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Non-discrimination

Slovakia

2023

including summary

EUROPEAN COMMISSION

Directorate-General for Justice and Consumers

Directorate D — Equality and Union citizenship

Unit D.1 Non-Discrimination: LGBTIQ, Age Horizontal Matters

Unit D.2 Non- Discrimination: Anti-Racism and Roma Coordination

European Commission

B-1049 Brussels

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 2022 – 1 January 2023

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Luxembourg: Publications Office of the European Union, 2023

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PDF ISBN 978-92-68-01638-1 ISSN 2599-9176 doi: 10.2838/45886 DS-BB-23-024-EN-N

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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 (7.75 %) and the Roma minority. The official number of Roma in the last census (2021) was 67 179 (1.23 %),¹ although the *Atlas of Roma Communities 2019* contains data on approximately 417 000 Roma living in 825 municipalities and estimates that there are 450 000 people of Roma origin in Slovakia.² The other minority groups include Czechs, Ruthenians, Ukrainians, Croatians, Vietnamese, Germans, Poles, Bulgarians, Moravians and Jews.³

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

Roma living in segregated settlements face an increased threat of forced eviction. Data from the EU SILC_MRK survey of the Office of the Roma Plenipotentiary for Roma communities published in October 2022 provides complex information about the housing of Roma in marginalised communities, including their social exclusion. It also shows on-going inequalities in terms of material quality of their housing, expenses for their housing and risks of losing their housing.⁴

In January 2022, the Košice District Court upheld the claim of nine complainants of Roma ethnicity that they were forcibly evicted from their homes in Košice (the district of Nižné Kapustníky) in 2012 under the pretext of waste removal by the city authorities.⁵ The Court ruled that forced eviction constitutes discrimination in the form of harassment and awarded each applicant non-pecuniary damages of EUR 1 000. In April 2022, the Slovak Government adopted the first action plans under the Strategy for the equality, inclusion and participation of Roma⁶, setting out particular tasks and activities for its implementation in the period 2022-2024.⁷ However, there are relevant aspects raised by NGOs indicating that the Strategy and the action plans may be falling short of the aims for their implementation in terms of a tangible impact.⁸

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. Also, data from the

¹ See: <https://www.scitanie.sk/en/population/basic-results/structure-of-population-by-ethnicity/SR/SK0/SR>.

² Ravasz, A. Kováč, Ľ. Markovič, F. (2021), *Atlas rómskych komunit 2019* (Atlas of Roma communities 2019), Bratislava, VEDA. Available at: <https://imb-bmi.org/wp-content/uploads/2021/03/atlas-romskych-komunit-2019.pdf>. <https://www.minv.sk/?atlas-romskych-komunit-2019>. The data in the official census was 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.

³ Each making up less than 1 % of the national population. See: <https://www.scitanie.sk/en/population/basic-results/structure-of-population-by-ethnicity/SR/SK0/SR>.

⁴ Office of the Roma Plenipotentiary for Roma Communities (2022), *Príjmy a životné podmienky v marginalizovaných rómskych komunitách: Vybrané ukazovatele zo zisťovania EU SILC_MRK 2020* (Income and living conditions in marginalised Roma communities: Selected indicators from the survey). For an overview of the main findings from this survey, see its executive summary, available in English, pp. 7-11.

⁵ Decision of the District Court Košice II, No. 15C/190/2014-650, 21 January 2022.

⁶ Slovak Government (2021), *Stratégia rovnosti inklúzie a participácie Rómov do roku 2030* (Strategy for the equality, inclusion and participation of Roma to 2030). Available at: <https://rokovania.gov.sk/RVL/Material/25860/1>.

⁷ Slovak Government (2022) Akčné plány k stratégii rovnosti, inklúzie a participácie Rómov do roku 2030 (Action plans under the Strategy for the equality, inclusion and participation of Roma to 2030). Available at: [Detail_uznesenia | Portal OV \(gov.sk\)](Detail_uznesenia | Portal OV (gov.sk)).

⁸ See: Roma Civil Monitor (2022), *Civil society monitoring report on the quality of the national strategic framework for Roma equality, inclusion, and participation in Slovakia*, pp. 39-40. Available at: <https://romacivilmonitoring.eu/wp-content/uploads/2022/09/RCM2-2022-C1-Slovakia-FINAL-PUBLISHED.pdf>.

EU SILC_MRK survey of the Government Office of the Roma Plenipotentiary for Roma communities confirms on-going pervasive inequalities in education. In particular, 17 % of children from the Roma marginalised communities aged from 6 to 15 years were in special education. Compared with the overall population, the proportion is roughly three times higher. The formation of purely Roma classes also widely occurs in mainstream education. Almost half (47 %) of children from the marginalised communities aged from 6 to 15 in mainstream education have only Roma classmates, while 32 % of children attend a school with exclusively Roma pupils.⁹

Both key independent human rights institutions – the Slovak National Centre for Human Rights (the designated equality body) and the Office of the Public Defender of Rights – continued to raise this on-going problem and the need for the Government authorities to address it effectively.¹⁰

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 December 2022, the Supreme Court of the Slovak Republic reached a landmark decision on the segregation of Roma children in a Roma-only school in the *actio popularis* claim filed by NGO the Center for Civil and Human Rights. It ruled that the defendant town of Stará Ľubovňa and the state, represented by the Ministry of Education, had violated the principle of equal treatment by failing to take sufficient preventive measures to protect against discrimination and to eliminate discrimination against Roma children at the Podsadek Primary School in Stará Ľubovňa based on their ethnic origin. It is the first judgment of the Supreme Court to address the systemic and widespread issue of segregation of Roma children in education and to recognise the positive obligation on the state regarding its prevention.¹¹

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. As of 2022, the infringement proceedings were still pending.

Roma women are especially affected by multiple and/or intersectional discrimination. This includes their segregation in hospitals. This practice has been challenged by NGO strategic litigation since 2013. In 2022, the District Court Bratislava III issued a judgment¹² dismissing the *actio popularis* claim submitted by NGO the Center for Civil and Human Rights. The Court held, among other findings, that the placement of Roma women in a separate room in itself does not necessarily have to constitute unlawful segregation and may be justified by the patients' state of health, the occupancy of the maternity ward,

⁹ Office of the Roma Plenipotentiary for Roma Communities (2022), *Príjmy a životné podmienky v marginalizovaných rómskych komunitách: Vybrané ukazovatele zo zisťovania EU SILC_MRK 2020* (Income and living conditions in marginalised Roma communities: Selected indicators from the survey) pp. 9: main findings in English. Available at: https://www.romovia.vlada.gov.sk/site/assets/files/1561/analyticka_sprava_eu_silc_mrk_2020_elektronicka_final.pdf?csrt=7830548095596483054.

¹⁰ Public Defender of Rights, *Správa o činnosti Verejného ochrancu práv za obdobie roka 2021* (Report on the activity of the Public Defender of Rights for 2021), February 2022, pp. 3-16. Available at: https://vop.gov.sk/wp-content/uploads/2022/03/VOP_VS21_SK_Digital-2.pdf. Observations of the Slovak National Centre for Human Rights in relation to the thirteenth periodic report of Slovakia to the Committee on the Elimination of Racial Discrimination. Bratislava: Slovenské národné stredisko pre ľudské práva, 2022. Available at: https://www.snslp.sk/wp-content/uploads/CERD_submission_SNCHR_final.pdf, Slovak National Centre for Human Rights (2022) *Segregácia vo vzdelávaní – analýza známych poznatkov* (Segregation of education – analysis of knowledge), available at: <https://www.snslp.sk/wp-content/uploads/Analýza-segregacia-vo-vzdelavani-2.pdf>.

¹¹ Decision of the Supreme Court of the Slovak Republic, No. 5Cdo/102/2020, 15 December 2022. The decision was delivered to the claimant on 3 February 2023, after the cut-off date for this report.

¹² Decision of the District Court Bratislava III, No. 14C/288/2013, 29 July 2022.

epidemiological measures, as well as whether the women themselves preferred to stay in a room with other Roma women. The case is now pending before the appeal court.

Same-sex marriage and civil partnerships are not recognised in Slovakia. Homophobic voices and voices that contest the concept of gender equality are getting stronger.¹³ In October 2022, two people were killed, and a third person was wounded, in a shooting outside a LGBTI+ bar in Bratislava.¹⁴ Before the killings, the murderer had posted an anti-LGBT and anti-Semitic statement on the Twitter social network. The murder intensified civil society calls for ensuring protection and equality for LGBTI+ people in the Slovak Republic by adopting a range of measures including e.g. the adoption of laws recognising the existence of same-sex couples and their families, at least in the form of a life partnership.¹⁵ Although the murder was condemned by the highest political representatives, it has not led to adopting comprehensive measures to prevent discrimination against LGBTI+ people in Slovakia – quite the opposite, in fact, as the human rights of LGBTI people in the Slovak Republic appear to be more, rather than less, at risk. In October 2022, the Regional Court in Žilina¹⁶ ruled in favour of gay spouses whom Slovakia had refused to recognise as permanent residents. The Court confirmed that the rejection of the application in this case constituted unjustified discrimination on the basis of sexual orientation and a violation of the right to respect for private and family life and freedom of residence. It is the first such decision on this matter in Slovakia.

