).

<sup>296</sup> CJEU, C-411/05 *Félix Palacios de la Villa v. Cortefiel Servicios SA*, judgment of 16 October 2007.

of employment with a particular employer, the age of the worker can indirectly influence the sum of the redundancy payment (the longer the employment relationship, the higher the redundancy payment).<sup>297</sup>

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

In Slovakia, national law does not include exceptions that seek to rely on Article 2(5) of the Employment Equality Directive.

#### **4.8 Any other exceptions**

In Slovakia, other exceptions to the prohibition of discrimination provided in national law are the following: according to Section 8(4) of the Anti-discrimination Act:

'differential treatment in occupational pension systems based on age shall not be deemed to constitute discrimination if it consists in the fixing of different age limits for entitlement to old age pension and disability pension in such systems, if it consists in the fixing of different age limits in such schemes for [different]<sup>298</sup> employees or groups of employees, and if it consists in using different ways of calculation of these pensions that are based on the criterion of age, provided that these calculations are not simultaneously discriminatory on the ground of sex.'

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<sup>297</sup> Labour Code, 311/2001, Section 76.

<sup>298</sup> The provision of Section 8(4) of the Anti-discrimination Act is very unclear as to what categories of 'employees' and 'groups of employees' it has in mind when stipulating this exception.

## **5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)**

### **a) Scope for positive action measures**

In Slovakia, positive action is permitted in national law in respect of racial or ethnic origin, disability and age. Positive action in respect of religion or belief and sexual orientation is not permitted in national law.

The ability to adopt positive action measures (known as 'temporary equalising measures') is provided for by the Anti-Discrimination Act.

Section 8a of the Anti-discrimination Act<sup>299</sup> stipulates that the

'adoption of temporary equalising measures by public administration bodies or other legal entities that are aimed at removing disadvantages following from the ground of racial or ethnic origin, affiliation with a national minority or an ethnic group, gender or sex, age or disability, the aim of which is to guarantee equality of opportunities in practice, is not deemed to be discrimination.'<sup>300</sup>

The Anti-discrimination Act lists the possible temporary equalising measures in a non-exhaustive list, including measures:

- a) 'aimed at removing social or economic disadvantage that disproportionately affects representatives of disadvantaged groups;
- b) consisting of supporting the interests of representatives of the disadvantaged groups in employment, education, culture, healthcare and services;
- c) aimed at generating equality in access to employment, education, healthcare and housing, mainly through targeted training programmes for representatives of the disadvantaged groups or through the dissemination of information about these programmes or through opportunities to apply for jobs or places in the education system.'<sup>301</sup>

The temporary equalising measures can only be adopted if there is 'provable inequality', if their aim is reducing or removing this inequality and if they are appropriate and necessary to achieve the set aim.<sup>302</sup> The temporary equalising measures can only be adopted in the fields falling under the material scope of the Anti-discrimination Act<sup>303</sup> (employment and occupation, social security and social advantages, healthcare, education and access to and provision of goods and services including housing).<sup>304</sup> They can only be in force while the inequality that has led to their adoption exists. Otherwise the bodies that have adopted such measures are obliged to end them.<sup>305</sup>

The ability to adopt positive action measures is further provided for in specific legal provisions in the areas of employment<sup>306</sup> and education.<sup>307</sup>

Bodies that adopt the measures are obliged to monitor and evaluate them continuously and to publish information about them with a view to reappraising their further duration, and must provide the relevant information to the Slovak National Centre for Human Rights

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<sup>299</sup> This provision gained its current shape after an amendment of the Anti-discrimination Act by Act No. 32/2013 of 5 February 2013, effective from 1 April 2013.

<sup>300</sup> Anti-discrimination Act, 365/2004, Section 8a(1).

<sup>301</sup> Anti-discrimination Act, 365/2004, Section 8a(1).

<sup>302</sup> Anti-discrimination Act, 365/2004, Section 8a(2).

<sup>303</sup> Anti-discrimination Act, 365/2004, Section 8a(3).

<sup>304</sup> Anti-discrimination Act, 365/2004, Sections 3(1), 6 and 5.

<sup>305</sup> Anti-discrimination Act, 365/2004, Section 8a(3).

<sup>306</sup> Labour Code No. 311/2001, Section 66, Act No. 5/2004 on Employment Services, Sections 63–65.

<sup>307</sup> Act No. 245/2008 on Education (Schools Act), Sections 19(4) and 60(4).



(the equality body).<sup>308</sup> In 2019, the centre monitored the implementation of two temporary equalising measures, but the public authorities that adopted these measures have failed to provide the centre with information that would enable it to evaluate their implementation.<sup>309</sup> The first of these measures was implemented by the Office of the Plenipotentiary of the Slovak Government for Roma Communities and concerned preferential employment of Roma for the position of teachers' assistants in kindergartens. The second was implemented by a municipality of the village of Botany that adopted measures to support equal access to housing and employment of the Roma minority living there. Even though such projects or measures supporting the equality of Roma are widespread, the village could arguably be the only one that defined its efforts as a temporary equalising measure and actively informed the centre.<sup>310</sup>

According to the most recent research by the Slovak National Centre for Human Rights from 2016 concerning the adoption of temporary equalising measures, 8.93 % of the bodies that are entitled to adopt such measures that were questioned (the sample was 1 198 bodies), informed the centre that they were adopting or have adopted temporary equalising measures in the past. Out of those questioned, as many as 55.18 % reported that they were not aware of the term 'temporary equalising measures' at all.<sup>311</sup>

Positive action measures were subject to Constitutional Court review, upon the adoption of the Anti-discrimination Act in 2004.

In 2005, the Constitutional Court decided that the former Section 8(8) of the Anti-discrimination Act was not in compliance with the Constitution.<sup>312</sup>

The Constitutional Court did not reject the application of the specific equalising measures (positive action) in principle. However, it stated that taking such action must have a constitutional basis, which is not the case when speaking about racial and ethnic origin. It seems from the current wording of Section 8a of the Anti-discrimination Act, which provides for the adoption of temporary equalising measures, that the Constitutional Court decision was simply 'overruled' by legislators with regard to racial or ethnic origin, affiliation with a national minority or an ethnic group, and age being the eligible grounds for positive action, and in principle also with all other grounds contained in the provision. However, no-one contests the current wording of Section 8a of the Anti-discrimination Act and the Constitutional Court decision used to be a subject of constant criticism for its inconsistency and illegitimacy.

In 2013, the Centre for the Research of Ethnicity and Culture (an NGO based in Slovakia) in cooperation with the Ministry of Justice initiated the formation of a working group composed of various representatives of governmental bodies, the Slovak National Centre for Human Rights and NGOs. The work of this group resulted in written guidelines for the implementation of temporary equalising measures with regard to ethnicity, nationality (národnosť), and sex or gender.<sup>313</sup>

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<sup>308</sup> Anti-discrimination Act, 365/2004, Section 8a(4).

<sup>309</sup> Response of the centre of 21 January 2020 to a request for information of 15 January 2020 (on file with the author).

<sup>310</sup> Additional information about the both these temporary equalising measures are available on the centre's website: <http://www.snslp.sk/#page=2894>.

<sup>311</sup> See Slovak National Centre for Human Rights (2016), *Monitorovanie a vyhodnocovanie účinnosti dočasných vyrovnávacích opatrení v podmienkach Slovenskej republiky* (Monitoring and Evaluation of the effectiveness of temporary equalising measures in Slovakia 2016), available at: [http://www.snslp.sk/CCMS/files/DVO\\_Vyskum\\_FINAL.pdf](http://www.snslp.sk/CCMS/files/DVO_Vyskum_FINAL.pdf).

<sup>312</sup> Decision of the Constitutional Court, PL. ÚS 8/04, 18 October 2005, <http://www.concourt.sk/>.

<sup>313</sup> Lajčáková, J. (2015) *Prijímanie dočasných vyrovnávacích opatrení na základe etnicity, národnosti, pohlavia alebo rodu na Slovensku: PRÍRUČKA* (Adopting Temporary Equalising Measures with Regard to Ethnicity, Nationality, Sex or Gender in Slovakia: GUIDELINES), Centrum pre výskum etnicity a kultúry, available at <http://cvek.sk/publikacie/>.

The current Government action plan on the prevention of all forms of discrimination 2016 - 2019 recognises that positive action measures have been implemented in Slovakia only very rarely, without expert advice and without proper evidence.<sup>314</sup>

b) Quotas in employment for people with disabilities

In Slovakia, national law provides for quotas for the employment of people with disabilities.

There is a special quota system established for employers who employ at least 20 employees. Under Sections 63-65 of the Employment Services Act, any employer who employs at least 20 employees<sup>315</sup> is obliged to ensure that at least 3.2 % of their workforce is made up of people with disabilities,<sup>316</sup> provided that the local labour office has job seekers with disabilities on its register. Instead of employing a person with a disability, an employer can also decide to buy goods or services from a sheltered workshop or a sheltered workplace or a self-employed person with a disability. If an employer fails to meet both of these obligations, they are obliged to pay a levy to the labour office. The levy is public revenue and is not redistributed further (i.e. to support the employment of people with disabilities). According to the recent statistics on this special quota, covering the year 2018: 8 370 employers met their legal obligation in this regard by ensuring that at least 3.2 % of their workforce is made up of people with disabilities; 1 556 employers met the obligation by buying goods or services from a sheltered workshop or a sheltered workplace or a self-employed person with a disability; 698 employers met the obligation by paying a levy to the labour office; and 1 284 employers met the obligation by combining the options.<sup>317</sup> The percentage of employers meeting the legal obligation by ensuring that at least 3.2 % of their workforce is made up of people with disabilities accounts for approximately 70 % and remains at the same level as in 2017. The statistics for 2019 are not yet publicly available.

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<sup>314</sup> *Akčný plán predchádzania všetkým formám diskriminácie na roky 2016-2019*, available at: [http://www.gender.gov.sk/diskriminacia/files/2016/09/AP\\_ADZ-.pdf](http://www.gender.gov.sk/diskriminacia/files/2016/09/AP_ADZ-.pdf).

<sup>315</sup> Excluding some categories of employees such as members of the police, prison guards, firefighters etc.

<sup>316</sup> In the context of these legal provisions, people with disabilities are considered to be citizens who due to their long term adverse health conditions are affected by a decrease in their ability to carry out earning activity by more than 40 % when compared to healthy individuals.

<sup>317</sup> Response of the Central Office of Labour, Social Affairs and Family of 12 February 2020 to a request for information of 11 February 2020 (on file with the author). The statistics were provided on demand and are not available online.

## 6 REMEDIES AND ENFORCEMENT

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

- a) Available procedures for enforcing the principle of equal treatment

In Slovakia, the following procedures exist for enforcing the principle of equal treatment: judicial, administrative, alternative dispute resolution (in the form of mediation), and internal complaint procedures (mainly in workplaces).

There are no different procedures for employment in the private and the public sectors.

- Civil judicial procedures

Under the Anti-discrimination Act, a natural person and/or legal entity who consider(s) themselves wronged in relation to their rights and interests protected by law because the principle of equal treatment has not been applied to them, may pursue their claim through judicial proceeding before the civil court of the first instance (there are no special labour courts in Slovakia). Persons discriminated against have the right to sue the perpetrator – be it a natural person or a legal entity, a public or private body – and request a number of remedies, including (the list is not exhaustive) that they be made to refrain from such conduct and, where possible, rectify the illegal situation or provide adequate satisfaction. If the adequate satisfaction is insufficient – generally if the violation of the principle of equal treatment has considerably impaired the dignity, social status or social achievement of the victim – they may also seek non-pecuniary damages in cash. The amount of the non-pecuniary damages is determined by the court, which must take into account the seriousness of the non-pecuniary damage and all underlying circumstances. Material damages resulting from such treatment may also be claimed.<sup>318</sup> There is no difference in the procedure, whether a public or private entity is being sued. The procedure has legally binding rules and the outcome is also legally binding.

Civil judicial proceedings under the Anti-discrimination Act follow the Civil Dispute Act,<sup>319</sup> which contains some special provisions on anti-discrimination proceedings. The act is a general civil dispute procedural code, with deviations for, among other things, proceedings concerning alleged violations of the principle of equal treatment. The act introduces the concept of 'Disputes with Protection of a Weaker Party,' where it departs from some of the general rules contained in the act, with the aim of mitigating the power imbalance between the parties to such proceedings. Consumer disputes, anti-discrimination disputes and individual labour disputes (including disputes connected to violations of the principle of equal treatment)<sup>320</sup> are the three types of disputes that incur protection of a weaker party.<sup>321</sup> In the regulation of anti-discrimination disputes,<sup>322</sup> the act refers to anti-discrimination legislation (in practice mainly the Anti-discrimination Act),<sup>323</sup> and stipulates that the procedural provisions contained in anti-discrimination legislation (e.g. on the burden of proof) take precedence over the Civil Dispute Act.<sup>324</sup> Among the exemptions from the general procedural rules contained in the act that apply to anti-discrimination disputes are: a broader duty of the court to instruct the complainants on their rights;<sup>325</sup> the ability of the court to seek evidence on its own initiative;<sup>326</sup> the right of the complainant to submit evidence until the decision on the merits is delivered (as compared to other

<sup>318</sup> Anti-discrimination Act, 365/2004, Section 9.

<sup>319</sup> Civil Dispute Act, 160/2015.

<sup>320</sup> Civil Dispute Act, 160/2015, Section 316(2).

<sup>321</sup> Civil Dispute Act, 160/2015, Sections 290-323.

<sup>322</sup> Civil Dispute Act, 160/2015, Sections 307-315.

<sup>323</sup> Civil Dispute Act, 160/2015, Section 307.

<sup>324</sup> Civil Dispute Act, 160/2015, Section 315(2).

<sup>325</sup> Civil Dispute Act, 160/2015, Section 309.

<sup>326</sup> Civil Dispute Act, 160/2015, Section 311.

proceedings where the period for submitting evidence is shorter);<sup>327</sup> and the duty of courts to conduct hearings in all anti-discrimination proceedings (except for when the complainant agrees to omitting the hearing).<sup>328</sup> The act also introduces a provision entitling NGOs and the Slovak National Centre for Human Rights to represent complainants when referring an extraordinary appeal to the Supreme Court (in disputes concerning violations of the principle of equal treatment).<sup>329</sup>

- Administrative procedures

Since all public authorities are obliged to follow the principle of equal treatment, either pursuant to the Anti-discrimination Act (if the scope of their activities falls under the material scope of the act), or pursuant to the Constitution (or both), they are all subject to administrative complaint proceedings. There is a special act on administrative complaint proceedings that deals with complaints against unlawful conduct by public authorities (discrimination falls under such conduct).<sup>330</sup> Some public bodies have special complaint mechanisms, which are regulated by laws. Generally speaking, the outcomes of these procedures are binding, but they are not legally bindings for courts. Furthermore, the facts stated in documents issued by public bodies within their powers and public documents are considered to be truthful, if the opposite has not been proved to be the case.<sup>331</sup>

In some instances when public bodies/institutions are obliged to observe the principle of equal treatment (such as a school, the State Social Insurance Company), decisions taken by these institutions (e.g. negative decisions on admission to a school or granting of a social insurance benefit) are subject to special administrative rules, and the decisions themselves are subject to appeal, either by administrative bodies, or by courts. If the appeal procedures are carried out by administrative bodies, the appellate decisions are usually subject to judicial review. All decisions are, generally speaking, binding.

