

Executive Summary

Slovakia Country Report on measures to combat discrimination by Zuzana Dlugosova, 2007

1. Introduction

The Slovak Republic is a country of five million people. Apart from Slovak nationals, there are diverse minority groups. The largest group are made up of Hungarians (9.7%) and the Roma minority. The official number of Roma at the last census (2001) was 89,920 (1.7%). However, the sociological studies indicate a number of 400,000 or more Roma living in Slovakia. The other minority groups include Czechs, Ukrainians, Croatians, Germans, Poles, Bulgarians, Moravians and Jews, each making up less than 1% of the national population.

Public debate on discrimination has had a chequered history in Slovakia. There has been public discussion on and reaction against discriminatory behaviour from time to time as NGOs and the media have criticised state administrative practices or behaviour of private individuals. The first of many legislative proposals referring to anti-discrimination was the proposal on registered partnerships by a group of MPs. However, it was rejected in February 2002. More complex debate on the issue of discrimination was initiated by the first and second drafts of the Anti-discrimination Act which were introduced in 2002 and 2003 by the Deputy Prime Minister for Human Rights, Minorities and Regional Development. Both proposals were rejected. The Anti-Discrimination Act presently in force was adopted in May 2004. The provision on positive action on the ground of racial and ethnic origin incorporated in the Anti-discrimination Act provoked a political debate in the country. Shortly after the adoption the Christian democratic Minister of Justice challenged on behalf of the Government the provision before the Constitutional court. The Constitutional court decided that the provision on positive action was unconstitutional because of the vagueness of the provision and because the Constitution does not allow to introduce such measures on the ground of race and ethnicity. After the election in June 2006 the new Deputy Prime Minister has announced his plan to reintroduce legal provision which would help the Roma population. He did so in November 2007. The Parliament adopted the amendment of the Anti-discrimination Act including temporary balancing measures in February 2008. Due to changes in the Parliament the balancing measures are aimed only at the ground of age and disability. The amendment will be effective as of April 2008.

Meanwhile, despite the decision of the Constitutional court several balancing measures are being undertaken to improve the position of Roma, such as teaching assistants in grammar schools, preparatory classes for Roma children, Roma field social workers, building low-cost houses, police specialists in selected Roma settlements, etc.

The Roma minority in Slovakia faces widespread prejudice and as yet, has not been fully integrated into mainstream society. Discriminatory behaviour towards them occurs especially in access to employment, to services (restaurants, cafes), to education (segregated schools or classes) and housing (segregation).

Another serious problem is racial hatred incited by neo-Nazi and nationalistic groups. The occurrence of physical attacks on the streets against Roma or foreigners of different race is on the increase.

There is a dialogue and co-operation with NGOs in human rights education including anti-discrimination, field work in Roma communities, as well as in commenting on proposed legislation.

2. Main legislation

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

The Constitution of the Slovak Republic states that human rights are guaranteed to every individual regardless of sex, race, skin colour, language, belief, religion, political affiliation or conviction, national or social origin, nationality or ethnic origin, property, lineage or any other status. No person shall be denied their legal rights, discriminated against or favoured on any of these grounds. Serious offensive and discriminatory behaviour is outlawed separately by the Criminal Code. In response to the need to implement the EU Employment and Racial Equality Directives, Slovakia adopted the Anti-Discrimination Act on 20 May 2004, the first in its history. A significant amendment to the Act was adopted in June 2007. The second important amendment was passed in February 2008 and will enter into force in April 2008. The Anti-discrimination Act meets minimum standards determined by both Directives.

Apart from the Anti-discrimination Act, several special laws were amended in the area of education, health care and employment. These amendments extend the grounds of prohibited discrimination beyond the scope of the Directives and make the anti-discrimination law quite complex. More specifically in the area of education, health care and employment discrimination is prohibited also on the grounds of: marital and family status, colour, language, political or other opinion, trade union involvement, national or social origin, property, lineage or other status.

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

The enforcement of the new rules established by the Anti-discrimination Act has not yet been fully tested in practice. There are some court decisions on racial discrimination in access to services and pending cases in the area of employment. First petitions were lodged for indirect discrimination on the ground of Roma ethnicity.

In general, people are still rather reluctant or not willing to litigate for their right not to be discriminated against.

3. Main principles and definitions

With the adoption of the Anti-discrimination Act, definitions of equal treatment and discrimination were introduced into the Slovak legal system. The Act defines direct discrimination, indirect discrimination, harassment, instruction to discriminate, incitement to discrimination and victimisation. Except for incitement to discrimination, which is a form which goes beyond the scope of Directives, the definitions follow the pattern of both Council Directives 2000/43/EC and 2000/78/EC. The Act also replicates both EU Directives in its definition of the grounds on which discrimination is prohibited. The last amendment of the Anti-discrimination taking effect as of April 2008 extended the list of grounds for all areas covered by the Directives. Discrimination by association is also prohibited. By determining whether discrimination has occurred or not, no account is taken of whether the reasons for discrimination were based on facts or on a false assumption.

Social aid, social insurance, social welfare payments and benefits, health care, education, goods and services including housing – are spheres in which discrimination on the grounds of sex, racial and ethnic origin is prohibited. In employment, discrimination on the grounds of sex, racial or ethnic origin, together with the grounds of religion or belief, disability, age and sexual orientation, is forbidden.