Persons with disabilities face numerous physical and societal barriers and segregation on a daily basis in all fields of life. In addition, children with disabilities face discrimination in access to education and are often placed in segregated special classes and/or schools. The educational system is not inclusive and often falls short of educating such children in mainstream education.

Many other individuals and groups also face serious discrimination, often in combinations of several grounds.

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*)¹⁷ 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

¹³ See Amnesty International's 2022/2023 report on Slovakia, pp. 325-326. Available at:

https://www.amnesty.sk/wp-content/uploads/2023/03/202223-air-english_2023-03-22_corr1.pdf.

¹⁴ See e.g. 'Slovakia LGBT attack: Thousands gather at vigil outside Bratislava bar', BBC, 15 October 2022.

<https://www.bbc.com/news/world-europe-63267451>.

¹⁵ See the public call on the Slovak Government and Parliament by NGOs to ensure a safe environment for LGBTI+ people, their families and children, while putting them on an equal footing with the rest of society, <https://inakost.sk/vyzva-ide-nam-o-zivot/>.

¹⁶ Decision of the Regional Court in Žilina, No. 30S 168/2020, 31 October 2022.

¹⁷ 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.

also constitutionally protected grounds.¹⁸ 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 2004.¹⁹ The ADA meets the minimum standards required by the directives and goes beyond them in some instances.

The ADA prohibits discrimination on open listed grounds.²⁰ In addition to the ADA, several special laws in all the fields covered by the directives refer to the ADA, sometimes extending the scope of grounds protected by it. 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.²¹ 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,²² and victimisation.²³ 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.²⁴ 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.²⁵

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.²⁶

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.²⁷

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.²⁸ The ADA

¹⁸ 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, for details see sections 2.1. and 4.2. of this report.

¹⁹ 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*).

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

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

²² 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.

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

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

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

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

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

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

stipulates that it does not apply to legal regulation of the status of third-country nationals²⁹ and states that, in the armed forces and security and rescue services, discrimination on the grounds of disability and age is allowed.³⁰

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.³¹ 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.³²

The existing legal rules and case law do not explicitly deal with situations of multiple and/or intersectional 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).³³ In all these fields, discrimination is prohibited on all the grounds listed in the ADA. The implementation of the ADA applies to both the private and the public sector.

5. Enforcing the law

Although the national anti-discrimination legislation is relatively progressive, its implementation is still a challenge in practice. 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 10 cases of alleged discrimination finally decided by domestic courts in anti-discrimination disputes in 2022, the courts ruled in favour of claimant in three cases; in others, the claims were dismissed.³⁴ The extreme length of the court proceedings 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

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

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

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

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

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

³⁴ Response from the Ministry of Justice of 20 February 2023 to a request for information of 10 February 2023 (on file with the author).

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.³⁵ 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.³⁶

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. In 2022, the District Court in Košice awarded eight claimants non-pecuniary damages of EUR 1 000 each in a case concerning forced evictions.³⁷ The decision is not final.

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.³⁸

Sometimes, in cases of discrimination that affect a larger or non-specified number of people or otherwise threaten the public interest, NGOs, or the Slovak National Centre for Human Rights, can sue the discriminating entity in its own name (*actio popularis*).³⁹ So far, a few such cases have been initiated (all by NGOs).⁴⁰

Sanctions for discriminatory behaviour can also be imposed through the administrative imposition of fines. The labour, trade and school inspectorates are the bodies in charge. However, in practice, proceedings before inspectorates are still not much used to enforce the anti-discrimination provisions.

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.⁴¹ Employment legislation provides for special protection for persons with disabilities and there is a special quota system established for employers who employ at least 20 employees.⁴²

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.⁴³ It can issue expert opinions to assess possible breaches of the ADA. However, the opinions are not binding and as such the body cannot impose any

³⁵ Anti-discrimination Act, 365/2004, Section 9(1)-(3), in conjunction with Section 11(1).

³⁶ Anti-discrimination Act, 365/2004, Section 9(4).

³⁷ Decision of the District Court Košice II, 21 January 2022, No. 15C/190/2014-650.

³⁸ Anti-discrimination Act, 365/2004, Section 11(2).

³⁹ Anti-discrimination Act, 365/2004, Section 9a.

⁴⁰ Center for Civil and Human Rights and European Roma Rights Centre.

⁴¹ Anti-discrimination Act, 365/2004, Section 8a.

⁴² 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 persons 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.

⁴³ 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).

sanction in cases where a violation of the principle of equal treatment has been found. The centre can also represent victims of discrimination in court proceedings and may also file an *actio popularis* claim. The centre works on all the grounds defined by ADA. For illustration, in 2022, the centre dealt with 122 discrimination complaints, of which, for example, 10 concerned age, nine ethnic origin, seven disability and two sexual orientation. Of 122 complaints, the centre found discrimination in only 14 cases. Half of them concerned discrimination on a ground of 'other status'. In 2022, the centre issued 20 expert opinions assessing possible breaches of anti-discrimination legislation; provided legal representation to four people in court proceedings concerning discrimination; and did not submit any *actio popularis* claims.⁴⁴ In 2022, the centre also issued several research reports⁴⁵ and submitted reports to the international bodies, including UN Treaty monitoring bodies⁴⁶

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

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; racial prejudices among judges and a lack of programmes to raise their awareness; lack of case law; 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; a high level of occurrence and tolerance of racism and discriminatory attitudes in society as a whole.

⁴⁴ Response of the Centre for Human Rights of 20 February 2023 to a request for information of 10 February 2023 (on file with the author).

⁴⁵ E.g. the centre published a legal analysis entitled 'Segregation in education - an analysis of knowledge', highlighting the widespread problem of segregation of Roma children in Slovakia. Available at: <https://www.snsip.sk/wp-content/uploads/Analiza-segregacia-vo-vzdelavani-2.pdf>.

⁴⁶ E.g. in 2022, the centre submitted its observations to the UN Committee on the Elimination of Racial Discrimination and raised relevant shortcomings concerning the protection of the rights of racial minorities in Slovakia.

⁴⁷ See, for example, Minority Rights Group Europe, Poradňa pre občianske a ľudské práva, EPEKA Slovenia. *Equality and justice on the sidelines: Comparative report on discrimination against Roma and their access to justice in Slovakia and Slovenia*, November 2022. Available at: <https://poradna-prava.sk/en/publications/equality-and-justice-on-the-sidelines-comparative-report-on-discrimination-against-roma-and-their-access-to-justice-in-slovakia-and-slovenia/>. Concluding Observations of the Committee on the Elimination of Racial Discrimination from September 2022, CERD/C/SVK/13, para. 8-11.

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,⁴⁸ 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.⁴⁹ Legally binding acts of the European Union take precedence over the laws of the Slovak Republic.⁵⁰ 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.⁵¹

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.⁵² 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.⁵³

Together with the Constitution, the Act on Equal Treatment in Certain Areas and Protection against Discrimination (Anti-discrimination Act),⁵⁴ 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'.⁵⁵ The duty to observe the principle of equal treatment is defined as comprising the prohibition of discrimination⁵⁶ 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,⁵⁷ 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).⁵⁸ It also requires 'measures for protection against discrimination'⁵⁹ to be adopted.

⁴⁸ 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 the Constitution effective until 1 January 2022 can be found (in Slovak) at: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1992/460/20210101?ucinnost=01.01.2022>. All other laws published in the Collection of Laws from 1998 onwards can be found in Slovak at: <https://www.slov-lex.sk/domov>.

⁴⁹ Article 7(5) of the Constitution.

⁵⁰ Article 7(2) of the Constitution.

⁵¹ Article 125(1)(b) of the Constitution.

⁵² Article 71(2) of the Constitution.

⁵³ Article 125(1)(d) of the Constitution.

⁵⁴ 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: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_128039.pdf.

⁵⁵ Anti-discrimination Act, 365/2004, Section 3(1).

⁵⁶ 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.

⁵⁷ Slovakia only recognises a union between a man and a woman as specified in the Slovak Constitution.

⁵⁸ Anti-discrimination Act, 365/2004, Section 2(1).