In some fields (e.g. employment, provision of goods and services), the performance of entities operating in these fields (employers, service providers, etc.) are subject to supervision through inspections. The inspections follow a type of administrative procedure. However, no shift of the burden of proof applies to inspection legislation and moreover, in most cases there is a lack of effective methodology for identifying discrimination (see section 6.3 of this report for more information).

In recent years, the Slovak Trade Inspectorate has made certain progress in effectively resolving complaints concerning discrimination. In some cases of discrimination against Roma in access to services, the inspectorate even used situation testing to uncover discrimination, in cooperation with the NGO. According to the statistics provided, in 2019, the Slovak Trade Inspectorate received 27 complaints concerning discrimination, out of which, discrimination was found in one case that concerned discrimination against Roma women who were denied access to a restaurant. The inspectorate conducted its checks in cooperation with the affected Roma women, using the situation testing method, and the discrimination was proved. In another 15 complaints, discrimination was not found; 11 complaints are currently still being assessed by the inspectorate and the administrative proceedings are pending. It should be noted that the NGO Centre for Civil and Human Rights has filed as many as 13 complaints, which specifically address occurrence of racial discrimination against Roma in access to public services. The number of complaints received by the inspectorate from individuals who are discriminated against remains generally very low.<sup>332</sup>

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<sup>327</sup> Civil Dispute Act, 160/2015, Section 312.

<sup>328</sup> Civil Dispute Act, 160/2015, Section 314.

<sup>329</sup> Civil Dispute Act, 160/2015, Section 429(2)(b).

<sup>330</sup> Act No. 9/2010 on Complaints (*zákon č. 9/2010 Z. z. o sťažnostiach*). Complaints against a public body are usually dealt with by a higher public authority. The complaint should be processed within 60 days.

<sup>331</sup> Civil Dispute Act, Sections 193 and 205.

<sup>332</sup> Response of the Slovak Trade Inspectorate of 23 January 2020 to a request for information of 16 January 2020 (on file with the author).

On sanctions, in the case from 2019 on racial discrimination of Roma women in a restaurant referred to above, the inspectorate imposed no financial sanction and the owner of the restaurant was only given a binding instruction to refrain from discrimination. Information from 2017-2018 indicates that in at least two cases, the Slovak Trade Inspectorate identified racial discrimination against Roma in access to services and imposed fines of EUR 1 000 and EUR 1 200.<sup>333</sup> Arguably, the inspectorate tends to impose either no sanctions, or only low sanctions, which may not have a sufficient deterrent effect.

In 2019, the NGO Centre for Civil and Human Rights published a report analysing the current inspection work of the Slovak Trade Inspectorate concerning cases of discrimination against the Roma minority and raised a number of recommendations for improving its effectiveness. The analysis also included a summary of monitoring of discrimination against Roma in access to goods and services showing that these practices still remain present in some localities.<sup>334</sup>

In 2019, the National Labour Inspectorate received 354 complaints concerning discrimination in employment, out of which 68 complaints were found to be justified as a result of the checks conducted. However, not all of them were concerned a violation of the principle of equal treatment, rather, most of them concerned violation of privacy at the workplace.<sup>335</sup> The inspectorate did not provide any clarification why cases concerning the violation of privacy are categorised as being among cases of discrimination. Thus it seems there are gaps in how the inspectorate categorise discrimination cases. The National Labour Inspectorate does not document statistics concerning grounds of discrimination identified and the sanctions imposed for discrimination specifically.<sup>336</sup>

The decisions of inspectorates are binding and are subject to judicial review.

- Internal complaint mechanisms

Section 13(5) of the Labour Code sets out the right of employees to submit a complaint to their employer against the infringement of the principle of equal treatment. The employer is obliged to respond to such a complaint without undue delay, provide redress, abstain from such conduct and eliminate the consequences thereof. The importance of this provision is in setting the obligation of a private employer to deal with complaints of discrimination in employment relationships. The procedure is binding for the employer (if he or she receives such a complaint) but not for outside entities, including state bodies. The effect of this particular remedy is questionable; it is not much used in practice, and when it is used, it is often not to the benefit but to the detriment of the person discriminated against.

- Mediation

The Anti-discrimination Act makes explicit reference to the right of people suffering breaches of the principle of equal treatment to mediation.<sup>337</sup> The process of mediation is regulated by the Act on Mediation,<sup>338</sup> which does not cover discrimination-specific

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<sup>333</sup> Response of the Slovak Trade Inspectorate of 23 January 2020 to a request for information of 16 January 2020 (on file with the author).

<sup>334</sup> Centre for Civil and Human Rights (2019) 'Situčný testing ako nástroj preukazovania diskriminácie v oblasti poskytovania tovarov a služieb' (Situational testing as a tool for proving discrimination in the area of providing goods and services). Available at <https://www.poradna-prava.sk/sk/dokumenty/situcny-testing-ako-nastroj-preukazovania-diskriminacie-v-oblasti-poskytovania-tovarov-a-sluzieb/>.

<sup>335</sup> Response of the National Labour Inspectorate of 24 January 2020 to a request for information of 15 January 2020 (on file with the author). The data provided are preliminary and the final statistics will be made public in April 2020.

<sup>336</sup> Response of the National Labour Inspectorate of 10 March 2020 to a request for information of 27 February 2020 (on file with the author).

<sup>337</sup> Anti-discrimination Act, 365/2004, Section 9(5).

<sup>338</sup> Act No. 420/2004 on Mediation and supplementing certain acts (*zákon č. 420/2004 Z. z. o mediácii a o doplnení niektorých zákonov*).

mediation. Although the possibility of mediation undoubtedly extends (at least theoretically) the scope of remedial options for victims of discrimination, it is highly questionable whether the concept is suitable for some types of discrimination or cases of discriminatory behaviour (mainly harassment and sexual harassment, but also any kind of intentional discrimination) and whether it might not, in some cases, perpetuate the inequality. The mediation agreement is binding for the parties to the mediation.<sup>339</sup> If the agreement is written in the form of notary minutes or approved by a court, it is also legally enforceable.<sup>340</sup>

- Criminal proceedings

Some of the gravest violations of the principle of equal treatment also constitute crimes (Criminal Code, Sections 421–425). There is a specific crime of 'apartheid and discrimination of other persons' (including racial, ethnic, nationality or religious segregation or other widespread or systemic discrimination of a group of people by public officials) in the Criminal Code.<sup>341</sup> Criminal convictions and subsequent criminal proceedings can only be initiated by the state. The judgments of criminal courts are legally binding.

b) Barriers and other deterrents faced by litigants seeking redress

Claiming invalidity of an employment termination can only be done within a period of two months from the due date of the termination of the employment relationship.<sup>342</sup> This is certainly a barrier to seeking effective remedies in cases of discriminatory dismissals.

There is also case law indicating that claiming financial compensation for non-pecuniary damage in civil law disputes can be subject to a three-year lapse period.<sup>343</sup>

Another significant barrier in access to justice for cases of discrimination is the extreme length of the judicial proceedings. It is not exceptional that court proceeding last several years at one instance of the court and that the overall durations of the proceedings are very long. For example, one of the court proceedings in a case of discrimination in access to goods and services has lasted for more than 14 years now; in another example, the Court of Appeal took more than three years to make a decision. This problem has been addressed by the Constitutional Court in its decisions finding a violation of the right to hear cases within a reasonable time.<sup>344</sup>

Another potential barrier to initiating anti-discrimination judicial proceedings may be the court fees, especially when seeking non-pecuniary damages in cash. This fee derives from the amount requested (3 %) and is always paid in addition to the judicial fees for the other claims made, and, in the author's view, is a barrier to seeking amounts that would really be effective, proportionate and dissuasive.

Socially disadvantaged applicants can be exempted from payment of court fees on the decision of the judge. However, the criteria for exempting a claimant from judicial fees are not fixed: the relevant provision states that an 'exemption can be granted if the situation of the party to the proceeding justifies it'.<sup>345</sup>

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<sup>339</sup> Mediation Act, 420/2004, Section 15(1).

<sup>340</sup> Mediation Act, 420/2004, Section 15(2).

<sup>341</sup> Criminal Code, 300/2005, Section 424a. According to the statistics published by the General Prosecution Office, since 2017, two criminal proceedings for this crime have been pending before law enforcement authorities. The conclusion of these proceedings have not been published.

<sup>342</sup> Meaning two months after the (invalidly terminated) employment relationship would have ended (as a consequence of the invalid termination). See Labour Code, 311/2001, Section 77.

<sup>343</sup> See the judgment of the Supreme Court of the Slovak Republic, No. 2 Cdo 278/2007, 1 November 2008.

<sup>344</sup> See for example the decision of the Constitutional Court of the Slovak Republic, No. I ÚS 602/2017, 7. March 2018; decision of the Constitutional Court of the Slovak Republic, No. III ÚS 471/2018, 20 March 2019.

<sup>345</sup> Civil Dispute Act, 160/2015, Section 254.

In practice, the physical accessibility of courts is not guaranteed for people with disabilities, particularly in old court buildings. Newly constructed or reconstructed court buildings, as well as all other public buildings, must be accessible for people with disabilities. Information provided in Braille script is mandatory only for the service panels in lifts.

There is also a lack of qualified legal assistance in the field of anti-discrimination (as well as a lack of accessible legal aid in general, in terms of financial accessibility). Access to free legal representation for those whose income is very low is provided by the state,<sup>346</sup> although this legal representation can only be provided in civil judicial proceedings (including proceedings in the field of employment and including judicial review of administrative decisions and proceedings before the Constitutional Court) and not in administrative proceedings/proceedings before inspectorates, or criminal proceedings.<sup>347</sup> The threshold for entitlement to free legal aid or for legal aid with a symbolic financial contribution from the person affected is relatively low,<sup>348</sup> but there is still a relatively significant group of people who would not be able to pay for legal services (i.e. they do not fall under the threshold and hence are not entitled to the free/symbolically paid legal aid, but are still unable to pay it by themselves).<sup>349</sup>

In cases of breaches of the principle of equal treatment, the Slovak National Centre for Human Rights can arrange legal assistance for victims of discrimination (no matter what their income). In 2019, the Slovak National Centre for Human Rights provided legal representation before courts in only two new cases of discrimination (for more details see chapter 7 of this report).<sup>350</sup>

There is no obligatory legal representation in proceedings concerning discrimination (apart from proceedings before the Constitutional Court). Where the applicant requests it, the Constitutional Court can also (aside from the free legal aid provided by the centre) appoint an attorney to represent him/her in proceedings before the Constitutional Court.<sup>351</sup>

According to a study of access barriers to efficient legal protection against discrimination, which included a nationwide survey on the barriers encountered by people who subjectively feel that they have been discriminated against but do not seek legal aid or use legal means to defend themselves against discrimination, just a tiny percentage (4.7 %) of respondents who felt that they have been discriminated against have sought legal assistance or sought to lodge a claim against discrimination by legal means. Over 92 % have not taken any steps to defend themselves.<sup>352</sup>

The reasons why those discriminated against decided not to challenge discrimination by legal means and not to seek legal assistance were relatively evenly distributed across the population of Slovakia. They included lack of trust in the institutions that might successfully resolve discrimination (13.1 % of responses), lack of evidence (11.8 % of responses), the fact that people who felt discriminated against did not consider it important to resolve their

<sup>346</sup> Act No. 327/2005 on Providing Legal Aid to Persons in Material Need, as amended (*zákon č. 327/2005 Z. z. o poskytovaní právnej pomoci osobám v materiálnej núdzi, v znení neskorších predpisov*).

<sup>347</sup> Act on Providing Legal Aid to Persons in Material Need, 327/2005, Section 3(1).

<sup>348</sup> Act on Providing Legal Aid to Persons in Material Need, 327/2005, Sections 6 and 6a.

<sup>349</sup> In addition, family members living in one household are, for the purposes of determining the level of their income, considered jointly unless they are opposing parties to a proceeding (see Section 4(2) of the act). This may exclude certain groups of persons from applying for the free legal aid/legal aid with a symbolic financial contribution (e. g. women subject to intimate partner violence, pupils/students living in one household with higher income parents who might not be supporting their children in pursuing legal proceedings in cases of discrimination, etc.).

<sup>350</sup> Response of the Centre of 21 January 2020 to a request for information of 16 January 2020 filed by the NGO Centre for Civil and Human Rights (on file with the author).

<sup>351</sup> Act on Constitutional Court, 314/2018, Section 37 (1)

<sup>352</sup> Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, (*Searching for barriers in access to effective legal protection from discrimination*) Košice: Poradňa pre občianske a ľudské práva, pp. 78-79. The publication is also available at <https://www.poradna-prava.sk/sk/dokumenty/diskriminacia-na-slovensku-hladanie-barier-v-pristupe-k-ucinnej-pravnej-ochrane-pred-diskriminaciou/>.

case (11.6 %), lack of information as to where and to whom to turn for legal assistance (over 10 %). The author of the study, NGO Centre for Civil and Human Rights, concluded:

'[t]he nationwide research results indicated an overall scepticism and even resignation with regard to any solution, as well as the conviction that discrimination in Slovakia is so normal and widespread that it makes no sense to oppose it and that it is not possible to obtain justice in Slovakia.'<sup>353</sup>

c) Number of discrimination cases brought to justice

In Slovakia, statistics on the number of cases related to discrimination brought to justice are available. The Ministry of Justice collects data on finalised cases and has recently taken measures to improve their accuracy.

In response to a request for information filed by the author of this report with the Ministry of Justice on the numbers of cases of discrimination decided by Slovak courts and any corresponding statistics, the ministry stated that the collection of statistical data about cases in 2019 are not yet complete. The recent available data about cases collected by the ministry covering 2018 included the name of the court, the file number and the duration of the proceedings in days, as well as how the claim was decided. In recent years, the Ministry of Justice has recognised shortcomings in data collection by some courts, as it checked the data provided and found that some turned out to be inaccurate (the ministry found that some courts identified some cases as anti-discrimination disputes, but when the ministry reviewed the files it turned out that the cases did not concern discrimination). The ministry reports that it has succeeded in minimising the existing problems by on-going secondary analysis of cases being collected. In addition, for the purpose of reporting to international human rights bodies, the ministry creates its own overview of court decisions concerning cases of discrimination based on existing data collection as well as its own searches of public databases of court decisions.<sup>354</sup>

The statistics provided by the Ministry of Justice do not contain information on discrimination-related proceedings and decisions by the Supreme Court and the Constitutional Court (see also section 6.1(d) below).

It is obvious that given the existing shortcomings, the statistics collected by the Ministry of Justice from previous years provided only inaccurate and partial information on (final) cases of discrimination that have been decided by ordinary courts in Slovakia. This number is desperately low, especially given that the Anti-discrimination Act has been in existence since 2004 (and some anti-discrimination provisions were contained in Slovak legislation even earlier), and also that discrimination is a very widespread phenomenon in Slovakia.

There is no more recent data on the number of proceedings or decisions in the field of discrimination.

d) Registration of discrimination cases by national courts

In Slovakia, discrimination cases are registered as such by national courts.

The registration of discrimination cases by courts and the subsequent data collection for statistical purposes, as well as making the data accessible to the public has been problematic, but has reportedly been improved. The Ministry of Justice found that inaccuracies in collecting data have been caused by individual errors by courts that are responsible for registering data about particular decisions in the database. These were

<sup>353</sup> Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, Košice: Poradňa pre občianske a ľudské práva, pp. 27-49 and p. 129.