In addition, in all areas covered by the Anti-Discrimination Act (except for access to goods and services, some social services and health insurance) discrimination is also prohibited on the grounds of marital and family status, colour, age, property, lineage or other status. Sexual orientation is mentioned only in the area of employment. It is not explicit in other areas, as it was politically unacceptable, especially to the one of the governing party - the Christian Democratic Movement. However, the list of grounds is not precisely limited, as the law provides ‘other status’ as a ground of discrimination. Nevertheless, after entering into force of the last amendment (April 2008) the following list of grounds will be unified for all areas covered by the Directives: sex, religion or belief, race, national or ethnic group membership, disability, age, sexual orientation, marital and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage or other status.

The Anti-discrimination Act obliges employers to take appropriate measures to enable a person with a disability to have access to employment, to promotion or other advance at work and to training. At the same time, accommodating the needs of a disabled person must not impose a disproportionate burden on an employer. Different treatment in an occupation is permitted if it is justified according to the rules identical with the Racial Equality and the Employment Equality Directive.

The Act also defines other exceptions to the principle of equal treatment. Discrimination on the ground of religion or belief is allowed for churches and religious organisations if a person’s religion is fundamental for carrying out certain occupation.

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

4. Material scope

The principle of equal treatment applies to all areas defined in the EU Directives and does not go beyond the scope of the Directives. According to the Anti-discrimination Act, discrimination on the grounds of sex and racial or ethnic origin is prohibited in the sphere of social aid, social insurance, old-age pension insurance, accessory pension insurance, state social payments and social benefits, health care, education, goods and services, including housing, provided to the public by legal entities and natural persons – entrepreneurs.

Discrimination on the grounds of sex, racial and ethnic origin, together with the grounds of religion or belief, disability, age and sexual orientation, is prohibited in the following areas: 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 on a particular profession, including benefits provided by such organisations. As stated above, there are more grounds on which discrimination is prohibited under special legal provisions. The special legal provisions do not extend the areas defined by the EU Directives. The implementation of the Anti-discrimination Act concerns both the private and the public sector.

5. Enforcing the law

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

The existing cases show that the courts are rather reluctant to impose sanctions which would be effective and dissuasive for perpetrators.

There is a shift of the burden of proof in the court proceeding once the victim has submitted to the court the evidence giving rise to a reasonable presumption that a violation of the principle of equal treatment has occurred. The defendant (alleged perpetrator) must prove that there has been no discrimination against the petitioner or that the treatment was necessary and justifiable. Statistical evidence has not been used in cases of discrimination until recently when first cases on indirect discrimination in the area of social insurance were lodged. The law does not exclude this kind of evidence. At the same time, there is no experience or case-law in this field. Situational testing is also not explicitly excluded by law and some NGOs applied it before the court in cases of racial discrimination. However, legal opinion as to the legality of hidden recording evidence differs.

The victim may also request material damages, if it is proven that discriminatory behaviour caused such damage. The victim may be represented in court by an organisation which has as its aim protection against discrimination. Such an organisation has no right to initiate a legal procedure without the consent of the victim. There are not many organisations in Slovakia with the specific purpose of providing legal aid to victims of discrimination. That is why representation by an NGO is used very rarely in practice. Most of the existing cases concern Roma discrimination assisted by the Centre of Civil and Human Rights (Poradňa pre občianske a ľudské práva) in Košice. Cases of discrimination in courts are not much publicised.

Under the Labour Code an employee may submit a complaint to an employer claiming infringement of the principle of equal treatment. The employer is obliged to respond to such complaint without undue delay, perform restitution and abstain from such conduct. However, the effect of such a remedy is questionable because there is no official authority outside the employment relationship to handle the complaints and employees are not motivated to take advantage of the law in this way.

Except for paying damages to the victim within a judicial proceeding, sanctions for discriminatory behaviour can also be imposed on the transgressor through the administrative imposition of fines. In access to goods and services, in employment relationships and education, the labour, trade and school inspectorates have the right to fix fines in such cases. However, the administrative proceedings are not used in practice for enforcing the anti-discrimination provisions. There is no case known in which such fines have been imposed in Slovakia.

6. Equality bodies

The body designated for the promotion of equal treatment is the Slovak National Centre for Human Rights. According to the Anti-discrimination Act, the Centre is an independent, non-judicial body, subsidised mainly by the Government. The role and tasks of the Centre are quite complex.

The Centre is empowered to prepare expert opinions on compliance with the principle of equal treatment on request from natural persons or legal entities or on its own initiative. The Centre is obliged to monitor and evaluate respect for human rights and equal treatment and to collect and provide information on racism, xenophobia and anti-Semitism. The Centre is also required to arrange legal aid for the victims of discrimination under the Anti-discrimination Act and is empowered to represent the victims in courts. As the Centre is competent to act in cases of discrimination defined by the Anti-discrimination Act, it works on all grounds defined by the Anti-discrimination Act and other special laws – sex, racial, national and ethnic origin, religion, belief, disability, age, sexual orientation, marital and family status, colour, age, property, lineage and other status. The Centre also publishes an annual report on respect for human rights in Slovakia. A significant enlargement of the reach of the Centre was carried out in 2007. Seven regional branches of the Centre were created in order to operate more effectively in all regions of Slovakia.

Except for arranging legal aid to the victims of discrimination, the Centre has the right to represent parties in proceedings concerning violation of the principle of equal treatment. There are not enough source materials, reports or independent evaluations to have a real picture about the quality and independence of assistance provided to victims of discrimination. The only information available is the reports issued by the Centre about its own activities. These only provide selected examples about the assistance provided to victims. From the existing sources it seems that the Centre usually does not represent the victims in court proceedings and take rather a consulting role or provide expert opinions.