⁵⁹ 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

Official title of the law: Constitution of the Slovak Republic⁶⁰

Name used in this report: -

Abbreviation: -

Date of adoption: 1 September 1992

Entry into the force: 1 September 1992

Latest relevant amendment: 8 December 2022 (No. 378/2022)

Web link: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1992/460/20230101.html?ucinnost=01.01.2023>

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.⁶¹

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

Principal content: the general anti-discrimination framework

Official title of the law: Act on Equal Treatment in Certain Areas and Protection Against Discrimination⁶²

Name used in this report: Anti-discrimination Act

Abbreviation: ADA

Date of adoption: 20 May 2004

Entry into force: 1 July 2004

Latest relevant amendment: 12 November 2015 (No. 378/2015)

Web link: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/365/20160102?ucinnost=01.01.2023>
http://www.snsip.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

⁶⁰ Constitution of the Slovak Republic, 460/1992, Article 12(2).

⁶¹ See the Finding of the Constitutional Court of the Slovak Republic, PL. ÚS 8/04-202, 18 October 2005.

⁶² 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)*).

Official title of the law: Labour Code⁶³

Name used in this report: Labour Code

Abbreviation: -

Date of adoption: 2 July 2001

Entry into force: 1 April 2002

Latest relevant amendment: 18 October 2019 (No. 380/2019)

Web link: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2001/311/20230101?ucinnost=01.01.2023>
<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

Official title of the law: Act on Education⁶⁴

Name used in this report: School Act

Abbreviation: -

Date of adoption: 22 May 2008

Entry into force: 1 September 2008

Latest relevant amendment: 20 October 2021 (No. 415/2021)

Web link <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2008/245/20230101?ucinnost=01.01.2023>

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

Official title of the law: Act on Healthcare, Services Related to the Provision of Healthcare and on amending and supplementing certain acts, as amended⁶⁵

Name used in this report: Healthcare Act

Abbreviation: -

Date of adoption: 21 October 2004

Entry into force: 1 January 2005

Latest relevant amendment: 5 December 2019 (No. 467/2019)

Web link: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/576/20230301?ucinnost=01.01.2023>

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 antisocial activity, contained in Section 2(1) of the Anti-discrimination Act

Civil/administrative/criminal law: administrative

Material scope: healthcare

⁶³ Labour Code No. 311/2001 (*zákon č. 311/2001 Z. z. Zákonník práce*).

⁶⁴ 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*).

⁶⁵ 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*).

Principal content: legal relations in providing healthcare

Official title of the law: Act on Establishing the Slovak National Centre for Human Rights⁶⁶

Name used in this report: Act on the Centre

Abbreviation: -

Date of adoption: 15 December 1993

Latest relevant amendment: 25 June 2015 (No. 176/2015)

Entry into force: 1 January 1994

Web link: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1993/308/20190101?ucinnost=01.01.2023>

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

⁶⁶ 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/gender⁶⁷ 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’.⁶⁸ 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.⁶⁹ 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.⁷⁰ 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 legislation⁷¹ or even not covered by generally binding Slovak legal acts, are also constitutionally protected grounds.⁷²
- 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.⁷³

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

⁶⁷ 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).

⁶⁸ 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.

⁶⁹ Finding of the Constitutional Court of the Slovak Republic, I. ÚS 17/99, 22 September 1999.

⁷⁰ 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>.

⁷¹ Such as marital and family status, which are covered, for example, by the Anti-discrimination Act or by the Labour Code.

⁷² 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.

⁷³ See the Finding of the Constitutional Court, PL. ÚS 8/04-202, 18 October 2005, paragraph 13.

2 THE DEFINITION OF DISCRIMINATION

2.1 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. This could be a basis for interpretation of the term 'racial origin' used in legislation and by the courts.

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.'⁷⁴

The Supreme Court has confirmed in its case law that the Roma represent an ethnic group.⁷⁵ The Slovak courts have a strong tendency to interpret the concept of (Roma) ethnicity, in the context of hate speech and hate crimes, narrowly.⁷⁶ 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.⁷⁷ The Slovak National Centre for Human Rights (the Slovak equality body) in its expert opinion on the ground of ethnic and racial origin did not provide further explanation of how the concept of 'ethnic and racial origin' should be interpreted.⁷⁸

b) Religion or belief

Neither Slovak law nor case law provide a definition of the terms 'religion' or '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'.⁷⁹

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.

⁷⁴ 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.

⁷⁵ Decision of the Supreme Court of the Slovak Republic, 4 Tdo 49/2012, 19 March 2013, pp. 7-8.

⁷⁶ Decision of the Supreme Court of the Slovak Republic, 4 Tdo 49/2012, 19 March 2013.

⁷⁷ Decision of the Supreme Court of the Slovak Republic, 4 Tdo 49/2012, 19 March 2013, pp. 6-7.

⁷⁸ Slovak National Centre for Human Rights (2019), *Expert opinion on protected ground of racial and ethnic origin*, available at: <http://snslp.sk/wp-content/uploads/2019-20-Odborne-stanovisko-obsah-chraneneho-dovodu-rasy-a-etnicity.pdf>.

⁷⁹ See e.g., Stiffel, H., Kočica, J. (2001), *Trestný zákon: Stručný komentár* (The Criminal Code: A Brief Commentary), Bratislava, p. 403.

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. There was no recent case law issued by domestic courts in 2022; previous years' case law on this issue is included in previous country reports on Slovakia.⁸⁰

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 Act⁸¹ and who submits to their employer a decision proving entitlement to a disability pension.⁸² 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 (at least 40 %) to perform gainful activities, which is expected, on the basis of medical assessment, to last at least one year.⁸³

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,⁸⁴ 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.⁸⁵

The Act on Benefits for Compensation of Serious Disability⁸⁶ uses the term 'serious disability' and defines it as a 'disability with a level of functional impairment of at least 50 %'.⁸⁷ 'Functional impairment' is defined as a lack of physical ability, sensory ability or mental ability with a prognosis in excess of 12 months.⁸⁸

⁸⁰ See, for example, Durbáková, V. (2022), *Country report: Non-discrimination – Transposition and implementation at national level of Council Directives 2000/43 and 2000/78 – Slovakia*, European Commission, European network of legal experts in gender equality and non-discrimination, pp. 18-19. Available at: <https://www.equalitylaw.eu/downloads/5805-slovakia-country-report-non-discrimination-2022-1-51-mb>.

⁸¹ 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.

⁸² Labour Code, 311/2001, Section 40(8).

⁸³ Social Insurance Act, 461/2003, Sections 70-72.

⁸⁴ 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.

⁸⁵ Employment Services Act, 5/2004, Section 9.

⁸⁶ 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.

⁸⁷ Act on Benefits For Compensation Of Serious Disability, 447/2008, Section 2(3).

⁸⁸ 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').⁸⁹ 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.⁹⁰ 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,⁹¹ 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).⁹²

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.⁹³

The Schools Act,⁹⁴ 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

'mental⁹⁵ 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'.

⁸⁹ Anti-discrimination Act, 365/2004, Section 2a(11)(d).

⁹⁰ 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. 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).

⁹¹ 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'.

⁹² Finding of the Constitutional Court of the Slovak Republic, I. ÚS 313/2012-52, 28 November 2012.

⁹³ Decision of the Supreme Court of the Slovak Republic, ref. No 7Sžo/83/2014, 24 September 2015.

⁹⁴ 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.

⁹⁵ In Slovak, the act uses the word 'mental' (and not, for example, 'intellectual').

The Slovak National Centre for Human Rights (the Slovak equality body) in its expert opinion on the ground of disability did not provide any guidance on how to interpret the concept of 'disability' for the purposes of non-discrimination law.⁹⁶

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.

2.2 Multiple and intersectional discrimination

In Slovakia, multiple discrimination is not prohibited by law.

In Slovakia, intersectional discrimination is not prohibited by law.

There are no legal rules or case law that would explicitly deal with situations of multiple and/or intersectional discrimination. These concepts sometimes appear in policy documents but their 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 and/or intersectional 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 and/or intersectional 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 and/or intersectional discrimination. The multiple and/or intersectional discrimination element has either not been dealt with by the courts, or the cases are still pending.

The human rights NGO the Center for Civil and Human Rights (*Poradňa pre občianske a ľudské práva*) is bringing two cases of multiple discrimination before domestic courts, using the concept of *actio popularis*. The first case concerns an allegedly discriminatory provision in the Act on Childbirth Allowance,⁹⁷ which was dismissed by domestic courts in 2022.⁹⁸ The domestic 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. For more details on the case see section 12.2. of this report.

The second case concerns segregation of Roma women in maternity hospitals and qualifies it as intersectional discrimination on the grounds of ethnicity and sex. The case was

⁹⁶ Slovak National Centre for Human Rights (2019), *Expert opinion on protected ground of disability*, available at: <http://snslp.sk/wp-content/uploads/2019-22-Odborne-stanovisko-diskriminacia-z-dovodu-zdravotneho-postihnucia.pdf>.