<sup>354</sup> Response from the Ministry of Justice of 27 January 2020 to a request for information of 16 January 2020 (on file with the author).



already minimised by on-going secondary checks by the ministry. In addition, in order to eliminate problems in the registration of discrimination cases by national courts, in 2018, the Ministry of Justice developed new rules of registration for final court decisions in discrimination cases. From 1 January 2019, the courts have the option to choose 'anti-discrimination dispute' as the type of judicial proceeding and can also record the ground of discrimination and the material scope of the discrimination case.<sup>355</sup>

Although courts are obliged to publish all of their final decisions (after the necessary anonymisation) online, experience shows that this does not happen in practice. Many of the decisions relating to discrimination that are known to the author of this report are not available online. Researching Constitutional Court decisions is somewhat easier as the Court publishes each of its decisions online and it is also possible to search by individual articles of the Constitution. The Supreme Court also publishes its decisions on its website.

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

### **a) Engaging in proceedings on behalf of victims of discrimination (representing them)**

In Slovakia, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination.

According to Section 10(1)(a) of the Anti-discrimination Act, the claimant in (civil) proceedings pursuant to the act (but in principle, also the defendant given that the provision talks about 'parties to the proceedings concerning the violation of the principle of equal treatment') can be represented by a legal entity that has the authority to do so (i.e. the authority to represent a party in proceedings concerning the principle of equal treatment) in accordance with a separate law. Under the Act on Establishing the Slovak National Centre for Human Rights (see chapter 7 of this report), the Slovak National Centre for Human Rights (the equality body) is entitled by law to represent the claimant in proceedings concerning the violation of the principle of equal treatment.

According to Section 10(1)(b) of the Anti-discrimination Act the parties can also be represented by a legal entity 'whose activities are aimed at or consist in the protection against discrimination' (in practice, this usually means NGOs, but in theory, it could also be trade unions and the law does not stipulate any more detail about such organisations). If the legal entity takes up the representation, it authorises one of its members or employees to act on its behalf.<sup>356</sup>

According to Section 308 of the Civil Dispute Act, the parties in anti-discrimination disputes can be represented by a person (or legal entity) authorised by anti-discrimination legislation.<sup>357</sup>

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

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

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<sup>355</sup> Response from the Ministry of Justice of 27 January 2020 to a request for information of 16 January 2020 (on file with the author).

<sup>356</sup> Civil Dispute Act, 160/2015, Section 317.

<sup>357</sup> Civil Dispute Act, 160/2015, Section 308.

As the Slovak National Centre for Human Rights is authorised to represent parties to proceedings in matters of breaches of the principle equal treatment under the same conditions as associations, the same also applies to the equality body.

If an NGO takes up the representation of a person affected by discrimination (or several people affected by discrimination in the case of a class action), it must assign one of its members and/or employees to act on behalf of the person(s) represented. If an NGO or the Slovak National Centre for Human Rights takes up legal representation in civil proceedings under the Anti-discrimination Act, all conditions applicable for the legal representation of individuals mentioned in Section 10(1) of the Anti-discrimination Act are equally applicable.

In administrative proceedings, parties to the proceedings, their legal representatives and their guardians can be represented by a lawyer or by 'another representative of their choice'.<sup>358</sup> This means that people affected by discrimination can in principle select any natural or legal person to represent them, including NGOs or the Slovak National Centre for Human Rights. In proceedings before administrative courts concerning judicial review of administrative decisions, the NGOs, trade unions and some other legal entities can represent the party to the proceedings.<sup>359</sup>

As far as criminal law is concerned, the victim in criminal proceedings can be represented by a proxy. Any person whose capacity to act legally is not limited can become a proxy, including an authorised representative of an organisation that helps those affected by crimes.<sup>360</sup> 'An organisation with the remit of helping those affected by crimes' is, pursuant to Section 10(23) of the Criminal Procedure Act, an NGO that provides free legal assistance to those affected by crimes.

Regarding a complaint dealt with by a public body, although there is no specific provision as to the legal standing of associations, the law does not prohibit other natural persons or legal entities from acting (submitting a complaint) on behalf of a complainant.

NGOs and trade unions do not have a legal duty to act. The Act on Establishing the Slovak National Centre for Human Rights provides that the Centre 'secures legal aid for victims of discrimination and intolerance'.<sup>361</sup>

b) Engaging in proceedings in support of victims of discrimination (joining existing proceedings)

In Slovakia, associations, organisations and trade unions are entitled to act in support of victims of discrimination.

According to Section 95 of the Civil Dispute Act, 'the court can also without any proposal invite into the court proceeding a public body whose aim is protection of fundamental rights and freedoms or legal entity which is entitled to rights protection, to engage in proceedings, if the relevant party agrees'.<sup>362</sup>

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

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<sup>358</sup> Administrative Code, 71/1967, Section 17(1).

<sup>359</sup> Administrative Judicial Act, 162/2015, Section 50.

<sup>360</sup> Criminal Procedure Code, 301/2005, Section 53.

<sup>361</sup> Act No. 308/1993 on Establishing the Slovak National Centre for Human Rights (*zákon č. 308/1993 Z. z. o zriadení Slovenského národného strediska pre ľudské práva*), Section 1(2)(e).

<sup>362</sup> Civil Dispute Act, 160/2015, Section 95.

Other forms of support are also possible although not explicitly listed in legislation (e.g. a written legal opinion from an NGO or other entity in the form of an amicus brief). In 2018, the Public Defender of Rights submitted an amicus brief to the first instance court in a case of discrimination based on an *actio popularis* claim submitted by the NGO Centre for Civil and Human Rights.<sup>363</sup> Expert opinions issued by the Slovak National Centre for Human Rights<sup>364</sup> at the request of a claimant are sometimes submitted to the courts (by the claimants, if they decide to submit the opinions requested from the centre).

#### c) Actio popularis

In Slovakia, national law allows associations, organisations and trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*).

Section 9a of the Anti-discrimination Act stipulates that, if a breach of the principle of equal treatment could violate rights or interests protected by law or freedoms of a greater or non-specified number of persons, or if the public interest could be otherwise seriously endangered by such a violation, the right to invoke the protection of the right to equal treatment is also vested in the Slovak National Centre for Human Rights or a legal entity that is 'concerned with or active in protection against discrimination' (usually NGOs, but in principle also trade unions).

These entities can request that the court determines that the principle of equal treatment has been breached, that the entity breaching the principle of equal treatment refrains from such conduct and, where possible, rectifies the illegal situation. The list of these actions is non-exhaustive. In principle it can also include some financial compensation, but judicial interpretation would be required in this regard. Although this provision is quite progressive, it is only rarely used in practice. Only one domestic NGO – the Centre for Civil and Human Rights – has initiated proceedings by using *actio popularis* so far (in cases of an indirect discriminatory legal provision of the Childbirth Allowance Act and in cases of segregation of Roma children in education and Roma women in maternity wards). An international NGO, the European Roma Rights Centre has submitted a few *actio popularis* claims to Slovak courts in cases of discrimination. The Slovak National Centre for Human Rights has not initiated any *actio popularis* proceedings so far.

For *actio popularis* proceedings, the same concept of the shift in the burden of proof applies as in all other proceedings in cases of breaches of the principle of equal treatment initiated on the basis of the Anti-Discrimination Act.

#### d) Class action

In Slovakia, national law allows associations, organisations and trade unions to act in the interest of more than one individual victim (class action) for claims arising from the same event.

There are no restrictions as to the number of petitioners who can be represented (although the Anti-discrimination Act is not explicit on the matter). Class actions are also possible in Slovak civil judicial proceedings, meaning that a group of citizens can lodge an action based on the same facts, where each victim must stand as a claimant.

According to Section 75 of the Civil Dispute Act, in cases where more than 10 claimants

<sup>363</sup> Prešov District Court, case *Poradňa pre občianske a ľudské práva (Centre for Civil and Human Rights) v the Ministry of Education and the District Office in Prešov*, proceedings file n. 29C/14/2016. Information on submitting an amicus brief is also available on the Public Defender of Rights' website (in Slovak only) <http://www.vop.gov.sk/segreg-cia-na-slovensku-pretrv-va-pr-pad-koly-v-terni-rie-i-s-d>.

<sup>364</sup> Under Section 1(2)(f) of the Act on the Slovak National Centre for Human Rights, the centre is granted the competence to prepare expert opinions concerning compliance with the principle of equal treatment upon a request or its own initiative. In 2018, the centre issued 15 expert opinions.

are party to the proceedings, the court can decide that only one claimant should represent the group.<sup>365</sup>

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

In Slovakia, national law requires a shift of the burden of proof from the complainant to the respondent. However, this is only applicable to civil proceedings.

According to Section 11(2) of the Anti-discrimination Act, if the claimant

‘communicates to the court facts which give rise to a reasonable assumption that a violation of the principle of equal treatment occurred, the defendant has the obligation to prove that there was no violation of the principle.’

The shifting of the burden of proof is applicable in all civil judicial proceedings filed on the basis of the Anti-discrimination Act and ‘in proceedings in matters connected to a breach of the principle of equal treatment’. As a breach of the principle of equal treatment is defined very broadly (to include, for example, victimisation, instruction to discriminate, incitement to discriminate, breach of the duty to adopt measures to prevent discrimination etc.), the concept of shifting the burden of proof should apply to all the components of the equal treatment principle and to all prohibited forms of discrimination.

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

‘burden of proof does not only and exclusively burden the defendant, but it also burdens the claimant. The claimant must, by priority, bear the burden of proof concerning the facts from which it can be inferred that direct or indirect discrimination, or, let us say, [a breach of] the principle of equal treatment, has been committed. The claimant must allege and at the same time submit proofs (bear the burden of proof) from which it can be reasonably concluded that the principle of equal treatment has been breached. At the same time, they must allege that their race or ethnic affiliation (origin) is the inducement for the discriminatory action. It is only thereafter that the burden of proof is shifted on to the defendant, who has the right to prove their allegations that they have not breached the principle of equal treatment.’<sup>366</sup>

In 2015, the Constitutional Court provided some additional clarifications in relation to selected aspects of the burden of proof in anti-discrimination proceedings.<sup>367</sup> The court emphasised the specificities of anti-discrimination proceedings, which are very demanding in terms of evidence assessment. It also pointed to the specific distribution of the burden of proof where the ‘claimant is supposed to communicate to the court the facts which give rise to a reasonable assumption (i.e. not an unquestionable settlement) that a violation of the principle of equal treatment occurred’,<sup>368</sup> which establishes the shift of the burden of proof on to the defendant. Whether the burden of proof gets shifted or not depends on the quality of the assessment of the evidence available – from the point of view of whether the deciding court has thoroughly considered all facts that emerged in the proceedings.<sup>369</sup> The Constitutional Court, referring to case law from the Czech Constitutional Court,<sup>370</sup> also held that ‘the requirement for the claimant to prove that their discrimination has taken place because of their racial (ethnic) origin and not for another reason can apparently not be fulfilled since proving the motivation (incentive) of the defendant is simply impossible, due

<sup>365</sup> Civil Dispute Act, 160/2015, Section 75.

<sup>366</sup> Finding of the Constitutional Court, No. IV. ÚS 16/09, 30 April 2009, available at: [https://www.ustavnysud.sk/documents/10182/992376/95\\_09a.pdf/13520fbb-1782-46cd-9402-76137529c669](https://www.ustavnysud.sk/documents/10182/992376/95_09a.pdf/13520fbb-1782-46cd-9402-76137529c669).

<sup>367</sup> Finding of the Constitutional Court of the Slovak Republic, No. III. ÚS 90/2015-40, 1 December 2015.

<sup>368</sup> This wording (except for the words in brackets) is contained in Section 11(2) of the Anti-discrimination Act.

<sup>369</sup> Finding of the Constitutional Court of the Slovak Republic, No. III. ÚS 90/2015-40, 1 December 2015, p. 15.

<sup>370</sup> Finding of the Constitutional Court of the Czech Republic, No. Pl. ÚS 37/04, 26 April 2006.

to the nature of the issue itself'.<sup>371</sup> Thus, the Constitutional Court confirmed that the claimant does not have to establish the motivation/incentive (the Constitutional Court uses both of these words) of the defendant to discriminate.

In a case decided by the Constitutional Court in 2013, the Constitutional Court adhered to an assessment of a second instance court from an earlier stage of the proceedings that 'the defendant proved that it is more likely that the discrimination hasn't taken place than it is likely that the discrimination has taken place, and so he discharged his burden of proof'. The Constitutional Court did not provide any comprehensive test on assessing the level of probability of discriminatory treatment. According to the author of this report, this practice is in violation of CJEU case law (for example *CHEZ Razpredelenie Bulgaria* C-83/14.).<sup>372</sup>

The implementation of this measure by Slovak courts is still problematic in practice. For example, in 2019 the District Court in Prešov dismissed an *actio popularis* lawsuit against the Ministry of Education and the district office in Prešov concerning the documented segregation of Roma children at the primary school in the village of Terňa.<sup>373</sup> Among other things, the court concluded that the claimant (the grassroots NGO Centre for Civil and Human Rights) failed to sustain its burden of proof as it did not prove that the disputed decisions of the state authorities on the school catchment area had violated a principle of equal treatment and had disadvantaged Roma children in comparison to children from the majority (for more details see section 12.2. of this report). Such an application of the principle of the shift of the burden of proof is a breach of the provisions regarding the shift of the burden of proof set by domestic anti-discrimination legislation and the EU directives.

The UN Committee on the Elimination of Racial Discrimination in its decision against Slovakia concerning an individual case of discrimination against a Roma woman in accessing employment has also highlighted shortcomings of general courts in implementing this measure and recommended that the state fully enforce its Anti-discrimination Act through the enhancement of available court proceedings for victims of racial discrimination by ensuring, inter alia, that the principle of shifted burden of proof is applied in line with Article 11 of the Anti-discrimination Act.<sup>374</sup> The improper implementation of shifting the burden of proof has also been challenged by the decision of the UN Committee on the Elimination of Discrimination against Women, in its view adopted on 16 November 2016 of *D.S. v. Slovakia*, a case of discrimination against a woman in employment on the grounds of her family status and sex (illegal dismissal upon her return to workplace from parental leave).<sup>375</sup>

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<sup>371</sup> Finding of the Constitutional Court of the Slovak Republic, No. III. ÚS 90/2015-40, 1 December 2015, pp. 17-18.

<sup>372</sup> Finding of the Constitutional Court, No. II. ÚS 383/2013-16, *V. S. v Primary School of Ivan Branislav Zoch in Revúca*, 10 July 2013. In this decision, the Constitutional Court seems to be indicating that once the burden of proof is shifted on to the respondent (upon the applicant establishing facts from which it may be presumed that there has been discrimination), the respondent is not obliged to prove beyond any doubt that there has been no breach of the principle of equal treatment (as the directives presumably require) but that it is sufficient to provide evidence establishing some probability of non-discrimination, provided that the probability of non-discrimination is higher than the probability of discrimination. It seems that in the case presented, the Slovak Constitutional Court lowers the requirements and standards of proof on the side of the defendant once the burden of proof has been shifted to them, which may not be compatible with the requirements of EU law on the burden of proof in discrimination cases and is reminiscent of a more traditional approach to burden of proof in civil law.