⁹⁷ 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 in relation to which the Center for Civil and Human Rights filed its claim is Section 3(4)(b).

⁹⁸ Decision of the District Court Bratislava I, ref. No 12C 231/2010-132, 16 May 2014; Decision of the Regional Court in Bratislava, ref. No. 14 Co 552/2014 – 180, 26 September 2017; Decision of the Supreme Court of the Slovak Republic, ref. No. 7Cdo114/2020, 27 October 2022.

dismissed by first instance court in 2022 and is still pending before the appeal court.⁹⁹ However the court did not provide any specific argumentation on intersectional discrimination. For more details on the case, see section 12.2 of this report.

2.3 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.

To the knowledge of the author of this report, there is no relevant recent case law on this issue.

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 relevant recent case law dealing with discrimination by association.

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*,¹⁰⁰ 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).

⁹⁹ Decision of the District Court Bratislava III, No 14 C 288/2013, of 29 July 2022.

¹⁰⁰ Court of Justice of the EU, C-303/06 S. *Coleman v. Attridge Law and Steve Law*, 17 July 2008.

2.4 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(2). 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',¹⁰¹ which will be dealt with in sections 4 and 5 of this report.

2.5 Indirect discrimination (Article 2(2)(b))

a) Prohibition and definition of indirect discrimination

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

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

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

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

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

The second difference is that, whereas the directives require a 'particular disadvantage' to take place in order to qualify certain treatment as indirectly discriminatory, the definition of indirect discrimination contained in the Slovak Anti-discrimination Act only requires a 'disadvantage'. It can thus be argued that, with regard to the concept of disadvantage, the

¹⁰¹ Anti-discrimination Act, 365/2004, Sections 8 and 8a.

Slovak definition may be even more favourable than the concept of 'particular disadvantage' as interpreted by the CJEU in *CHEZ*.¹⁰² 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, there are no court decisions to date that offer specific reasoning on the definition of indirect discrimination.¹⁰³

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 Center for Civil and Human Rights as an *actio popularis* claim. The NGO as claimant argued that a specific provision of this act is discriminatory and 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.

After the case was dismissed by the lower courts,¹⁰⁴ the claimant submitted the case to the Supreme Court, arguing that the lower courts failed to interpret correctly Section 2a(3) of the Anti-Discrimination Act, which contains the definition of indirect discrimination. According to the appellant, the courts did not deal with the question whether the means to achieve that legitimate aim (as concluded) were proportionate and necessary. The Supreme Court, in its decision of 27 October 2022, dismissed the extraordinary appeal of the claimant, concluding that the interpretation of indirect discrimination given by the lower court was correct and the relevant provision does not constitute discrimination. It complied with the reasoning that the given provision is objectively justified by the pursuit of a legitimate interest, which is the protection of the child: that the mother does not leave the child in the maternity ward dependent on an artificial diet, so that the child does not lose contact with the mother, which is important for the child's further emotional development. At the same time, there is also a legitimate interest of protecting the mother: that she should not leave the medical facility where she is under medical supervision after giving birth without a decision of the doctor, who has the sole power to decide on the termination of her hospitalisation. The provision as argued is based on the principle of universality and does not favour or put at a disadvantage any person. The Supreme Court also specifically added that any custom of any community cannot override the best interests of the minor child, which is paramount. The Supreme Court also rejected the claimant's request for a

¹⁰² CJEU, Case C-83/14 *CHEZ Razpredelenie Bulgaria AD v. Komisia za zashtita ot diskriminatsia*, judgment of 16 July 2015, para 109.

¹⁰³ For example, in a case of discrimination against a Roma child in access to education, the District Court in Malacky in its decision 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. See decision of Malacky District Court, 17 May 2018, No. 5C/212/2014, confirmed by the decision of Bratislava Regional Court, No. 6Co65/2019, 25 November 2020. The case has been also subsequently dismissed by the Slovak Constitutional Court in Decision No. III.ÚS 633/2021-19 of 12 November 2021.

¹⁰⁴ Decision of the District Court Bratislava I, No. 12 C 231/2010 of 16 May 2014. Decision of the Regional Court in Bratislava, No. 14Co/552/2014 – 180 of 26 September 2017.

referral to the CJEU, reasoning that it was not necessary as the court did not find the alleged provision in violation of either domestic or EU law.¹⁰⁵

2.5.1 Statistical evidence

Section 2.5.1 is not updated for 2022. Regarding both the legal framework and the practice, please see Country report Non-discrimination Slovakia 2022, Transposition and implementation at national level of Council Directives 2000/43 and 2000/78, reporting period 01.01.2021 – 01.01.2022.

2.6 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’.¹⁰⁶ Section 11(1) of the act further states

¹⁰⁵ Decision of the Supreme Court of the Slovak Republic, No. 7 Cdo114/2020 of 27 October 2022.

¹⁰⁶ Anti-discrimination Act, 365/2004, Section 9(2).

that 'the claimant is obliged to identify the person who has allegedly violated the principle of equal treatment'.

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

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

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

Also relevant is the content of Section 5(2) of the Anti-discrimination Act, which stipulates that the principle of equal treatment must be applied in the fields of 'access and provision of' social security, healthcare, education and goods and services including housing. Thus, it follows from the quoted provision that both persons who access as well as persons who provide the specified items are entitled to protection against violations of the principle of equal treatment, and those who interact with them in these environments should be held liable for the breaches (as 'everyone' is obliged to observe the principle of equal treatment). However, the wording of Section 6(1) of the Anti-discrimination Act, which states that discrimination shall be prohibited in 'employment relationships, similar legal relationships, and in related legal relationships' is confusing in the framework of that interpretation. As labour legislation does not define any of the terms 'employment relationship, similar legal relationship, and related legal relationships' and legal theory defines legal relationships basically as relationships between employers and employees,¹⁰⁷ 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.¹⁰⁸ 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

¹⁰⁷ See for example Barancová, H., Schronk, R. (2007), *Pracovné právo* (Labour Law), Bratislava, Sprint, pp. 197-208.

¹⁰⁸ See Labour Code, 311/2001, Sections 81 and 82 respectively.

observe the principle of equal treatment can be undoubtedly inferred (at least to some extent).¹⁰⁹

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,¹¹⁰ 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.

In a case concerning forced eviction of Roma, the first instance court also rather progressively interpreted the harassment as a form of discrimination. According to the court, harassment is a particularly harmful form of discriminatory treatment; by definition, with harassment, it is not necessary to examine the comparator, i.e. the person in the same situation, as opposed to direct or indirect discrimination. This reflects the fact that harassment is inappropriate in itself because of the form it takes and the potential impact it may have.¹¹¹

2.7 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

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

In Slovakia, instructions 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'.¹¹² Under Section 2a(1) of the Anti-discrimination Act, incitement to discriminate is considered a form of discrimination.

¹⁰⁹ 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;
- 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.'

¹¹⁰ Civil Code (as amended), 40/1964, Section 420(2).

¹¹¹ Decision of the District Court Košice II, No. 15C/190/2014-650, 21 January 2022.

¹¹² See Anti-discrimination Act, 365/2004, Section 2(7).

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 Act¹¹³ 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 regulations¹¹⁴ (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.¹¹⁵ Civil servants are also obliged to follow the instructions of their superiors unless these instructions are in conflict with generally binding legal regulations¹¹⁶ (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.¹¹⁷

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.¹¹⁸ More information on this case can be found in the previous country report on Slovakia.¹¹⁹

¹¹³ 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*).

¹¹⁴ Civil Service Act, 55/2017, Section 111(3).

¹¹⁵ Civil Service Act, 55/2017, Section 111(1)(a).

¹¹⁶ Civil Service Act, 55/2017, Section 111(1)(i).

¹¹⁷ Civil Service Act, 55/2017, Section 111(3).

¹¹⁸ Decision of the Slovak Supreme Court, No 3 Cdo 405/2015 – 773 of 8 December 2016.

¹¹⁹ Durbáková, V. (2022), *Country report: Non-discrimination – Transposition and implementation at national level of Council Directives 2000/43 and 2000/78 – Slovakia*, European Commission, European network of legal experts in gender equality and non-discrimination, p. 30. Available at: <https://www.equalitylaw.eu/downloads/5805-slovakia-country-report-non-discrimination-2022-1-51-mb>.

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

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

In Slovakia, the duty to provide reasonable accommodation for persons 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.¹²⁰ 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.¹²¹

The measure will not be considered as giving rise to a disproportionate burden if its adoption by the employer is mandatory under separate provisions.¹²² The availability of financial assistance is taken into account in assessing whether there is a disproportionate burden, including any financial assistance from the state, although it is not specifically mentioned in a legislation.

Employers' duties in this regard are also prescribed by the Labour Code: the 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 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).

¹²⁰ Anti-discrimination Act, 365/2004, Section 7(1).

¹²¹ Anti-discrimination Act, 365/2004, Section 7(2)(a)-(c).

¹²² Anti-discrimination Act, 365/2004, Section 7(3).

b) Case law

To the knowledge of the author of this report, there is no case law yet on the duty to provide reasonable accommodation in employment.

However, the Supreme Court, in a case on the right to inclusive education of a child with a disability, held that a refusal to provide reasonable accommodation is a form of discrimination.¹²³ 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, the only purpose of Section 40(8) of the Labour Code is to identify a duty to provide reasonable accommodation and not to claim protection from discrimination in general (Labour Code, Section 158). This would seem to be a breach of the EU Framework Directive which is not so restrictive. There is no definition of disability contained in the ADA, either in general or for the purpose of reasonable accommodation. The only legal definition is in Labour Code, which is used only for the purpose of identifying a duty to provide reasonable accommodation.

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

'mental¹²⁴ disability, hearing impairment, visual impairment, physical impairment, communication ability disorder, autism, or with other pervasive developmental disorders, or with multiple disabilities.'¹²⁵

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'.¹²⁶ The same definition of disability is used also for the purpose to identify a duty to provide reasonable accommodation.

Please see section 2.1(c) for further details.

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

In Slovakia, failure to meet the duty of reasonable accommodation is recognised as a form of discrimination or more accurately, as a violation of the principle of equal treatment.¹²⁷

¹²³ Decision of the Supreme Court of the Slovak Republic, No. 7Sžo/83/201424, September 2015.

¹²⁴ In Slovak, the act uses the word 'mental' (and not, for example, 'intellectual').

¹²⁵ Schools Act, 245/2008, Section 2(l).

¹²⁶ Schools Act, 245/2008, Section 2(k).

¹²⁷ Anti-discrimination Act, 365/2004, Section 7(4).

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.¹²⁸

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 2.8(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 2.8(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 2.8(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.

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

In Slovakia, there is a duty to provide reasonable accommodation for persons 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 persons 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 2.8(a) and 2.8(b) only applies to the field of employment). Furthermore, the UN Committee on Economic, Social and Cultural Rights has expressed its concern that the

¹²⁸ Anti-discrimination Act, 365/2004, Section 7(4).

State Party's legislation defines only the failure to provide reasonable accommodation as discrimination against persons with disabilities in the context of employment. The Committee recommended that Slovakia should amend its anti-discrimination legislation to ensure formal and unequivocal recognition of the fact that a denial of reasonable accommodation constitutes discrimination.¹²⁹

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.¹³⁰ 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.¹³¹

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.¹³²

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.

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. More details on this case can be found in the previous country report.¹³³

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

Section 2.8.f is not updated for 2022. Please see Country report: Non-discrimination – Transposition and implementation at national level of Council Directives 2000/43 and 2000/78 – Slovakia, reporting period 01.01.2021 – 01.01.2022.

¹²⁹ UN Committee on Economic, Social and Cultural Rights (2019) *Concluding observations on the third periodic report of Slovakia*, (E/C.12/SVK/CO/3), 14 November 2019. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fSVK%2fCO%2f3&Lang=en.

¹³⁰ 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*).

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

¹³² Decision of the Supreme Court of the Slovak Republic, No. 7Sžo/83/2014, 24 September 2015.

¹³³ Durbáková, V. (2022), *Country report: Non-discrimination – Transposition and implementation at national level of Council Directives 2000/43 and 2000/78 – Slovakia*, European Commission, European network of legal experts in gender equality and non-discrimination, pp. 34- 35. Available at: <https://www.equalitylaw.eu/downloads/5805-slovakia-country-report-non-discrimination-2022-1-51-mb>.

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,¹³⁴ 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.¹³⁵

In addition, separate acts set out the requirement to be a citizen of the Slovak Republic for specific professions or employment.¹³⁶

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.¹³⁷

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.

Although the reference to natural persons as persons protected against discrimination in Section 2a of the Anti-discrimination Act is not explicit, their protection against discrimination is undisputable, following logical and systematic interpretation of the provision and of the whole Anti-discrimination Act, in conjunction with the directives.

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:

¹³⁴ 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*).

¹³⁵ Act on the Residence of Foreigners, 404/2011, Section 2(2).

¹³⁶ Senior state officials, prosecutors, constitutional judges, judges, police officers, customs officers, fire and rescue service members, mountain rescue service members and professional soldiers.

¹³⁷ For example: Act on the Residence of Foreigners, 404/2011 and Asylum Act 480/2002.

‘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 Act¹³⁸ with respect to its members, associates, shareholders, members of its bodies, employees, persons acting on its behalf or persons on behalf of which such a legal entity is acting.’

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.¹³⁹ 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 the 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 in Section 2a(9) in conjunction with Section 2(1) providing a definition of discrimination of legal persons and also from the interpretation of the whole ADA, 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.¹⁴⁰

¹³⁸ 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.

¹³⁹ Anti-discrimination Act, 365/2004, Section 5(2)(d).

¹⁴⁰ See Anti-discrimination Act, 365/2004, Section 5(2)(d).

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

3.2 Material scope

3.2.1 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.¹⁴¹ Gender identity/expression and sex characteristics specifically are not covered in national legislation.

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.¹⁴²

There is no case law specifically concerning the applicability of provisions relating to access to employment, self-employment or occupation. However, in 2022, the Slovak National Centre for Human Rights (the national equality body) issued its research report on monitoring job advertisements with regard to recruitment conditions set by employers.¹⁴³ During the research in 2022, the equality body monitored 4 208 job advertisements on three job portals. According to the report, of all analysed adverts, 74.3 % were identified by the equality body as potentially discriminatory. The highest proportion of incorrect adverts were ads using text in the masculine gender. Age requirements for the jobseeker were the second most numerous category of distinguishing criteria. More frequent were instances of using the formulation 'young' rather than 'dynamic' in referring to work teams. A 'young' work team was supposed to be a benefit for working in the IT sector. Further, the equality body identified in the advertisements requirements for excellent health, to be a non-smoker as well as car ownership or an internet connection. The equality body concluded that discriminatory job advertising is a long-standing problem, which is just one of many manifestations of discriminatory attitudes in parts of Slovak society. The Centre therefore states that it will continue to carry out activities contributing to the elimination of such discriminatory practices.

¹⁴¹ Anti-discrimination Act, 365/2004, Section 6(1) and 6(2)(a).

¹⁴² 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. It can be stated that conditions for access to self-employment (among others mentioned above) have been transposed into the domestic legislation in line with the directives.

¹⁴³ Slovak National Centre for Human Rights (2022), *Súhrnná výskumná správa z nezávislého zisťovania diskriminácie v predzmluvných pracovných vzťahoch- Monitoring pracovnej inzercie* (Comprehensive research report on independent survey of discrimination in pre-contractual employment relationships), available in Slovak at: <https://www.snslp.sk/wp-content/uploads/monitoring-pracovna-inzercia-2022.pdf>.

3.2.2 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. Gender identity/expression and/or sex characteristics are not explicitly covered by domestic legislation.

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'¹⁴⁴ and working conditions, including remuneration, promotion and dismissal', in which the principle of equal treatment applies (Section 6(1) of the Anti-discrimination Act).

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

3.2.3 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. Gender identity/expression and/or sex characteristics are not specifically covered in national legislation.

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 Learning¹⁴⁵ 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.

¹⁴⁴ The term 'employment' includes occupation, other gainful activity or function.

¹⁴⁵ 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*).

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.¹⁴⁶

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

3.2.4 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. Gender identity/expression and/or sex characteristics are not specifically covered in national legislation.

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.

3.2.5 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. The gender identity/expression or sex characteristics are not specifically covered in national legislation.

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),¹⁴⁷ 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 Need¹⁴⁸ regulates, among other things, the provision of financial aid to those who are deemed to be in material need.¹⁴⁹ 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

¹⁴⁶ Higher Education Act, 131/2002, Section 55(2).

¹⁴⁷ 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*).

¹⁴⁸ 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*).

¹⁴⁹ See Act on Aid in Material Need, 417/2013, Section 1(1).

a special law;¹⁵⁰ in 2022, the sum for one adult was EUR 234.42 per month). The allowance (financial aid in material need) is supposed to secure basic living conditions.¹⁵¹

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 premises), some kind of voluntary work (pursuant to a special law on voluntarism)¹⁵² 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 this provision has negative impact on marginalised Roma.