<sup>373</sup> Decision of the District Court in Prešov, No. 29C/14/2016, 13 March 2019.

<sup>374</sup> See CERD (2015), 'Opinion of the UN Committee on the Elimination of Racial Discrimination in the case of *V.S. v. Slovakia*', Communication No. 56/2014 from 16 December 2015, para 7.4. and 9, available at <https://www.poradna-prava.sk/en/documents/opinion-of-the-cerd-in-the-case-of-v-s/>.

<sup>375</sup> See CEDAW (2016), 'Views of the UN Committee on the Elimination of All Forms of Discrimination Against Women in *D.S. v. Slovakia*', Communication No. 66/2014, adopted on 21 November 2016, available at <https://www.poradna-prava.sk/en/documents/views-adopted-by-the-cedaw-committee-in-the-case-of-d-s/>.

The Act on Labour Inspection<sup>376</sup> does not contain any explicit and clear provisions on the burden of proof in relation to identifying breaches of the principle of equal treatment.

The Criminal Procedure Act allows for no exceptions to the traditional concept of burden of proof in criminal proceedings.

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

In Slovakia, there are legal measures of protection against victimisation. Article 12(4) of the Constitution generally prohibits any victimisation resulting from the exercise of basic rights guaranteed under the Constitution.

Under Section 2a (1) of the Anti-discrimination Act, victimisation is considered to be a form of discrimination. The Anti-discrimination Act also contains an explicit definition of victimisation according to which victimisation means any action or omission that is unfavourable to the person concerned and is directly connected to a) seeking legal protection against discrimination for oneself or on behalf of another person, or to b) providing a witness testimony, an explanation or is connected to other involvement of a person in a proceeding concerning the violation of the principle of equal treatment, or to c) a complaint invoking a breach of the principle of equal treatment.<sup>377</sup> Thus, it is not only a complainant directly affected by discrimination but anybody else who acts as a witness or a general complainant who is protected against adverse treatment.

In addition to this provision, several other laws regulate protection against victimisation.<sup>378</sup> The only procedural guarantee against victimisation is included in the Anti-discrimination Act. A case of victimisation decided by domestic courts concerned a Roma woman who claimed to be discriminated against in her workplace on the ground of her Roma ethnic origin. Among other forms of discrimination, she also pointed out that direct discrimination and harassment against her resulted in victimisation after she repeatedly complained to the employer about how she was treated. The district and regional courts dismissed this lawsuit. The case is now pending before the European Court of Human Rights in Strasbourg.<sup>379</sup>

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

##### **a) Applicable sanctions in cases of discrimination – in law and in practice**

As mentioned above, victims of discrimination have the right to sue the perpetrator – be it a natural person or a legal entity, a public or private body – and request a number of remedies, including (the list is not exhaustive) that they be made to refrain from such conduct and, where possible, rectify the illegal situation or provide adequate satisfaction. If the adequate satisfaction is insufficient, generally in cases where the violation of the

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<sup>376</sup> Act No. 125/2006 on Labour Inspection and changing and supplementing Act No. 82/2005 on Illegal Work and Illegal Employment and changing and supplementing certain laws, as amended (*zákon č. 125/2006 Z. z. o inšpekcií práce a o zmene a doplnení zákona č. 82/2005 Z. z. o nelegálnej práci a nelegálnom zamestnávaní a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

<sup>377</sup> Anti-discrimination Act, 365/2004, Section 2a (8).

<sup>378</sup> Complaints Act, 9/2010, Sections 7 and 8. These sections stipulate that the mere fact of filing an action must not be used to the detriment of the complainant. Moreover, the complainant may request that their identity not be disclosed. The other law is the Labour Code, Section 13(3), which states that no person may be persecuted or otherwise adversely treated in the workplace as a reaction to a complaint, action, petition to start criminal proceedings, or other report on criminality or other anti-social activity against another employee or the employer. Similar provisions are enshrined in other acts, for example the Act on the State Service of Customs Officers, Act on the State Service of Members of the Police Force, Act on the Fire and Rescue Service, Employment Services Act, Higher Education Act, the Schools Act and the Healthcare Act.

<sup>379</sup> Decision of the District Court Košice II, No. 20C68/2012-350, 8 September 2015 and decision of the Regional Court in Košice, No. 2Co/657/2015 – 379, of 13 December 2016. European Court of Human Rights, application n. 77422/17.

principle of equal treatment has considerably impaired the dignity, social status or social achievement of the victim, a claimant may also seek financial compensation for non-pecuniary damage. The amount of this financial compensation is determined by the court, which must take into account the seriousness of the non-pecuniary damage and all underlying circumstances. Material damages resulting from such treatment may also be claimed.<sup>380</sup> There is no difference in the procedure, whether a public or private entity is being sued.

Since the list of possible claims is non-exhaustive, other possible claims include determining (by the court) that the principle of equal treatment has been violated or declaring a job termination invalid.<sup>381</sup>

In the area of both public and private employment, labour inspectorates (based in every region of the country) as the bodies that oversee the observance of employment legislation (including appointment, dismissal, pay and working conditions) have the authority to impose a fine of up to EUR 100 000<sup>382</sup> (and in some cases up to EUR 200 000)<sup>383</sup> on the entities that fall under their jurisdiction and that have breached their duties under the provisions of the employment legislation. The manager whose conduct has breached their statutory duties in the field of employment and their obligations under collective agreements may be fined up to four times their average monthly salary.<sup>384</sup>

As for access to employment, the offices of labour, social affairs and family are entitled to investigate complaints regarding potentially discriminatory job announcements.<sup>385</sup> If the labour office finds violation, it can impose a fine up to EUR 33 193. In practice, the labour offices face difficulties in identifying the entity that published the discriminatory announcement and that is why they cannot sanction the responsible person and/or company. The liability of advertising agency is not examined.<sup>386</sup> In education, the competent body is the State School Inspectorate. If the liable employee of a school or a school facility fails to remove the deficiencies identified by the inspection, they will be fined up to EUR 331.<sup>387</sup>

In the area of access to goods and services, the monitoring authorities (offices of the Slovak Trade Inspectorate) may punish discriminatory conduct with a fine of up to EUR 16 600. Where there are multiple violations of a legal obligation within one year, the inspectorate may impose a fine up to EUR 33 000. In practice, recent sanctions for discrimination imposed by the Slovak Trade Inspectorate ranged from giving binding instructions to the discriminator (basically a warning without a fine) to a fine of EUR 1 200. The sanctions for discrimination have so far proven to be ineffective or insufficiently dissuasive in practice.

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<sup>380</sup> Anti-discrimination Act, 365/2004, Section 9.

<sup>381</sup> The Slovak courts do not have a problem with declaring that the principle of equal treatment has been violated (and the Supreme Court confirmed the legitimacy of this claim in its decision of 22 February 2012, No. 5 Cdo 257/2010). With regard to invalidity of job termination (for the reason of discrimination) and the subsequent wage compensation, the Supreme Court held that these are possible claims (decision of the Supreme Court of Slovakia, No. 5 Cdo 56/2014, 24 March 2015, p. 8).

<sup>382</sup> Labour Inspection Act, 125/2006, Section 19(1)(a).

<sup>383</sup> Labour Inspection Act, 125/2006, Section 19(2)(b)(1) in conjunction with Section 19(3)(c).

<sup>384</sup> Labour Inspection Act, 125/2006, Section 19(1)(c).

<sup>385</sup> Employment Act, 5/2004, Sections 12 and 13 in conjunction with Section 62(2).

<sup>386</sup> For example in some cases the announcement makes a statement such as 'Alcoholics, lazy people and Roma do not call!' but only a phone number is published and according to the domestic legislation the mobile operator and police are not obliged to provide the labour office with the personal data of the phone holder.

<sup>387</sup> Act No. 596/2003 on State Administration of the School System and School Self-Governance, Section 37a(2)(b).

b) Compensation - maximum and average amounts

The amount of financial compensation for non-pecuniary damage is not limited and depends primarily on the seriousness of the damage caused and the circumstances under which it occurred.

The amount of compensation for pecuniary damage is not limited – the claimant must prove the real material damage that they have suffered and the causal link between the damage suffered and the unlawful act of the defendant. The only exception seems to be claims of wage compensation in cases of illegal dismissals (this is, however, a general remedy applicable under the Labour Code, although the Supreme Court has already held that it is also applicable in anti-discrimination proceedings – see section 6.1 above). According to Section 79(2) of the Labour Code

‘if the overall time for which an employee should receive wage compensation is greater than 12 months, a court may, at the request of the employer, reduce the employer’s obligation to pay wage compensation for the period in excess of 12 months by a proportionate amount or may decide not to award the employee any wage compensation for the period in excess of 12 months. Wage compensation shall be awarded for a period of no more than 36 months.’

There is no official or other information available on the average amount of compensation awarded to victims.

However, a study, published in 2012 by an NGO, the Centre for Civil and Human Rights,<sup>388</sup> offers some information on the amounts of compensation for non-pecuniary damage that have been granted by courts in cases of discrimination at that time.<sup>389</sup> The number of cases in which compensation for non-pecuniary damage was awarded at that time was already indicative of the unwillingness of Slovak courts to grant this type of compensation. Indeed, as the authors of the study note, after analysing all the decisions available at that time, courts often considered the fact that the declaration of a violation of the principle of equal treatment has been made to represent sufficient satisfaction for the person discriminated against.<sup>390</sup> No recent study has been published on this issue, and, to the knowledge of the author of this report, the practice of the courts in this respect has not changed.

There are no more recent complex data on the amounts of compensation awarded. The Ministry of Justice in its reply to the author of this report did not provide any information about the amount of compensation granted by courts in cases that were finalised by effective judgments in 2018. The amount of compensation is not data that is required to be collected. However, it can be seen that from 23 cases decided by courts in 2018, the courts partially decided in favour of the claimants in only two cases, while in the other

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<sup>388</sup> Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, (*Searching for barriers in access to effective legal protection from discrimination*) Košice: Poradňa pre občianske a ľudské práva. The publication is also available at <http://www.poradna-prava.sk/site/assets/files/1114/diskriminacia-na-slovensku.pdf>.

<sup>389</sup> The study presents the finding that, of 22 cases where courts found violations of the principle of equal treatment and where claimants also sought financial compensation for their non-pecuniary damage, this compensation was only granted in 12 cases. In cases where financial compensation for non-pecuniary damage was granted, this was usually in the field of employment or access to it (eight cases). Two remaining cases in which financial compensation for non-pecuniary damage was granted were in the fields of access to services and housing. In six cases, the amounts awarded were most frequently around EUR 1 000 or slightly over (up to EUR 1 327.75). In one case (relating to ethnicity) the compensation was EUR 165.96 for each claimant (the case concerned several claimants), in another case it was EUR 3 983.75, in another it was EUR 3 3198.39 and in the remaining case it was EUR 66 387.83. In the latter case the ground for discrimination was not given in the proceedings, so it is unclear how the case relates to the Anti-discrimination Act and the EU directives in general. In addition, the decision was not yet final.

<sup>390</sup> Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, (*Searching for barriers in access to effective legal protection from discrimination*) Košice: Poradňa pre občianske a ľudské práva, p. 98.



cases the claims were dismissed or the proceedings discontinued (due to the fact that parties settled the case out of court).<sup>391</sup>

In a case of discrimination against Roma in access to a local bar, the court ordered the bar owner to pay the Roma who had been discriminated against financial compensation to the amount of EUR 300 each and legal costs. This is one of the first final court decisions in Slovakia in which the court has awarded non-pecuniary damage for racial discrimination in access to services – the total amount the defendant had to pay is EUR 600 for non-pecuniary damage and approximately EUR 1 800 in legal costs.<sup>392</sup> In a case of discrimination against a Roma woman in access to employment,<sup>393</sup> the court awarded the claimant EUR 2 500 out of EUR 5 000 requested.

### c) Assessment of the sanctions

It is already clear that the courts are fairly reluctant to award financial compensation at all for non-pecuniary damage in cases of discrimination and when such compensation is granted, the amounts tend to be symbolic. These amounts of compensation are hardly effective, proportionate and dissuasive.

One of the reasons for this inadequate implementation of the requirements of the directives may be the wording of the corresponding provision of the Anti-discrimination Act (Section 9(3)) which requires a finding of a 'considerable impairment of the dignity, social status or social achievement of the person injured' in order for financial compensation for non-pecuniary damage to be awarded.<sup>394</sup>

Although this set of conditions is not exhaustive and courts are supposed to take into account 'the seriousness of the non-pecuniary damage and all underlying circumstances', the most frequent practice is that persons affected by discrimination have to prove how their dignity has been 'considerably impaired', instead of the perpetrators' behaviour being judged as inherently humiliating and impairing a person's dignity.<sup>395</sup> Thus, instead of bringing the perpetrators to justice, the individuals affected by discrimination often have to go through their trauma again, including during the judicial proceedings, and remain disillusioned after the judicial decision is announced. A change in legislation reflecting the need for a paradigm shift (judging the behaviour and treatment of the perpetrator instead of burdening and re-traumatising the victim) would be more than welcome.

As regards financial compensation for non-pecuniary damage, there is another problematic issue, namely the judicial fees. According to Slovak legislation, the claimant is supposed to pay 3 % of any sum claimed as financial compensation for non-pecuniary damage. This means that the higher the amount claimed as compensation for non-pecuniary damage, the higher the judicial fee – which hinders claimants from even requesting amounts that

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<sup>391</sup> Response from the Ministry of Justice of 20 February 2020 to a request for information of 13 February 2020 (on file with the author).

<sup>392</sup> Decision of the District Court in Spišská Nová Ves, No. 1C 118/2010- 175, 25 April 2014 reaffirmed by the decision of the Regional Court in Košice, No. 6 Co 833/2014 – 223, 28 June 2016. More information on the case is available at <https://www.poradna-prava.sk/en/documents/press-release-the-slovak-court-ordered-a-bar-owner-to-pay-compensation-for-discrimination/>.

<sup>393</sup> Decision of the District Court in Spišská Nová Ves, No. 8 C 268/2016 – 523, 23 March 2017 upheld by the decision of the Regional Court in Košice by its decision of 7 February 2018 ref. No. 9Co 259/2017.

<sup>394</sup> See Section 6.1(a) for the full wording of the relevant provision.

<sup>395</sup> An exception to this practice is a decision by the District Court in Spišská Nová Ves of 25 April 2014 (ref. No. 1C/118/2010-175) reaffirmed by the decision of the Regional Court in Košice, No. 6 Co 833/2014 – 223 from 28 June 2016, where the district court argued that the defendant's action was directed against the dignity of the complainants and that they were 'gravely humiliated' by this action, and went on to say that '[a]ny discrimination is undoubtedly objectively degrading for every person affected by it' and that it represents action that is 'particularly dangerous and socially inadmissible'.

would be effective, proportionate and dissuasive. The judicial fees are paid in advance and in every instance, and they are doubled before the Supreme Court.<sup>396</sup>

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

On other remedies granted in cases of discrimination, when the courts declare that discrimination has occurred, they generally oblige the discriminator to provide a written apology to the person discriminated against and tend to find this remedy to be sufficient. However, in most of cases of discrimination such a sanction by itself cannot be considered to be effective, proportionate and dissuasive as required by the directives and must be followed by financial compensation and or other financial sanction.

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<sup>396</sup> If, however, the first instance court awards some but not all of the requested compensation, the fee before the second instance court (and later possibly before the Supreme Court) is only calculated from the difference between the amount originally claimed and the amount actually awarded.

## **7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)**

- a) Body/bodies designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

By the adoption of Anti-discrimination Act in 2004,<sup>397</sup> the Slovak National Centre for Human Rights became the specialised body for the promotion of equal treatment for all grounds of discrimination covered by the Anti-discrimination Act. With the adoption of the Anti-discrimination Act, Act 308/1993 on Establishing the Slovak National Centre for Human Rights ('Act on the Centre') was amended.<sup>398</sup>

According to the Act on the Centre, the centre is an independent, non-judicial body, subsidised by the state. According to Section 1 of the Act on the Centre, the centre fulfils tasks in the field of fundamental rights and freedoms. To these ends, the centre does the following:

- monitors and evaluates the observance of human rights and the observance of the principle of equal treatment, in accordance with the Anti-discrimination Act;
- gathers information on racism, xenophobia and anti-Semitism in Slovakia and provides this information on request;
- conducts research and surveys for the purpose of providing data in the field of human rights, gathers and, on request, provides information in this field;
- prepares educational activities and takes part in information campaigns with the aim of increasing tolerance in society;
- secures legal aid for victims of discrimination and intolerance;
- issues, on request of natural persons or legal entities or on its own initiative, expert opinions in matters of observance of the principle of equal treatment in accordance with the Anti-discrimination Act;
- carries out independent inquiries concerning discrimination.

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

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

On a long-term and continuing basis, the centre is subject to criticism by NGOs, international human rights bodies and others who are active in the field of human rights, particularly for its insufficient functioning and independence.<sup>399</sup> In recent years, these

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<sup>397</sup> Act No. 365/2004 on Equal Treatment in Certain Areas and Protection against Discrimination and on amending and supplementing certain other laws as amended.

<sup>398</sup> Act No. 308/1993 on Establishing the Slovak National Centre for Human Rights, as amended (*zákon č. 308/1993 o zriadení Slovenského národného strediska pre ľudské práva v znení neskorších predpisov*).

<sup>399</sup> See, for example, Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, (*Searching for barriers in access to effective legal protection from discrimination*) Košice: Poradňa pre občianske a ľudské práva, pp. 110-112. Available at <https://www.poradna-prava.sk/sk/dokumenty/diskriminacia-na-slovensku-hladanie-barier-v-pristupe-k-ucinnej-pravnej-ochrane-pred-diskriminaciou/>; UN Committee on the Elimination of Racial Discrimination (2018), *Concluding Observations of the Committee on the Elimination of Racial Discrimination from January 2018*, (CERD/C/SVK/CO/11-12), para. 7-8. Available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/SVK/CO/11-12&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/SVK/CO/11-12&Lang=En); UN Committee on Economic, Social and Cultural Rights (2019), *Concluding Observations of the Committee on Economic, Social and Cultural Rights from November 2019*, (E/C.12/SVK/CO/3), para. 6-7. Available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fSVK%2fCO%2f3&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fSVK%2fCO%2f3&Lang=en).

objections have been repeatedly highlighted in recommendations of the UN treaty monitoring bodies and other international human rights institutions.

In 2011, the Government approved the Analytical report on the functioning and status of the Slovak National Centre for Human Rights in the context of institutional protection of human rights in the Slovak Republic. This report was the first of its kind ever produced by the Slovak Government and, more generally, the first attempt that has ever been made to monitor and evaluate the functioning of the centre in a relatively complex manner.

Following the findings of the report and further analyses of the potential financial and legal impacts of carrying out fundamental and systemic changes in the setting up and functioning of the centre, the Ministry of Justice prepared an amendment to the Act on the Centre submitted to the Parliament in 2019. In June 2019, the Parliament, without publicly giving any specific reasons, rejected the amendment, despite its adoption having been recommended by the Parliament's Constitutional and Legal Affairs Committee as well as the Human Rights and Ethnic Minorities Committee, which handled the amendment during the legislative process in the Parliament.<sup>400</sup> The amendment was meant to secure the compliance of the centre with the Paris principles that set international standards regarding the functioning of national human rights institutions. In the new election period in 2020, the Ministry of Justice plans to discuss with the centre the situation concerning the amendment.<sup>401</sup>

In 2019, the overall subsidy for the centre from the state budget was EUR 769 715. The centre had no additional minor income.<sup>402</sup> In comparison to the previous year, the subsidy for the centre has noticeably increased (EUR 565 356 in 2018). In January 2019, the Government reached agreement on increasing the staff and material capacities of the centre, increasing its budget by 40 % since 2019.<sup>403</sup> The centre does not record what proportion of its overall subsidy is spent on fulfilling its responsibilities as an equality body.<sup>404</sup>

The current mechanism of financing the centre may arguably have a negative impact on its independence. Given that it is the Government that introduces the Act on the State Budget on an annual basis and the Parliament that approves the act, and there are no constitutional or statutory guarantees on minimum budgetary thresholds for the centre or mechanisms that would prevent the possibility of arbitrary (non)allocation of funds to it (which, in practical terms, is in the full and exclusive control of the Government), this mechanism casts doubts on whether the centre can, in principle, be independent from the political powers in office under the legislation and the current mechanisms of approving the centre's annual budgets.

### c) Institutional architecture

In Slovakia, the designated body forms part of the body with multiple mandates. Apart from its mandate as a body for the promotion of equal treatment, the centre has a mandate as the national human rights institution (NHRI). It was given this mandate by its establishment on 1 January 1994 following the Treaty on the Establishment of the Slovak National Centre for Human Rights between the Government of the Slovak Republic and

<sup>400</sup> The proposed amendment and information about the course of the ongoing legislative process are available at: <https://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=7&ID=1264>.

<sup>401</sup> Slovak Government (2019) 'Návrh Trinástej periodickej správy Slovenskej republiky o implementácii Medzinárodného dohovoru o odstránení všetkých foriem rasovej diskriminácie' (The Proposal of the Thirteen periodic report of Slovak Republic on implementation of the International Convention on Elimination of Racial Discrimination). September 2019. p. 3.

<sup>402</sup> Response of the centre of 21 January 2020 to a request for information of 15 January 2020 (on file with the author).

<sup>403</sup> Slovak Government (2019) *Thirteenth periodic report submitted by Slovakia to the UN Committee on the Elimination of Racial Discrimination*, 13 December 2019, CERD/C/SVK/13, para. 12.

<sup>404</sup> Response of the centre of 17 June 2019 to a request for information of 12 June 2019 (on file with the author).

United Nations.<sup>405</sup> The centre is currently not in full compliance with the principles relating to the status of national human rights institutions for the promotion and protection of human rights (the Paris principles) and continues to be accredited with 'B' status.

There is no specific structure within the centre to address its equality and non-discrimination mandate. In December 2019, the centre had 23 employees in total.<sup>406</sup> Its multiple mandate as the body responsible for the promotion of equal treatment and as the national human rights institution (NHRI) is not structurally divided within the centre and according to working contracts, all employees of the centre carry out both mandates simultaneously.<sup>407</sup>

On 8 December 2019, the mandate of the executive director of the centre expired and the board provisionally delegated this position to one of the current employees. By the end of 2019, the board had still not elected a new executive director. Its election has repeatedly failed to produce a winner.

d) Status of the designated body/bodies – general independence

i) Status of the body

The centre has separate legal status, as established by the Act on the Centre. According to the Act on the Centre, the centre is an independent, non-judicial body, subsidised by the state. The governing body of the centre is the executive director, who manages and exercises control over the centre and who is the statutory representative of the centre,<sup>408</sup> and the board, which consists of nine independent members. One member is appointed by the President of the Slovak Republic, one member by the Chair of the National Parliament, one member by the Ombudsperson, one member by the Prime Minister of the Government of the Slovak Republic in response to a proposal from NGOs, one member is appointed by the Minister of Labour, Social Affairs and Family and the other four members are appointed by deans of the four law faculties (see Section 3a(1) of the Act on the Centre). Membership of the board is voluntary and the board members are only entitled to reimbursements of their cash expenses (see Section 3a(3) of the Act on the Centre).

The executive director is elected and dismissed by the board upon nomination by the board members. The staff are appointed and dismissed by the executive director.

As regards the financing of the centre, according to the Treaty on the Establishment of the Slovak National Centre for Human Rights between the Government of the Slovak Republic and United Nations, the first two years of its existence were supported by the Voluntary Fund, subsidised by the Government of the Netherlands and by contribution from the Slovak Government. A commitment to the further maintenance of the centre was undertaken by the Slovak Government and the centre is financed by subsidies from state budget.

The Act on the Centre does not deal with the question of to whom the centre is accountable (it only stipulates that the executive director of the centre is accountable to the board and sets out the areas of this accountability, such as the activities of the centre, proper management and bookkeeping, fulfilling the decisions of the board etc).<sup>409</sup> Given the fact that the centre is a public institution set up by law, it can be argued that it is accountable to the public (although there is no particular provision contained in the Act on the Centre that would set up mechanisms for implementing this accountability and/or controlling it).

<sup>405</sup> Notice of the Ministry of Foreign Affairs of the Slovak Republic No. 29/1995.

<sup>406</sup> Response of the centre of 26 February 2020 to a request for information of 13 February 2020 (on file with the author).

<sup>407</sup> Response of the centre of 21 January 2020 to a request for information of 15 January 2020 (on file with the author).

<sup>408</sup> Act on the Centre, 308/1993, Section 2(1) and (2).

<sup>409</sup> See Act on the Centre, 308/1993, Section 3b(4), for more details.

In terms of spending finances from the state budget effectively, the centre is accountable to the Supreme Audit Office of the Slovak Republic, which controls the management of funds and property of the state.

ii) Independence of the body

Section 2(1) of the Act on the Centre stipulates that the centre is an independent legal entity. However, NGOs and international human rights bodies have questioned the factual independence of the centre in practice.<sup>410</sup>

e) Grounds covered by the designated body/bodies

The centre has a mandate to deal with all grounds covered by national law, i.e. sex, religion or belief, race, affiliation with nationality (národnosť) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act as well as some other grounds contained in other acts (unfavourable state of health, duties to family, membership of or involvement in a political party or political movement, a trade union or other association).

According to the assessment of the author of this report, the centre does not prioritise any of the covered grounds; a significant number of cases in which the centre provided legal representation before courts or on which it issued expert opinions relate to discrimination in employment on the ground of 'other status' and it is a failure of the centre that it has not sufficiently addressed pressing and widely documented discrimination in Slovak society on the grounds of ethnicity and gender. Given the limited staff and institutional capacity of the centre, prioritisation in dealing with the grounds of discrimination is necessary. However, this has not been reflected in the centre's approach so far.

f) Competences of the designated body/bodies – and their independent exercise

i) Independent assistance to victims

The centre has a duty to provide independent assistance to victims. It receives claims from individuals by post, e-mail and by electronic form as well as in person and generally provides claimants with free legal counselling by assessing whether they were subjected to discrimination based on the received information and providing them with advice about available legal options to address discrimination. The centre can also provide victims with free legal representation in a court proceeding concerning discrimination.

The information available does not allow the author of this report to assess whether this duty is exercised in an independent manner and effectively. The provision of assistance to victims is based on private communication between the centre and victims of discrimination and, as such, this information is not publicly available. The centre assists victims in various forms, such as dealing with complaints, mediating in cases or providing legal representation in court proceedings. In 2019, the centre received 109 complaints where discrimination was reasonably claimed, and the centre found them to come within its remit. In 2019, the centre provided representation in two new cases of discrimination filed with

<sup>410</sup> UN Committee on the Elimination of Racial Discrimination (2018), *Concluding Observations of the Committee on the Elimination of Racial Discrimination from January 2018*, (CERD/C/SVK/CO/11/12), para. 7-8. Available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/SVK/CO/11-12&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/SVK/CO/11-12&Lang=En); UN Committee on Economic, Social and Cultural Rights (2019), *Concluding Observations of the Committee on Economic, Social and Cultural Rights from November 2019*, (E/C.12/SVK/CO/3), para. 6-7. Available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fSVK%2fCO%2f3&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fSVK%2fCO%2f3&Lang=en).

domestic courts. One case concerns discrimination against a child in preschool education based on disability. The other case is about discrimination in the area of employment based on the other status and specifically concerns an employee who claimed discrimination from his/her employer due to supporting petition that was initiated against this employer.

In addition, the centre provided on-going representation in the other two pending cases. The first one concerns alleged direct discrimination and harassment in the area of employment based on the other status. It specifically concerns an employee (man), who claimed discrimination and harassment from his supervisor (woman) after rejecting to maintain a personal relationship with her. The district court confirmed discrimination against the person represented by the centre and the defendant appealed to the regional court.<sup>411</sup> The second case also concerns discrimination in the area of employment based on the other status. The employee (woman) claimed discrimination in comparison to the other employees due to pointing at illegal activity of her employer. In April 2019 a district court decided to terminate the proceeding on the request of the person represented by the centre.<sup>412</sup>

The number of cases litigated by the centre remains low, which may be a result of its insufficient institutional and staff capacities and/or other reasons (such as the reluctance of people who have experienced discrimination to pursue their cases by legal means, or mistrust of the equality body). However, even given its current institutional and staff capacity, the level of its provision of legal representation to victims of discrimination in court proceedings clearly appears to be low when compared to the number of cases the centre dealt with in 2019 and the prevalence of discrimination in Slovakia. It is up to the equality body to analyse this situation in more detail in order to identify barriers in this regard (for more details see data later in this chapter).

## ii) Independent surveys and reports

The centre has a duty to conduct independent surveys and publish independent reports. In practice, it ranges from publishing an annual report on the observance of human rights including the principle of equal treatment, publishing various analytical materials and conducting surveys concerning discrimination to submitting alternative reports to the international bodies. In 2019, the centre published a research report mapping the implementation of the right to housing in Slovakia and formulating recommendations for the state authorities responsible.<sup>413</sup>

Also in 2019, the centre submitted an alternative report the UN Committee on Economic, Social and Cultural Rights and the UN Committee on the Rights of Persons with Disabilities in respect of their monitoring of Slovakia's compliance with UN human rights treaties. The report reflects critically on information provided in the Government periodic report and according to the assessment of the author of this report can be considered to be independent.<sup>414</sup>

## iii) Recommendations

The centre is competent to issue independent recommendations on discrimination issues. In practice, the centre issues the recommendations in its annual reports on the observance

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<sup>411</sup> Response of the centre of 21 January 2020 to a request for information of 15 January 2020 (on file with the author).

<sup>412</sup> Response of the centre of 26 June 2020 to a request for information of 25 June 2020 (on file with the author).

<sup>413</sup> Riečanský, M., Paľovčíková, G., Ujházyová, M. (2019), *Právo na bývanie: Výskumné sondy v oblasti uplatňovania práva na bývanie na Slovensku* (Right to Housing: Research probes on the implementation of the right to housing in Slovakia). Bratislava: Slovenské národné stredisko pre ľudské práva. The report is available in Slovak at <http://www.snsip.sk/SnsipWeb.html#menu=1419>.