As such this provision was very heavily criticised by civil society and NGOs¹⁵³ Nevertheless, the Constitutional Court ruled on the legality of the provision in its decision by which it dismissed the complaint of a group of MPs and concluded that the provision is not in violation of the general non-discrimination principle provided by the Slovak Constitution.¹⁵⁴

The basic law on the state social security scheme is the Social Insurance Act.¹⁵⁵ 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.¹⁵⁶

The Social Services Act¹⁵⁷ regulates legal relations in connection with the provision of social services.¹⁵⁸ The Social Services Act contains a principle of equal treatment clause and refers

¹⁵⁰ 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*).

¹⁵¹ 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 64.70 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).

¹⁵² Act No. 406/2011 on Volunteerism and on changing and supplementing other laws (*zákon č. 406/2011 Z. z. o dobrovoľníctve a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

¹⁵³ 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; Balážová, G., Gallová Kriglerová, E., Chudžíková, A., Lajčáková, J., Surová, S., Števílová, 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-vyrocnna-sprava/>.

¹⁵⁴ Decision of the Constitutional Court of the Slovak Republic, No. PL.ÚS 8/2014, 27 May 2015.

¹⁵⁵ Act No. 461/2003 on Social Insurance as amended (*zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov*).

¹⁵⁶ 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*).

¹⁵⁷ 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*).

¹⁵⁸ 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

to the Anti-discrimination Act, as does the Act on Benefits for Compensation of Serious Disability,¹⁵⁹ which regulates legal relationships connected with providing financial contributions aimed at compensating for the social consequences of 'serious disabilities'.

The Act on Old-Age Pension Saving contains a prohibition of discrimination clause formulated as a referral to the Anti-discrimination Act.¹⁶⁰ 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.¹⁶¹

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).¹⁶²

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.¹⁶³

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 Children¹⁶⁴ 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.¹⁶⁵ 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.¹⁶⁶ However, the formulation of the relevant provisions,

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).

¹⁵⁹ Act on Benefits for Compensation of Serious Disability, 447/2008.

¹⁶⁰ 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.

¹⁶¹ 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.

¹⁶² 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).

¹⁶³ 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.

¹⁶⁴ Act No. 383/2013 on Childbirth Allowance and on Allowance for More Concurrently Born Children and on amending and supplementing certain laws (*zákon č. 383/2013 o príspevku pri narodení dieťaťa a príspevku na viac súčasne narodených detí a o zmene a doplnení niektorých zákonov*).

¹⁶⁵ 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.

¹⁶⁶ 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

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.¹⁶⁷ The challenged provision is now subject to proceedings initiated by an *actio popularis* that was filed by the Center for Civil and Human Rights (see section 2.2). In 2022, the case was rejected by the Slovak Supreme Court, after having been dismissed by the first instance and appeal courts.¹⁶⁸ The domestic courts concluded that the given provision does not constitute discrimination. The case can be further submitted to the Slovak Constitutional Court.

According to the analyses published by NGO the Center for Civil and Human Rights, specific provisions of domestic legislation 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, 600/2003.¹⁶⁹ In this regard it should be noted that the UN Committee on the Rights of the Child in its concluding observations 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.¹⁷⁰

In 2022, the District Court Bratislava III in its judgment¹⁷¹ dismissed the *actio popularis* claim submitted in 2013 by the NGO Center for Civil and Human Rights. The claim was submitted against the state represented by the Ministry of Health; the Ministry of Health as a Government body and founder of the state-run hospital itself; and the Faculty Hospital with Polyclinic J. A. Reiman in Prešov. It claimed that the gynaecology and obstetrics wards of the hospital in question had a long-standing practice of placing Roma women in separate so-called 'Roma rooms' and the state, and the ministry as founder, had failed to eliminate this practice. According to the Court, the claimant did not prove that Roma women were placed in separate rooms because of their Roma origin. Although several Roma women confirmed this practice through their testimony during the proceeding, the Court disregarded their evidence and relied more on the testimonies of medical staff.

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.'

¹⁶⁷ 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).

¹⁶⁸ 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. Decision of the Supreme Court of the Slovak Republic, No. 7 Cdo114/2020 of 27 October 2022.

¹⁶⁹ Poradňa pre občianske a ľudské práva (Center 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 Center 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/>.

¹⁷⁰ 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.

¹⁷¹ Decision of the District Court Bratislava III, No. 14C/288/2013, 29 July 2022.

The Court further held that the placement of Roma women in a separate room in itself does not necessarily have to constitute unlawful segregation and may be justified by the patients' state of health, the occupancy of the maternity ward or epidemiological measures, as well as whether the women themselves preferred to stay in the room with other Roma women. In particular, it pointed out that, according to the defendant hospital, many Roma women wished to be placed in a joint room with other Roma women and that, in that case, the hospital was simply respecting the women's wishes.

The Court also rejected as relevant the opinion of the Slovak National Centre for Human Rights (the national equality body) submitted as evidence by claimant, which assessed the practice of placing Roma women in ethnically homogeneous rooms as discriminatory, in violation of the Anti-discrimination Act. The claimant appealed against the decision, so the case is now pending before the Regional Court in Bratislava. (see more information in section 12.2.)

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.

3.2.6 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. Gender identity/expression and sex characteristics are not specifically covered in national legislation.

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

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

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 legislation¹⁷² 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

¹⁷² Act No. 443/2010 on subsidies for housing development and social housing, as amended.

apartments.¹⁷³ In 2022, the Slovak Parliament adopted new legislation that is aimed at supporting the construction of rental housing with regulated rents and a guarantee of long-term housing. It is intended to address insufficient physical and affordable availability of housing for broad groups of the population.¹⁷⁴ The legislation specifies that eligible renters for providing the rental housing are legal entities that acquired the ownership of the rented buildings by construction, by purchase or where the investment partner has directly or indirectly become a partner of the legal entity which has acquired ownership of the residential buildings by construction or purchase and that legal entity has acquired the legal status of renter. The legislation also establishes the new institution/agency for state-supported rental housing, which shall create conditions and instruments for the development of state-supported rental housing.¹⁷⁵ The criteria that must be met by the applicant for rental housing are specified by a Government regulation adopted in October 2022. It sets out minimum and maximum income thresholds for potential tenants eligible for rental housing. It also states that at least 10 % of dwellings should be reserved for people with severe disabilities, or for those whose care in children's social services has ended, or for those whose foster care or substitute care has ended.¹⁷⁶ However, as the agency states on its website, the whole effort is meant to fill the gap between social housing, market rents and buying a home with a mortgage. The tenants must have certain income to pay their rent and the state places a regulated 'cap' on the amount of this rent, which should increase only by inflation over the years. A tenant can also get a contribution to the rent from their employer; the agency estimates that it could save up to 30 % of the cost of living on such a rent in comparison with commercial rents. In the author's opinion, however, this initiative has only limited potential to contribute to removing structural problems in access to rental housing for a wide range of socially disadvantaged people, including the marginalised Roma population, in practice (See chapter 3.2.9.). Notably, the rental housing in the given legal framework is not eligible for individuals who are registered as a debtor with the tax office, public health insurance and social security or who have an execution record. This in practice effectively excludes a significant proportion of marginalised people, who widely struggle with debts and executions.

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).

¹⁷³ Supreme Audit Office of the Slovak Republic (2018), 'Analytical material - Social housing as a tool for solving a bad social situation'. Available at: <https://www.nku.gov.sk/documents/10157/2509c132-e727-416f-b872-65fd99f4b55e>.

¹⁷⁴ Act. No. 222/2022 on state support for rental housing, as amended.

¹⁷⁵ The agency runs its own website providing detailed information on its competences and also provides detailed information for potential renters and potential tenants of rental housing; see: <https://www.najomnebyvanie.info/>.

¹⁷⁶ Regulation of the Government of Slovak republic no. 327/2022 Coll. on certain measures relating to state support of rental housing, adopted on 5 October 2022.

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

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

Sections 5(1) and 5(2)(c) of the Anti-discrimination Act stipulate the duty to observe the principle of equal treatment and prohibit discrimination on all the grounds contained within the act, including in the area of education. Gender identity/expression and sex characteristics are not specifically covered in national legislation.