<sup>414</sup> The alternative report of the centre is available at: [http://www.snsip.sk/CCMS/files/UPR\\_spr%C3%A1va.pdf](http://www.snsip.sk/CCMS/files/UPR_spr%C3%A1va.pdf).

of human rights, including the principle of equal treatment, in Slovakia. In addition, it regularly includes recommendations in its reports on surveys, analytical reports or alternative reports for international human rights bodies. Recommendations are primarily addressed to the Government, Government institutions or other state institutions.

The centre has recently formulated and included independent recommendations in its reports submitted to the international human rights bodies as well as in its annual reports on the observance of human rights, including the principle of equal treatment, in Slovakia. According to the assessment of the author of this report, the centre generally addresses relevant issues concerning protection against discrimination in Slovakia and as such can be considered to be independent. However, their contextual and analytical quality varies, which may be a result of the insufficient institutional and staff capacity of the centre.

The centre also commonly formulates recommendations in its expert opinions and addresses them to various bodies depending on the issue and context of the expert opinions (see section 7(f)(iv) below).

iv) Other competences

The centre:

- monitors and evaluates the observance of the equal treatment principle and the Anti-discrimination Act;
- gathers and provides information upon request on racism, xenophobia and anti-Semitism in the Slovak Republic;
- prepares educational activities and participates in information campaigns aimed at increasing tolerance in the society; and
- issues expert opinions on the observance of the equal treatment principle under the Anti-discrimination Act, upon requests from natural persons or legal entities or on its own initiative.

The centre noticeably increased the number of expert opinions issued in 2019 (26 overall). These generally focused on analysing the conformity of particular domestic legal provisions with anti-discrimination legislation, assessing the potential discriminatory impact of certain practices in society. The centre has also documented or analysed certain theoretical issues concerning anti-discrimination law. The centre has also produced expert opinions either on its own initiative or based on requests or complaints received from third parties claiming potential discrimination. Some of the expert opinions are based on independent surveys or monitoring that the centre has conducted. The centre monitors the impact of these opinions and evaluates measures that its recipients take in response. However, its ability to check their implementation effectively is limited.<sup>415</sup>

g) Legal standing of the designated body/bodies

In Slovakia, the designated body – the Slovak National Centre for Human Rights – has legal standing to:

- bring discrimination complaints (on behalf of identified victims) to court;
- bring discrimination complaints (on behalf of non-identified victims) to court;
- intervene in legal cases concerning discrimination, such as *amicus curiae*.

In accordance with Section 1(3) of the Act on the Centre, the centre has the authority to represent parties in proceedings concerning violation of the principle of equal treatment. The clients are represented by the centre's staff lawyers. In such cases the people represented by the centre do not pay for the legal representation it provides. However, the

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<sup>415</sup> Response of the centre of 26 March 2020 to a request for information of 25 March 2020 (on file with the author).



centre cannot represent victims of discrimination in proceedings before the Constitutional Court. The centre can intervene in legal cases concerning discrimination, such as *amicus curiae*. The centre does not have any litigation strategy; according to the centre, it has a duty as the equality body to treat every client equally and does not give strategic preference to any cases due to their potential impact on society. In 2019, the centre started to provide legal representation in two new cases of discrimination. Overall, in 2019, the centre has provided legal representation to four victims of discrimination. The courts issued decisions in two cases litigated by the centre – both were decisions of first instance courts. In the first case, the district court confirmed discrimination against the person represented by the centre and the defendant appealed to the regional court. In the second case, the district court decided to terminate the proceeding on the request of a person represented by the centre.<sup>416</sup>

The Slovak National Centre for Human Rights is authorised by law to join judicial proceedings related to breaches of the principle of equal treatment, either on the side of the claimant or on the side of the defendant. In 2019, the centre did not join any judicial proceeding as an intervener in a discrimination case. In addition, in cases in which breaches of the principle of equal treatment could violate rights, interests protected by the law or freedoms of a larger or non-specified number of people, or if the public interest could be seriously endangered in some other manner by such a violation, the centre can invoke the protection of the right to equal treatment in its own name. By the end of 2019, the centre had not filed an *actio popularis* lawsuit in its own name, but had analysed the possibility of initiating up to 10 such suits that it plans to submit to the courts in 2020. The lawsuits will mostly address discrepancies of particular legal provisions with anti-discrimination laws as identified by the centre (e.g. possible discriminatory provisions stipulating pension payments for fire fighters and housing surcharges for policemen, admission criteria for kindergartens or problematic provisions of the law on abortion). In addition, the lawsuits will address segregation practices in education and discrimination against people with visual impairment in Slovak society.<sup>417</sup>

The centre continues to provide legal representation to only a small number of persons who have been discriminated against and it is not sufficiently active in improving access to justice for people who have experienced discrimination. According to the assessment of the author of this report, a significant number of the limited amount of cases in which the centre provided legal representation before courts relate to discrimination in employment on the ground of 'other status' (mostly harassment conducted by an employee's supervising manager) and so do not sufficiently address the pressing and widely documented discrimination in Slovak society on the grounds of ethnicity and gender. From this perspective, the case law produced by the centre appears to fall short of its particular strategic relevance in terms of advancing the implementation of anti-discrimination legislation in domestic courts, spurring public discussion on the most pressing human rights issues or addressing issues that need legal interpretation.

#### h) Quasi-judicial competences

In Slovakia, the equality body – the Slovak National Centre for Human Rights – is a quasi-judicial institution.<sup>418</sup> It has a responsibility to deal with claims of individuals and reach findings on discrimination in individual cases. However, the centre's conclusions in these cases are not legally binding and can only serve as a relevant opinion, which can be presented, for instance, in court proceedings when victims decide to take additional legal

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<sup>416</sup> Response of the centre of 21 January 2020 to a request for information of 15 January 2020 (on file with the author).

<sup>417</sup> Response of the centre of 21 January 2020 to a request for information of 15 January 2020 and related additional response of the centre of 26 March 2020 to a request for information of 25 March 2020 (on file with the author).

<sup>418</sup> The issue is a matter of interpretation. The author of this report interprets the competence of the Slovak equality body to hear and consider individual complaints as a quasi-judicial competence, which is why she considers the equality body to be a quasi-judicial body.

steps. The centre monitors how clients make use of its conclusions and when the clients decide to file a lawsuit they usually propose that the centre be engaged in the proceeding as a third party. The centre monitors the overall impact of its conclusions and opinions on eradicating discriminatory practices or behaviours that the centre has found to be discriminatory. However according to centre, it has an insufficient remit in relation to carrying out further checks on those who discriminate, which limits further monitoring.<sup>419</sup>

i) Registration by the body/bodies of complaints and decisions

In Slovakia, the body registers the number of complaints of discrimination made.

The data are available to the public.

The centre registers the number of discrimination complaints received, including information about the ground and field of discrimination being claimed. These data are published in annual reports on the activities of the centre, which are publicly available on the centre's website.<sup>420</sup>

In 2019, the centre received 109 complaints, out of which discrimination was reasonably claimed in 94 and the centre found them relevant to its remit. Out of this total, the centre found a violation of anti-discrimination legislation in 23 complaints. As for the field of discrimination, 57 complaints concerned employment and access to employment, 11 access to goods and services, 11 social security, 7 education, 2 access to healthcare and 1 discrimination based on the framework of the Constitution; in 20 cases no field was identified. The grounds of the complaints received were: 6 on age; 9 on ethnic origin (all Roma ethnicity); 12 on sex, 2 on gender; 9 on disability; 2 on sexual orientation; 1 on political or other opinion; 1 on education; 1 on social origin; 1 on religion; 4 on reporting criminality or other anti-social activity; and 46 on other status. The complaints that the centre attributed to the ground of other status concerned in particular employees who experienced discrimination as a result of making a complaint against their employer, potential discrimination based on permanent residence and state citizenship. Fifteen complaints were not linked to any discriminatory ground, although the centre still found that it was competent to deal with them as it looked at these complaints through the lens of the principle of equal treatment.<sup>421</sup>

j) Stakeholder engagement

In Slovakia, the designated body engages with stakeholders as a part of implementing its mandate.

According to the information provided by the centre, in 2019, the centre collaborated with a wide range of public stakeholders including civil society organisations, public bodies, local government entities, international institutions and other bodies including universities and schools.<sup>422</sup>

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<sup>419</sup> Response of the centre of 26 March 2020 to a request for information of 25 March 2020 (on file with the author).

<sup>420</sup> Slovak National Centre for Human Rights (2019), *Ročná záverečná správa o činnosti Slovenského národného strediska pre ľudské práva za rok 2018 (Annual report on the activities of the Slovak National Centre for Human Rights for the Year 2018)*. Available in English 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).

<sup>421</sup> Response of the centre of 21 January 2020 to a request for information of 15 January 2020 and additional response of the centre of 27 March 2020 to a request for information from the same date (on file with the author).

<sup>422</sup> Response of the centre of 21 January 2020 to a request for information of 15 January 2020 (on file with the author).

#### k) Roma and Travellers

The centre does not treat Roma as a priority issue. The issue of discrimination against the Roma minority in Slovakia is a part of the centre's overall educational activity concerning protection against discrimination. In 2019, the centre gave increased attention to issues of discrimination against Roma in access to employment and access to housing, while conducting independent surveys, the results of which will be published in 2020.<sup>423</sup> The centre also gives attention to discrimination against the Roma minority in various areas of public life in its annual report on the observance of human rights as well as in alternative reports for international human rights bodies; it addresses recommendations in this regard to the state authorities responsible.<sup>424</sup>

However, its activities on the prevention of discrimination against the Roma minority do not include litigation of cases of discrimination against Roma, despite the on-going prevalence of such discrimination in Slovakia. In recent years, the centre has provided legal representation in very few cases of discrimination against the Roma minority and has not made use of its competence to initiate *actio popularis* lawsuits to challenge structural discrimination of the marginalised Roma minority in education, housing or healthcare. In 2019, the centre conducted an independent survey addressing a particular case of segregation of Roma children in education, following information reported by the media. It also publicly commented on a few cases of discrimination against Roma raised in the media. In 2019, the centre did not engage in any litigation concerning discrimination against Roma at all, neither by providing legal representation to affected Roma, nor through any other legal intervention in pending cases in this regard in Slovakia (such as providing *amicus curiae*).<sup>425</sup>

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<sup>423</sup> Response of the centre of 21 January 2020 to a request for information of 15 January 2020 (on file with the author).

<sup>424</sup> For instance, in its recent report on the Observance of Human Rights Including the Principle of Equal Treatment in the Slovak Republic for the Year 2018, the centre addressed a number of relevant recommendations to the Government authorities and municipalities concerning the right of Roma for adequate housing and right of Roma children to quality education without segregation. The recommendations were based on a concise analysis the situation in these areas including case studies from concrete localities. The report is available at: <http://www.snsip.sk/#page=2426>.

<sup>425</sup> Response of the centre of 21 January 2020 to a request for information of 15 January 2020 (on file with the author).

## 8 IMPLEMENTATION ISSUES

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

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

Some information about legal protection against discrimination (including in English) is contained on the website of the Slovak National Centre for Human Rights (the equality body, [www.snslp.sk](http://www.snslp.sk)). The Ministry of Labour, Social Affairs and Family runs a website that provides a wider range of information concerning the protection from discrimination for the general public (e.g. an overview of anti-discrimination legislation, forms and grounds of discrimination, instructions on protection against discrimination). The website also includes information on how to combat discrimination.<sup>426</sup> In 2019, the Ministry of Labour, Social Affairs and Family announced a call for project proposals specifically aiming at the prevention and elimination of all forms of discrimination. The call aims to support a wide range of activities including educational and awareness-raising activities on the legal protection from discrimination. The call was open to 29 November 2019 and was financed by the EU funds.<sup>427</sup>

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

In 2010, the Council of the Government of the Slovak Republic for Human Rights, National Minorities and Gender Equality was set up as a permanent advisory body to the Government of the Slovak Republic.<sup>428</sup> According to its statute, the Council is a permanent expert, advisory, coordinating and consultative body to the Government in the field of human rights, including the rights of national minorities and ethnic groups and in the field of pursuing the principle of equal treatment and the principle of gender equality.<sup>429</sup> The Council has 40 members<sup>430</sup> and unites representatives of the Government, regional and local bodies, public human rights institutions, NGOs, academic institutions and vice-chairpersons of the Council's committees. The Council has seven committees, which cover issues of national minorities and ethnic groups, people with disabilities, gender equality, children and youth, research and education in the field of human rights and development, the prevention and elimination of racism, xenophobia, anti-Semitism and other forms of intolerance, and the rights of lesbians, gays, bisexual, transgender and intersex persons.<sup>431</sup>

The Council and its mechanisms are undeniably some kind of forum for expert discussion, networking and exchange of opinions between the Government, NGOs and academia, representatives of local and regional bodies, human rights institutions and other stakeholders involved in the protection of human rights including non-discrimination. On the other hand, its structure is rather complicated and 'all-encompassing', which is a barrier per se for its efficient functioning. It does not have clear and flexible mechanisms for assessing legislation that is under preparation concerning human rights (including the right to non-discrimination) and giving opinions by the Council thereon (including a clear and efficient mechanism for entering the legislative process), and so there have been many

<sup>426</sup> The website is available in Slovak at <http://www.gender.gov.sk/diskriminacia/>.

<sup>427</sup> Response of the Ministry of Labour, Social Affairs and Family of 23 January 2020 to a request for information of 15 January 2020 (on file with the author).

<sup>428</sup> Act on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration, 575/2001, Section 2(3). The website of the Council of the Government: [www.radavladyp.gov.sk/](http://www.radavladyp.gov.sk/).

<sup>429</sup> Statute of the Council of the Government of the Slovak Republic for Human Rights, National Minorities and Gender Equality, Article 2. The statute is available at <http://www.radavladyp.gov.sk/dokumenty-rady/>.

<sup>430</sup> The names of the members are available at <http://www.radavladyp.gov.sk/zlozenie-rady-vlady-slovenskej-republiky-pre-ludske-prava-narodnostne-mensiny-a-rodovu-rovnost/>.

<sup>431</sup> See Statute of the Council of the Government of the Slovak Republic for Human Rights, National Minorities and Gender Equality, Article 6(1) and (2).

instances when the Council did not address human rights and equality issues of critical importance. Similarly, there is no mechanism for monitoring the compliance of the Government and its ministries with the recommendations of the Council and its committees. Furthermore, it can be said that the Government does not take the recommendations of the Council very seriously and that it is often a forum for formal discussion only.

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

Upon an official request by the author of this report for information on measures that the Slovak Republic carried out in 2019 in relation to social partners with the aim of implementing the principle of equal treatment pursuant to EU directives, the Ministry of Labour, Social Affairs and Family noted that social partners are engaged in a range of Government advisory bodies concerning the protection of human rights including the Council of the Government for Human Rights, National Minorities and Gender Equality. In addition, they are engaged in the Administrative and Social Council of the Slovak Republic working as an initiative, consultative and negotiating body of the Slovak Government, employers and social partners and so, through this institutional platform, social partners are informed about all legislative or non-legislative materials concerning non-discrimination and equal treatment.<sup>432</sup>

- d) Addressing the situation of Roma and Travellers

In 2001, the Office of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities was established. The Plenipotentiary was directly subordinate to the Prime Minister and their tasks were to 'propose, coordinate and control activities aiming at solving problems of the Roma minority and, following approval from the Government, to carry out systemic solutions to achieve equal status in society for citizens belonging to the Roma minority'.<sup>433</sup> In June 2012, the Plenipotentiary, albeit still remaining an advisory body of the Government and officially accountable to it, became de facto subordinate to the Minister of Interior with whom the Plenipotentiary is supposed to 'coordinate her/his activities'.<sup>434</sup> At the same time, the Office of the Plenipotentiary also moved to the Ministry of Interior.<sup>435</sup> The subsuming of the office into the Ministry of Interior, apart from being unprincipled and non-systemic (the situation of Roma communities requires systemic solutions in all areas of life including employment, housing, infrastructure, education, health etc. where the Ministry of Interior has no powers), also has a very negative and dangerous flavour, as part of the Ministry of Interior's remit is to deal with 'security', criminal proceedings and with the repressive side of the exercise of state power in general.