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',¹⁷⁷ 'inclusive education',¹⁷⁸ as well as the 'prohibition of all forms of discrimination, and especially segregation',¹⁷⁹ as the principles on which education should be based. The act also contains definition of inclusive education as 'joint education of children and pupils, students or participants in education, carried out on the basis of equal opportunities and respect for their educational needs and individual peculiarities and supporting their active involvement in the educational activity of a school or school facility'.¹⁸⁰ The principle of inclusive education is conceptualised in Slovak strategic policy documents as something that concerns everyone in the school environment, that is all children, pupils, students, teachers, educators, parents and other actors in education and training. It is also included in a broader context, in all related policies, e.g. youth, employment and other policies and life of Slovak society.¹⁸¹

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'.¹⁸² The Act on Higher Education also prohibits discrimination.¹⁸³ There is no particular definition of segregation in Slovak legislation, but the Recovery and Resilience Plan of Slovakia, adopted by the Council of the EU, stipulates the introduction of the definition of segregation by the third quarter of 2023.¹⁸⁴ In this regard, in August 2022 the Ministry of Education proposed the amendment of the School Act containing the definition of segregation to interdepartmental comment procedure within the legislative process; however, based on comments received, the proposal was withdrawn by the Ministry for additional development. Within the given procedure, key independent human rights bodies – the Slovak National Centre for Human Rights (the equality body) and the Office of the Public Defender of Rights – both raised reservations regarding the proposed definition of segregation,¹⁸⁵ while the Centre specifically stressed the necessity of linking the definition to the Anti-discrimination Act and thus the necessity of amending it.¹⁸⁶ The same was proposed by the NGO the Center for Civil and Human

¹⁷⁷ Schools Act, 245/2008, Section 3(c).

¹⁷⁸ Schools Act, 245/2008, Section 3(d).

¹⁷⁹ Schools Act, 245/2008, Section 3(e).

¹⁸⁰ Act No. 415/2021 amending the Act No. 245/2008 on Education (School Act), Section 2 (ai).

¹⁸¹ Stratégia inkluzívneho prístupu vo výchove a vzdelávaní (Strategy for an inclusive approach in upbringing and education), adopted by the Government of the Slovak Republic on 8 December 2021, p. 6. Available at: <https://www.slov-lex.sk/legislativne-procesy/SK/LP/2021/659>.

¹⁸² Schools Act, 245/2008, Section 2(s). However, the act does not define in more detail what such integration would mean.

¹⁸³ Act on Higher Education, 131/2002, Section 55.

¹⁸⁴ Plán obnovy a odolnosti Slovenska (Recovery and Resilience Plan of Slovakia) adopted by the Council of the EU on 13 July 2021, p. 245. Available at: <https://www.planobnovy.sk/kompletny-plan-obnovy/>.

¹⁸⁵ The proposed definition in the August 2022 amendment was 'school segregation is an act or omission of an act which has the direct effect of or indirectly results in unjustified spatial, organisational or physical exclusion or separation from other children, pupils or pupils in education and training or to less favourable education or less favourable education'.

¹⁸⁶ Details of this legislative process, including the legislative proposal and comments of the Slovak National Centre for Human Rights and the Office of the Public Defender of Rights are available in Slovak at the state legislative portal Slov-lex: <https://www.slov-lex.sk/legislativne-procesy/SK/LP/2022/502>. The Slovak National Centre for Human Rights also expressed its reservations about the definition of segregation proposed by the Ministry of Education in August 2022 in its recent publication from 2022, 'Segregation of

Rights, leading strategic court action on school segregation of Roma children in Slovakia.¹⁸⁷ As of 1 January 2023, no other legislative amendment containing a definition of segregation had been proposed in Slovakia. In the opinion of the author of this report: 1./ the Ministry of Education's initiative to introduce the proposed definition of segregation to the School Act was non-conceptual as it has to be essentially included in the Anti-discrimination Act as a form of discrimination, and also the proposed wording of the definition was problematic. 2./ the adoption of the definition in domestic legal order is not necessary for overall effective prevention of segregation of Roma children, and the adoption of a definition with potentially problematic wording can even be counterproductive for overall access to justice and desegregation efforts as such, which must focus in particular on the implementation of complex desegregation plans on local and regional levels, containing a wide range of targeted desegregation measures.

The current Slovak Government, in line with its programme declaration, in December 2021 adopted the Strategy for an inclusive approach in upbringing and education¹⁸⁸ as a key Government framework document, which sets out the direction of strategic public policies to bring about change in the education of children, pupils and students towards inclusive education by 2030.¹⁸⁹ On 1 June 2022, the Slovak Government adopted the first action plan under this Strategy, setting out particular tasks and activities for its implementation in the period 2022-2024.¹⁹⁰

However, in general, it can now be said that the way in which the system of education has been designed so far (not only in terms of legislation but also in terms of the everyday practice) perpetuates the exclusion of pupils from minorities and pupils with disabilities from mainstream education.¹⁹¹ They are often placed in segregated special schools or classes.

The case law targeting discrimination against pupils with disabilities is limited and only a few cases have been decided by Slovak courts. An important case decided by the Supreme Court in 2015 concerns the right to inclusive education of children with disabilities.¹⁹² The claimant was a female child with an intellectual disability and a hearing impairment who was refused enrolment at a mainstream primary school. More information on this case can be found in the previous country report on Slovakia.¹⁹³

education – analysis of knowledge', pp. 15-16. The Centre specifically did not find it appropriate that the School Act, as a legislation in the field of education, would establish a new form of discrimination without this being directly reflected in the Anti-discrimination Act. Available at: <https://www.snslp.sk/wp-content/uploads/Analiza-segregacia-vo-vzdelavani-2.pdf>.

¹⁸⁷ Comments of the Center for Civil and Human Rights are available in Slovak at: https://poradna-prava.sk/wp-content/uploads/2022/09/Pripomienky-k-navrhu-novely-skolskeho-zakona_definicia-segregacie.pdf.

¹⁸⁸ Stratégia inkluzívneho prístupu vo výchove a vzdelávaní (Strategy for an inclusive approach in upbringing and education), adopted by the Government of the Slovak Republic on 8 December 2021.

¹⁸⁹ The strategy consists of six priority areas for the development of an inclusive approach in education: inclusive education and supportive measures, counselling system in education, desegregation in upbringing and education, removing barriers in the school environment, training and education for pedagogical and professional staff and de-stigmatisation. Each of these areas sets out a range of strategic goals.

¹⁹⁰ Resolution of the Slovak Government No. 373/2002 on the first action plan for the implementation of the Strategy for an inclusive approach in upbringing and education for 2022-2024. Adopted on 1 June 2022. Available at: <https://rokovania.gov.sk/RVL/Resolution/20161/1>.

¹⁹¹ For details about shortcomings concerning the education of children with disabilities in Slovakia see: Coalition of Slovakian NGOs (2019), *Implementation of the United Nations Convention on the Rights of Persons with Disabilities in Slovakia*, alternative report of coalition of domestic NGOs promoting the rights of persons with disabilities submitted to the UN Committee on the Rights of Persons with Disabilities. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fICS%2fSVK%2f35652&Lang=en.

¹⁹² Judgment of the Supreme Court of the Slovak Republic, No. 7Sžo/83/2014, 24 September 2015.

¹⁹³ Durbáková, V. (2022), *Country report: Non-discrimination – Transposition and implementation at national level of Council Directives 2000/43 and 2000/78 – Slovakia*, European Commission, European network of legal experts in gender equality and non-discrimination, p. 46. Available at: <https://www.equalitylaw.eu/downloads/5805-slovakia-country-report-non-discrimination-2022-1-51-mb>.

Another important case decided by a domestic court was a case of discrimination against a child in preschool education on the ground of disability. The child, who has been diagnosed with a behavioural disorder, was not enrolled in a kindergarten because the director claimed that the kindergarten was not able to provide education for children with special educational needs. The district court confirmed discrimination against the child, ordering the school to apologise and to financially compensate the complainant¹⁹⁴

a) 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. The concept of segregation is not defined by law, but according to the basic principles in the Schools Act, such segregation is prohibited.

The segregation of Roma children in education is a very widespread problem, which has already been documented in many reports by national and international NGOs.¹⁹⁵ Both key independent human rights institutions – the Slovak National Centre for Human Rights (the equality body) and the Office of the Public Defender of Rights have continued to raise this on-going problem and the need for Government authorities to address it effectively.¹⁹⁶ In addition, segregation of Roma children continues to be a matter of concern for international human rights bodies monitoring the implementation of human rights treaties by the Slovak Government.¹⁹⁷

In November 2022, the Office of the Roma Plenipotentiary for Roma Communities released an analytic report that presents selected outputs from the second EU SILC_MRK survey which took place in autumn 2020. The report provides a comprehensive overview of the living conditions of marginalised Roma communities in Slovakia, and its findings concerning the education of Roma children confirms the on-going pervasive inequalities that exist in this area. In particular, 17 % of children from the marginalised communities aged from 6 to 15 years were in special education. Compared with the overall population, the proportion is roughly three times higher. The formation of purely Roma classes also occurs widely in mainstream education. Almost half (47 %) of children from the marginalised communities aged from 6 to 15 in mainstream education have only Roma classmates, while 32 % of children attend a school with exclusively Roma pupils.¹⁹⁸ The collection of data within the EU SILC_MRK survey was supported by the European Union Agency for Fundamental Rights (FRA), which in 2020 launched a survey on Roma in eight EU Member States (Croatia,

¹⁹⁴ Decision of the District Court in Žilina, No. 7C/83/2019-159, 27 July 2020.