## **8.2 Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78)**

- a) Compliance of national legislation (Articles 14(a) and 16(a))

According to the Article 125 of the Slovak Constitution, the Constitutional Court decides on the compliance of laws with the Constitution, with constitutional laws and with international

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<sup>432</sup> Response of the Ministry of Labour, Social Affairs and Family of 23 January 2020 to a request for information of 15 January 2020 (on file with the author).

<sup>433</sup> See [www.minv.sk/?vznik\\_uradu](http://www.minv.sk/?vznik_uradu). The original statutes are not available.

<sup>434</sup> See Article 2(3) of the Statutes of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities, approved by a resolution of the Government of the Slovak Republic No. 308 of 27 June 2012, available at: [www.minv.sk/?statut\\_rk](http://www.minv.sk/?statut_rk).

<sup>435</sup> See Article 3(4) of the Statutes of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities. The link to the website of the current Plenipotentiary is [www.minv.sk/?romske-komunitu-uvod](http://www.minv.sk/?romske-komunitu-uvod).

treaties approved by the Slovak Parliament and ratified and proclaimed in the manner prescribed by law.

If the law or part of a provision is non-compliant, it loses its effect. The authorities that have issued such legislation must, within six months of the declaration of the Constitutional Court's decision, bring them into line with the Constitution, with constitutional laws and international treaties. If they fail to do so, such provisions, or parts of provisions thereof will cease to apply six months after the date of the decision.<sup>436</sup>

The problem is that individuals cannot submit a complaint to the Constitutional Court claiming the non-compliance of national legislation with the principle of equal treatment – such a complaint can only be submitted by the President of the Republic, a group of MPs, the Government, a general court in a matter related to pending court proceedings, the Ombudsperson, the General Prosecutor and, in matters related to the judiciary, the President of Judicial Council.<sup>437</sup>

b) Compliance of other rules/clauses (Articles 14(b) and 16(b))

Section 13 of the Anti-discrimination Act states that employers and relevant trade union bodies that conclude collective agreements are obliged to bring the provisions of collective agreements into compliance with the principle of equal treatment by 1 January 2005. Employers have the same obligation to adopt the provisions into their internal rules. This means that after January 2005, no collective agreements and internal rules of employment contrary to the Anti-discrimination Act may be legally applied.

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<sup>436</sup> Constitution of the Slovak Republic, Article 125, para 3.

<sup>437</sup> Act on Constitutional Court, 314/2018, Section 74.

## 9 COORDINATION AT NATIONAL LEVEL

In accordance with the Act on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration,<sup>438</sup> the Ministry of Labour, Social Affairs and Family is the central state administration body for 'gender equality and equal opportunities and for the coordination of state policies in this field'.<sup>439</sup>

Since 1 September 2015, the Ministry of Justice has been responsible for coordinating the fulfilment of human rights tasks and provides for the development and implementation of state policies in the field of human rights.<sup>440</sup>

Following the adoption of the 'National Strategy for the Protection and Promotion of Human Rights in the Slovak Republic' in 2015,<sup>441</sup> on 13 January 2016, the Slovak Government adopted the 'Action Plan to Prevent All Forms of Discrimination 2016-2019'.<sup>442</sup> On the same day, the Government also adopted the 'Action Plan to Prevent and Eliminate All Forms of Racism, Xenophobia, Anti-Semitism and Other Forms of Intolerance 2016-2018'.<sup>443</sup> In 2015, the draft 'Action Plan for LGBTI People for 2016-2019' was also prepared by the Ministry of Justice in collaboration with the LGBTI activist community.<sup>444</sup> However, as of the end of 2019, this action plan had still not been adopted. On 26 October 2016, the Government adopted the 'Action Plan on the Protection of Persons Belonging to the National Minorities and Ethnic Groups 2016-2020'.<sup>445</sup>

The Government's policy concerning the integration of Roma living in marginalised communities is set out in the 'Strategy of the Slovak Republic for Roma Integration to 2020', which was adopted on 11 January 2012.<sup>446</sup> The strategy is an 'open document' to be supplemented by action plans, which specifies policies and measures to be implemented in selected areas. On 17 January 2019, the Slovak Government adopted updated action plans supplementing the existing strategy in the areas of education, employment, health, housing and financial inclusion.<sup>447</sup>

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<sup>438</sup> Act on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration, 575/2001.

<sup>439</sup> Act on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration, 575/2001, Section 15(1)(h).

<sup>440</sup> By the amendment to the Act on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration, No. 172/2015.

<sup>441</sup> Available at: <https://rokovania.gov.sk/RVL/Material/11579/1>.

<sup>442</sup> *Akčný plán predchádzania všetkým formám diskriminácie na roky 2016-2019*. Available at: [http://www.gender.gov.sk/diskriminacia/files/2016/09/AP\\_ADZ-.pdf](http://www.gender.gov.sk/diskriminacia/files/2016/09/AP_ADZ-.pdf).

<sup>443</sup> *Akčný plán predchádzania a eliminácie rasizmu, xenofóbie, antisemitizmu a ostatných foriem intolerancie na roky 2016 -2018*, available at: <https://rokovania.gov.sk/RVL/Material/12583/1>.

<sup>444</sup> *Akčný plán pre LGBTI ľudí na roky 2016-2019*.

<sup>445</sup> *Akčný plán ochrany práv osôb patriacich k národnostným menšinám a etnickým skupinám na roky 2016 - 2020*. Available at: <https://rokovania.gov.sk/RVL/Material/21551/1>.

<sup>446</sup> Slovakia (2012) 'Strategy of the Slovak Republic for the Integration of Roma to 2020'. Available at: <https://rokovania.gov.sk/RVL/Material/8177/1>.

<sup>447</sup> *Aktualizované akčné plány Stratégie Slovenskej republiky pre integráciu Rómov do roku 2020 na roky 2019 - 2020 pre oblasti: D.2.1 Oblasť vzdelávania, D.2.2 Oblasť zamestnanosti, D.2.3 Oblasť zdravia, D.2.4 Oblasť bývania a D.2.5 Oblasť finančného začlenenia*. Available at <https://rokovania.gov.sk/RVL/Resolution/17492/2>.

## 10 CURRENT BEST PRACTICES

A national project of health mediators based in marginalised Roma communities, entitled 'Healthy Communities' is aimed at improving the access of marginalised Roma communities to healthcare. It recently employed 264 health mediators mostly of Roma origin (the mediators mostly come from the communities) who assist people from marginalised Roma communities with everyday health-related situations. In 2018, this project introduced an additional pilot initiative and currently employs eight Roma health mediators working directly in maternity and paediatric wards of selected hospitals in the vicinity of marginalised Roma communities in eastern Slovakia. They carry out mediation and awareness-raising work as well as providing psychosocial support for Roma women and children in hospitals.<sup>448</sup>

In 2019, regional inspectorates of the Slovak Trade Inspectorate in Košice and Prešov intensified their inspection work focused on uncovering racial discrimination against the Roma minority in access to public spaces (e.g. pubs, restaurants). They carried out a number of checks in this area, based on complaints received from the Centre for Civil and Human Rights, which has conducted field monitoring on the occurrence of discrimination against Roma in the particular area and identified a number of specific cases. The inspectorates carried out checks using a method of situation testing and Roma people facing discrimination participated as testers, enabling the inspectorates to effectively document potential discrimination. The centre facilitated the participation of Roma in the inspection checks on racial discrimination and published a report analysing the work of the current inspectorate, proposing a number of recommendations to improve its effectiveness.<sup>449</sup>

The largest internet employment portal in Slovakia, [www.profesia.sk](http://www.profesia.sk) started giving particular attention to discrimination against persons with health disabilities and came up with an initiative to support their employment in the society. In 2018, over 2 000 persons with health disabilities were looking for a job and created CV profiles on the portal. From 1 March 2019, the company decided to provide free access to all these profiles for their clients that use the portal for searching for new employees. It also actively communicates with NGOs working with persons with disabilities, for instance, to support the preparation of people with disabilities for job interviews.<sup>450</sup>

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<sup>448</sup> Additional information is available on the website of the project: <https://zdraveregiony.eu/>.

<sup>449</sup> Centre for Civil and Human Rights (2019) *Situačný testing ako nástroj preukazovania diskriminácie v prístupe k tovarom a službám* (Situational testing as a tool for uncovering discrimination in access to goods and services). Poradňa pre občianske a ľudské práva. Available at <https://www.poradna-prava.sk/sk/dokumenty/situačný-testing-ako-nástroj-preukazovania-diskriminácie-v-oblasti-poskytovania-tovarov-a-služieb/>.

<sup>450</sup> Additional information about the initiative is available at <https://www.chartadiverzity.sk/su-zdravotne-znevychodneni-na-trhu-prace-skutocne-neziaduci-vyse-desatina-ma-vysokoskolsky-titul/>.



## 11 SENSITIVE OR CONTROVERSIAL ISSUES

### 11.1 Potential breaches of the directives at the national level

- The protection against discrimination guaranteed under the Anti-discrimination Act is only provided in connection with 'rights of persons provided for under special laws'. This is the problem that in some areas (like social advantages, access to goods and services) the rights of the persons would be provided by generally binding legal enactments other than laws (for example, Government decrees, ministerial ordinances, generally binding ordinances of self-governing bodies or municipalities etc.). See mainly sections 2.4(b) and 3.2.7 above for further details.
- The definition of harassment raises a few questions regarding full compliance with the directives. See section 2.4 for more details.
- The judicial interpretation of indirect discrimination is not in compliance with interpretation given by the CJEU case law. See section 2.3 for more details.
- The definition of disability in labour and social security legislation is very restrictive compared to the definition developed by the Court of Justice of the EU in *Skouboe Werge and Ring*.<sup>451</sup> See section 2.1.1 for more details.
- If contract work falls outside legal relations covered by the Labour Code, it is probably not covered by anti-discrimination provisions. See section 3.2.1 for details.
- Act 417/2013 on Aid in Material Need contains a provision (Section 10 (3)) that reduces the payment of the allowance in material need for each adult person who does not carry out some kind of 'work in the public interest' or similar works in amount of at least 32 hours per month. The provision appears to be indirectly discriminatory on the ground of ethnicity (against the Roma). See section 3.2.6 for more detail.
- Act 383/2013 on Childbirth Allowance and on Allowance for More Concurrently Born Children clearly appears to be discriminatory towards Roma women. See section 3.2.7 for more details.
- Section 4 (3) of Act 571/2009 on Laws on Parental Care Allowance and Article 12a of Act 600/2003 on Child Allowance appear to be discriminatory towards Roma. See section 3.2.7 for more details.
- The conditions of job termination for university professors (when they reach 70 years of age) and for judges and prosecutors (when they reach 65 years of age) are very likely in conflict with CJEU case law. See sections 4.6.4(c) and (f) of this report for more details.
- The way in which the courts have dealt so far with cases where financial compensation for non-pecuniary damage was sought indicates that, with regard to this type of compensation, the sanctions are not effective, proportionate and dissuasive. See section 6.5(c) for more details.
- The segregation of Roma children in education remains a very serious problem and state authorities fall short in addressing it effectively. See section 3.2.8 for further details.
- Act 308/1991 on Freedom of Religious Belief and the Status of Churches and Religious Societies may be discriminatory on the ground of religion for members of certain religions or religious societies, since it significantly advantages registered churches and religious societies with regard to the legal and economic environment in which they operate. See section 2.1.1 for more details.

### 11.2 Other issues of concern

The key issues of concern with regards to the implementation and practical application of the anti-discrimination directives on the national level are the following:

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<sup>451</sup> CJEU, Joined Cases C-335/11 and C-337/11, *HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab* (C-335/11), and *HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S, in liquidation* (C-337/11), judgment of 11 April 2013.

- Barriers to access to courts and to justice in general.
- Extreme length of the judicial proceedings.
- Lack of proper knowledge of anti-discrimination legislation by legal professionals (including those in decision-making positions) and by decision-makers in general, discriminatory attitudes and lack of training.
- The application of reversed burden of proof by domestic courts in anti-discrimination court proceedings continues to fall short of a legal consistency and is often not in compliance with CJEU case law.
- Extreme reluctance of domestic courts to award financial compensation for non-pecuniary damages; if compensation is awarded, it is generally symbolic.
- Courts' interpretation of the necessity only for individuals to submit claims, which undermines the standing of *actio popularis*.
- Although the Slovak National Centre for Human Rights fulfils its tasks stemming from EU and national law on paper, it appears to have serious problems with efficiency, transparency, independence and with its overall performance in general. See section 7 for more details.
- Organisations and the Slovak National Centre for Human Rights can represent persons affected by discrimination in civil proceedings, but cannot represent them before the Constitutional Court. See sections 6.2(a) for more details.
- Existence of racial prejudices among judges influencing their decision making in cases of racial discrimination and lack of programmes to increase their sensitivity to the issues involved.
- Lack of case law.
- Challenges remain in the registration of cases and decisions on discrimination by courts, with statistics thus not precisely reflecting the reality of cases pending.
- The concept of the shift in the burden of proof only applies to judicial proceedings (and not to administrative proceedings carried out, for example, by labour inspectorates or offices of the Slovak Trade Inspectorate). This makes it almost impossible for administrative bodies that are formally authorised to identify and sanction breaches of the principle of equal treatment to carry out their responsibilities in the field of equality efficiently. See section 6.3 for more details.
- Lack of data and statistics connected to discrimination and its grounds.
- Lack of effective implementation of public policies in the field of anti-discrimination.
- Lack of mainstreaming of the principle of non-discrimination and lack of coordination among public bodies and institutions responsible for non-discrimination.
- Claiming invalidity of an employment termination can only be done within a period of two months from the date of the termination of the employment relationship. This is certainly a barrier to seeking effective remedies in cases of discriminatory dismissals. See section 6.1(b).
- On-going reluctance of the Government to adopt the 'Action Plan for LGBTI People for 2016-2019', drafted by the Ministry of Justice in 2015.
- Lack of resources invested by the Government into non-discrimination, lack of systemic support of NGOs by the Government.
- The system of education not sufficiently integrating the principles and values of human rights, non-discrimination and multiculturalism.
- Lack of commitment and interest on the side of politicians in the values of human rights and non-discrimination.
- A very high level of occurrence and tolerance of racism and discriminatory attitudes in society at large.
- No effective policies providing for the transition from a segregated to an inclusive educational system and a lack of material, financial and human resources for mainstream schools to ensure inclusive education.
- Public support for extremist ideas and policy regimes disregarding democratic values including the protection of human rights, particularly among young people; inability of the school system to sufficiently address these issues.

- Racist political discourse among some politicians against ethnic minorities, particularly Roma, Muslims and non-citizens.

## 12 LATEST DEVELOPMENTS IN 2019

### 12.1 Legislative amendments

There have been no amendments to anti-discrimination legislation in 2019.

### 12.2 Case law

**Name of the court:** The Constitutional Court of Slovak Republic

**Date of decision:** 15 November 2018 delivered on 28 January 2019

**Name of the parties:** I.H. v. Supreme Court of the Slovak Republic

**Reference number:** IV ÚS 573/2018 - 13

**Address of the webpage:**

<https://www.ustavnysud.sk/vyhľadavanie-rozhodnuti#!DecisionsSearchResultView>

**Brief summary:** The claimant, Mr. I.H., who is of Roma ethnic origin, filed a constitutional complaint against the decisions of the general courts in his case of racial discrimination – the refusal by a mobile operator company to provide him with a phone service for a fixed tariff. In his constitutional complaint, he claimed that the general courts<sup>452</sup> violated his right to a fair trial guaranteed by the Slovak Constitution. Among other things, he argued that his right to a fair trial was violated by the decisions of the lower courts, which dismissed his claim for discriminatory treatment. According to the general courts, due to the particular circumstances of the case neither defendant was responsible for the alleged discriminatory treatment. In this regard, the general courts concluded that an employee of the service provider was responsible for the discriminatory treatment, but that the service provider no longer had a contract with the mobile operator and its successor could not be found responsible as the right to protection from discrimination is a personal right (similar to the right to be free from interference with one's personal dignity) which cannot be transferred to the company's successor, although it succeeds to all its rights and duties (universal succession). As for the mobile operator, the courts did not find it to be responsible as it did not have direct contact with the claimant. On 15 November 2018, the Constitutional Court dismissed the claimant's constitutional complaint. The Constitutional Court did not find the legal opinion and reasoning of the lower courts on the lack of responsibility of defendants for the discriminatory treatment to be unconstitutional – in violation of the claimant's right to a fair trial. Like the general courts, the Constitutional Court concluded that a violation of the principle of equal treatment has a personal character and cannot be transferred by contract to the legal entity's successor. That is why, according to the Constitutional Court, in cases of discrimination the only person who discriminates can be responsible for discriminatory treatment is the one who discriminates. The Constitutional Court did not find unconstitutional the legal opinion of the Slovak general courts that responsibility for discriminatory treatment is solely personal, which is why it cannot be transferred to other legal entities although there was universal succession to the rights and duties.

**Name of the court:** The Constitutional Court of the Slovak Republic

**Date of decision:** 29 November 2018 delivered on 8 March 2019,

**Name of the parties:** Poradňa pre občianske a ľudské práva (Centre for Civil and Human Rights) v. District prosecution Vranov nad Topľou in the proceeding file no. Pd 55/16/7713-6, Regional prosecution in Prešov in the proceeding file no. Kd 214/16/7700 and General prosecution of Slovak Republic in the proceeding file no. VI/2 Gd 347/16/1000

**Reference number:** IV ÚS. 644/2018-10

**Address of the webpage:** <https://www.ustavnysud.sk/vyhľadavanie-rozhodnuti#>

**Brief summary:** A claimant - a local human rights NGO - in July 2016 filed a complaint with the district prosecution addressing the illegality of the municipality regulation of the town Vranov nad Topľou, setting up school catchment areas for primary schools established by the town. Based on statistics gathered on the numbers of Roma children in primary

<sup>452</sup> Judgment of the Regional Court in Kosice from 18 September 2013 n. 5 Co 197/2012 and Decision of the Supreme Court of the Slovak Republic from 8 December 2016, No. 3 Cdo 405/2015 – 773.

schools in the town, the complainant argued that the municipal regulation set up school catchment areas in a way that concentrated Roma children living in the town and in nearby villages into a particular school and thus contributed to their segregation in education. The Roma population in the town predominantly lived in one residential area and Roma children from this area fall within the catchment area of one particular school. Moreover even nearby villages with substantial Roma populations fall within the catchment area of the same school, which increased the percentage of Roma children there to 85 percent in comparison to much lower proportions of Roma children in the other schools in the town. Some other documented social patterns in the town suggested the segregation impact of the disputed municipality regulation. The district prosecution did not find the regulation illegal and the regional and general prosecution offices further dismissed the claimant's complaint, addressing faults in assessing the case. In this regard, the general prosecution specifically reasoned that the claimant's complaint targeted the municipality regulation, which was adopted based on certain broader non-legal arguments and facts that prosecutors are not eligible to assess. As a result, in April 2017, the claimant turned to the Constitutional Court, arguing a violation of its right to judicial and other legal protection and the right to fair trial guaranteed by the Slovak Constitution and the European Convention on Human Rights. It particular, it argued that the prosecution offices did not duly investigate its complaints and did not deal with its argumentation, which violated the principle of the equality of legal arms and made the decisions of the prosecution offices arbitrary. The Constitutional Court dismissed the claimant's constitutional complaint as manifestly ill-founded. It concluded that the general prosecution sufficiently reasoned its decision and, in connection with decisions of subordinated prosecutions, handled the claimant's complaint in a way that was constitutionally acceptable. The court also noted that in respect to handling a complaint by a prosecution, there is no adverse party standing against the claimant and given that fact, its constitutional right to be treated equally in a legal proceeding could not even be theoretically violated.

**Name of the court:** The District Court in Prešov

**Date of decision:** 13 March 2019

**Name of the parties:** Poradňa pre občianske a ľudské práva (Centre for Civil and Human Rights) v. Ministry of Education, Science, Research and Sport of the Slovak Republic and the District Office in Prešov

**Reference number:** 29C/14/2016

**Address of the webpage:**

<https://www.poradna-prava.sk/sk/dokumenty/rozhodnutie-okresneho-sudu-v-presove-tykajuce-sa-namietanej-zodpovednosti-statnych-organov-za-segregaciu/>

**Brief summary:** A claimant - a local human rights NGO - in January 2016 filed an *actio popularis* lawsuit under the domestic Anti-Discrimination Act with the District Court in Prešov against the Ministry of Education and the district office in Prešov concerning documented segregation of Roma children at a primary school in the village of Terňa. The claimant argued that some Roma children at the school faced segregation due to decisions made by the state authorities responsible for setting up the school catchment area for the given locality as well as due to their inactivity in preventing existing segregation. The authorities arguably did not take into account the limited spatial capacity of the school and set up the local school catchment area in such way that the school was unable to accommodate all the Roma children from the nearby village of Malý Slivník with the children from the majority and had to start educating some Roma children in the second afternoon shift and in separate Roma-only classes. The claimant pointed at free capacity in some other nearby schools, which could accept and educate more children. The claimant asked the court to force the state authorities in question to adopt effective measures that would eliminate and prevent the segregation of Roma children at the given school. In court proceedings, the Slovak Public Defender of Rights made a submission to the court as a third party, as she had mapped the situation in this locality from her own initiative. Her submission supported the claimant's reasoning.

The district court dismissed the lawsuit. It stated that the claimant failed to sustain its burden of proof as it did not prove that the disputed decisions of the state authorities on school catchment area had violated the principle of equal treatment and had disadvantaged Roma children in comparison to children from the majority. It further reasoned that the decisions were not discriminatory since they related to all children, including non-Roma children. The court also essentially concluded that the state authorities were not eligible to interfere into the organisation of education processes that were fully in the competence of the school. The court also commented on the situation at the school involved and stated that discrimination against Roma children could be found there only if Roma children were placed in separate classes due to their Roma ethnic origin, which was not proved. From a procedural point of view, the court rejected the objection by the sued state authorities and concluded that NGOs are eligible to file *actio popularis* lawsuits and general courts have an authority to deal with such discrimination cases. The claimant appealed against the decision and also asked the Appeal Court to refer the case to the Court of Justice of the EU for a preliminary ruling on interpretation of the EU law in this case. The case is still pending before the Appeal Court.

### 12.3 Cases brought by Roma and Travellers

The type and number of cases brought by Roma depend on the existence and available resources of NGOs active in the relevant field; cases where Roma would access courts by themselves, without the assistance of NGOs or the Slovak National Centre for Human Rights, are extremely scarce (which is a good indicator of access to justice for people of Roma origin). There are no official figures available as far as cases brought before courts or other authorities are concerned (concerning discrimination on the ground of ethnic origin but also concerning discrimination in general). Some information about pending cases is available from the Centre for Civil and Human Rights, an NGO active in the field, which is either providing legal representation, or is the claimant itself (in cases initiated by *actio popularis* – e. g. on segregation of Roma children in education, or on segregation of Roma women in maternity wards).

In the author's view, the general trends and patterns for cases brought by Roma (in the majority of the cases represented by the Centre for Civil and Human Rights) in 2019 (but also in the previous years) remain the following:

- Extreme amount of barriers Roma people face in order to access courts, independent legal action by Roma people discriminated against is basically non-existent if assistance is not provided by NGOs.
- General reluctance of courts to determine discrimination based on ethnic origin, and if this is the case, the application of reversed burden of proof continues to fall short of a legal consistency, extreme reluctance to award financial compensation for non-pecuniary damages; if compensation is awarded, it is generally symbolic.
- The courts tend to downplay the seriousness of discrimination, overlooking or not understanding its prima facie impact on human dignity. In some instances, there remains a certain bias or preoccupation of courts, particularly when dealing with cases of discrimination against the Roma minority.
- Extreme length of the judicial proceedings and extreme endurance required on the side of the complainants and their legal representatives to carry on with the proceedings; lack of engagement of the Slovak National Centre for Human Rights (the equality body) to deal with ethnicity-based discrimination efficiently.<sup>453</sup>

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<sup>453</sup> For more information on the current situation regarding access to justice in cases of discrimination see also Centre for Civil and Human Rights (2019), *NGO's submission to the UN Economic, Social and Cultural Rights concerning the third periodic report of Slovak Republic*, September 2019, pp. 8-9. Available at <https://www.poradna-prava.sk/sk/dokumenty/alternativna-sprava-vyboru-osn-pre-hospodarske-socialne-a-kulture-prava/>.

In contrast, and to some extent paradoxically, the fact that there are so many barriers in access to judicial (but also other) remedies with regard to the right to non-discrimination in general (i.e. also with regard to grounds other than ethnicity) and cases brought to courts are so scarce, means that the decided cases on ethnic discrimination – the majority of the cases initiated and represented/assisted by the Centre for Civil and Human Rights – represent a very significant source of interpretation of the current legislation.

## ANNEX 1: MAIN TRANSPOSITION AND ANTI-DISCRIMINATION LEGISLATION

**Country:** Slovakia  
**Date:** 31 December 2019

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

(zákon č. 365/2004 Z. z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (antidiskriminačný zákon))

Date of adoption: 20.05.2004

Latest relevant amendment: 12.11.2015 (No. 378/2015)

Entry into force: 01.07.2004

Web link: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/365/20160102?ucinnost=31.12.2019>; [http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon\\_ENG-1.1.2015.pdf](http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf); (English version)

Grounds covered: sex, religion or belief, race, affiliation with a nationality (národnosť) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act (as well as some other grounds contained in some other acts, mainly trade union involvement and unfavourable state of health, contained, for example, in the Labour Code)

Civil/administrative/criminal law: civil and to some extent also administrative

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

Principal content: the basic act transposing the directives

**Title of the law: Labour Code No. 311/2001**

(zákon č. 311/2001 Z. z. Zákonník práce)

Date of adoption: 02.07.2001

Latest relevant amendment: 18.10.2019 (No. 380/2019)

Entry into force: 01.04.2002

Web link: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2001/311/20200101?ucinnost=31.12.2019>; <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61871/60966/F-506442866/SVK61871.pdf> (English version)

Grounds covered: sex, religion or belief, race, affiliation with nationality (národnosť) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act as well as trade union involvement, unfavourable state of health and genetic features

Civil/administrative/criminal law: civil

Material scope: employment

Principal content: labour relations in private employment and in parts of public employment

**Title of the law: Act No. 245/2008 on Education (Schools Act)** (zákon č.

245/2008 Z. z. o výchove a vzdelávaní (školský zákon) a o zmene a doplnení niektorých zákonov)

Abbreviation:

Date of adoption: 22.05.2008

Latest relevant amendment: 27.06.2019 (No. 209/2019)

Entry into force: 01.09.2008

Web link <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2008/245/20200101?ucinnost=31.12.2019>



Grounds covered: all grounds covered by the Anti-discrimination Act as well as social disadvantage  
Civil/administrative/criminal law: administrative  
Material scope: education  
Principal content: legal relations in pre-school, primary and secondary education

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

Abbreviation:

Date of adoption: 21.10.2004

Latest relevant amendment: 05.12.2019 (No. 467/2019)

Entry into force: 01.01.2005

Web link: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/576/20200101?ucinnost=31.12.2019>

Grounds covered: sex, religion or belief, race, affiliation with a nationality (národnosť) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act

Civil/administrative/criminal law: administrative

Material scope: healthcare

Principal content: legal relations in providing healthcare

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

Abbreviation:

Date of adoption: 15.12.1993

Latest relevant amendment: 25.06.2015 (No. 176/2015)

Entry into force: 01.01.1994

Web link: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1993/308/20190101?ucinnost=31.12.2019>

Grounds covered: all grounds covered by national law: sex, religion or belief, race, affiliation with nationality (národnosť) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, contained in Section 2(1) of the Anti-discrimination Act as well as some other grounds contained in other acts (unfavourable state of health, genetic features, duties to family, membership of or involvement in a political party or a political movement, a trade union or other association)

Civil/administrative/criminal law: administrative

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

Principal content: rules on obligations and the functioning of the equality body

## ANNEX 2: INTERNATIONAL INSTRUMENTS

**Country:** Slovakia

**Date:** 31 December 2019

<b>Instrument</b>	<b>Date of signature</b>	<b>Date of ratification</b>	<b>Derogation s/ reservation s relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
European Convention on Human Rights (ECHR)	Signed 21.02. 1991	Ratified 18.03.1992	No	Yes	Yes
Protocol 12, ECHR	Signed 04.11. 2000	Not ratified	No	No	No
Revised European Social Charter	Signed 18.11. 1999	Ratified 23.04.2009	Yes Reservations applied by Slovak Republic: Article 15 Paragraph 3 Article 18 Paragraph 3 Article 19 Paragraph 2, 3, 4c, 8, 10, 12 Article 31	Ratified collective complaints protocol?  No	Yes
International Covenant on Civil and Political Rights	Signed 07.10. 1968	Ratified 28.05.1993	No	Yes	Yes
Framework Convention for the Protection of National Minorities	Signed 01.02. 1995	Ratified 14.09.1995	No	N/A	Yes
International Covenant on Economic, Social and Cultural Rights	Signed 07.10. 1968	Ratified 28.05.1993	No	Yes	Yes
Convention on the Elimination of All Forms of Racial	Signed 07.10. 1966	Ratified 28.05.1993	No	Yes	Yes

<b>Instrument</b>	<b>Date of signature</b>	<b>Date of ratification</b>	<b>Derogations/ reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
Discrimination					
ILO Convention No. 111 on Discrimination	Signed 25.06.1958	Ratified 01.01.1993	No	N/A	Yes
Convention on the Rights of the Child	Signed 30.09.1990	Ratified 28.05.1993	No	No	Yes
Convention on the Rights of Persons with Disabilities	Signed 26.09.2007	Ratified 26.05.2010	No	Yes	Yes

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