¹⁹⁵ See e.g. Center for Civil and Human Rights (2022), Submission to the UN Committee on the Elimination of Racial Discrimination concerning Slovakia, pp. 7-8, available at: <https://poradna-prava.sk/wp-content/uploads/2022/07/NGO-submission-for-CERD-concerning-Slovakia-NGO-Poradna-July-2022.pdf>. 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/>.

¹⁹⁶ Public Defender of Rights, *Správa o činnosti Verejného ochrancu práv za obdobie roka 2021* (Report on the activity of Public Defender of Rights for 2021), February 2022, pp. 3-16. Available at: https://vop.gov.sk/wp-content/uploads/2022/03/VOP_VS21_SK_Digital-2.pdf. Observations of the Slovak National Centre for Human Rights in relation to the thirteenth periodic report of Slovakia to the Committee on the Elimination of Racial Discrimination. Bratislava: Slovenské národné stredisko pre ľudské práva, 2022. Available at: https://www.snslp.sk/wp-content/uploads/CERD_submission_SNCHR_final.pdf; Slovak National Centre for Human Rights (2022) *Segregácia vo vzdelávaní – analýza známych poznatkov* (Segregation of education – analysis of knowledge), available at: <https://www.snslp.sk/wp-content/uploads/Analýza-segregacia-vo-vzdelavani-2.pdf>.

¹⁹⁷ The UN Committee on the Elimination of Racial Discrimination (CERD), in its recent concluding observations to Slovakia from September 2022, expressed its concern over 'the persistent, widespread and systemic discrimination and segregation affecting Roma children in the education system.' CERD/C/SVK/CO/13, para. 32. See also: Fifth Opinion on the Slovak Republic of the Advisory Committee on the Framework Convention for the Protection of National Minorities from February 2022, para. 205-224.

¹⁹⁸ Office of the Roma Plenipotentiary for Roma Communities (2022), *Príjmy a životné podmienky v marginalizovaných rómskych komunitách: Vybrané ukazovatele zo zisťovania EU SILC_MRK 2020* (Income and living conditions in marginalised Roma communities: Selected indicators from the survey), pp. 9: main findings in English. Available at: https://www.romovia.vlada.gov.sk/site/assets/files/1561/analyticka_sprava_eu_silc_mrk_2020_elektronicka_final.pdf?csr=7830548095596483054.

Czechia, Greece, Hungary, Italy, Portugal, Romania and Spain) and two accession countries (North Macedonia and Serbia). Data from the referred EU SILC_MRK survey in Slovakia are comparable with FRA data the other countries. In this context, the FRA report published in October 2022 describes on-going discrimination against Roma children and the magnitude of this problem through a comparative perspective with other countries with a sizeable Roma population. It shows that Slovakia has the highest percentage of children who attend school where all or most children are Roma (65 %) and that this proportion had even increased in comparison with comparable FRA survey data concerning Slovakia from 2016 (60 %).¹⁹⁹

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. In 2022, the infringement proceedings were still pending. The segregation of Roma children was recognised in a range of Government strategies or plans adopted in 2021 and 2022, which acknowledge this problem in its full systemic extent and contain Government commitments to address it in the forthcoming years (see the Strategy for equality, inclusion and participation of Roma to 2030 and its action plans for the period 2022-2024, the Strategy of inclusive approach in upbringing and education, and the Recovery and Resilience Plan of Slovakia).²⁰⁰

Misdiagnosis and placement of Roma children in 'special' schools.

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. Specialised classes can be only established for a minimum of four and a maximum of eight pupils. In the event that the number of pupils is lower than four, the specialised class is cancelled.

The Schools Act stipulates that 'a child or a pupil whose educational needs stem exclusively from their development in a socially disadvantaged environment cannot be placed in special schools or special classes' (meaning special schools or special classes for children with disabilities or a health disadvantage – see the previous section),²⁰¹ and the education of children from socially disadvantaged environments must be pursued through 'individual

¹⁹⁹ European Union Agency for Fundamental Rights (2022), Roma in 10 European countries: Main results, p. 40. Available at: <https://fra.europa.eu/en/publication/2022/roma-survey-findings>.

²⁰⁰ *Stratégia rovnosti inklúzie a participácie Rómov do roku 2030* (The Strategy for equality, inclusion and participation of Roma to 2030) adopted by the Government of the Slovak Republic on 7 April 2021, available at: <https://rokovania.gov.sk/RVL/Material/25860/1>; *Akčné plány k stratégii rovnosti, inklúzie a participácie Rómov do roku 2030* (Action plans under the Strategy for equality, inclusion and participation of Roma to 2030), adopted by the Government of the Slovak Republic on 6 April 2022, available at: <https://rokovania.gov.sk/RVL/Resolution?NegotiationID=1202>; *Stratégia inkluzívneho prístupu vo výchove a vzdelávaní* (Strategy for an inclusive approach in upbringing and education), adopted by the Government of the Slovak Republic on 8 December 2021, *Plán obnovy a odolnosti Slovenska* (Recovery and resilience plan of Slovakia) adopted by the Council of the EU on 13 July 2021, available at: <https://www.planobnovy.sk/kompletny-plan-obnovy/>.

²⁰¹ Schools Act, 245/2008, Section 107(2).

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.²⁰² 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).²⁰³

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). The Government strategies listed above, and the recovery and resilience plan reflect this problem and are intended to address it in a complex manner through a broad range of measures addressing school desegregation and introducing inclusive education. The recovery and resilience plan particularly declares the ambition to eliminate excessive enrolment of Roma pupils in the special education stream as well as their segregation in mainstream education through legislative amendments, monitoring and funding schemas.²⁰⁴

Particularly relevant and comprehensive in this area remains the quantitative data drawn from research conducted by the Ministry of Finance, which shows that Roma children from marginalised communities remain severely overrepresented in the special education system.²⁰⁵

In recent years, the Research Institute for Child Psychology and Psychopathology operating under the Ministry of Education has been working on exploring a new approach to diagnostics, which would not lead to selecting children for different types of schools, but would define the strengths and weaknesses of each child for the needs of education in an inclusive environment. In this regard, it has developed and published standards on diagnosis of school capabilities of children from marginalised Roma communities.²⁰⁶ Based on publicly available information, these standards had not been approved by the Ministry of Education as of 1 January 2023.²⁰⁷

In 2021-2022, some legislative amendments were introduced in Slovakia to address the misdiagnosis of marginalised Roma children leading to their overrepresentation in the special education system for children with mental disabilities. The amendments became effective from 1 January 2023.²⁰⁸

²⁰² Schools Act, 245/2008, Section 107(1).

²⁰³ Schools Act, 245/2008, Section 107(3).

²⁰⁴ Plán obnovy a odolnosti Slovenska (Recovery and resilience plan of Slovakia) adopted by the Council of the EU on 13 July 2021, pp. 18-19.

²⁰⁵ Ministry of Education, Science, Research and Sport of the Slovak Republic, *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>.

²⁰⁶ Odborné postupy v pedagogickej a poradenskej praxi - Školská spôsobilosť dieťaťa z marginalizovanej rómskej komunity (Professional procedures in pedagogical and counselling practice - School competence of the child from a marginalised Roma community). May 2021. Available at: <https://vudpap.sk/wp-content/uploads/2022/06/Skolska-sposobilost-dietata-z-marginalizovanej-romskej-komunity.pdf>. Other professional standards and procedures developed by VUDPaP are available at: <https://vudpap.sk/x/projekty/standardy/tvorba-standardov/odborne-postupy-a-skusenosti-mdp/odborne-postupy/>.

²⁰⁷ See the media statement of the former Minister of Education on this matter from February 2023, <https://www.skolskyportal.sk/legislativa/grohling-z-novely-skolskeho-zakona-vypadla-definicia-segregacie>.

²⁰⁸ Amendment of School Act by Act No. 415/2021 Coll of Laws adopted on 20 October 2021 with relevant provisions effective from 1 January 2023. Decree on counselling and prevention facilities 24/2022 Coll. Of Laws. Government. Regulation No. 489/2022 Coll. Of Law, which amended the regulation No. 630/2008 Coll. of Laws on laying down the details of the breakdown of funds from the state budget for schools and school establishments. This regulation was amended specifically by Article 8a which sets up the procedure for calculating the amount of funding for counselling and prevention facilities.

The given amendments specifically reform the counselling and prevention facilities responsible for school diagnostics. The adoption of the given amendments should also be seen in the context of the aforementioned activities of the Research Institute of Child Psychology and Pathopsychology and newly developed standards on diagnosis of school capabilities of children from marginalised Roma communities and the necessity of their effective implementation in school practice. The Research Institute reportedly realised these activities within the complex project supported from the European Social Fund.²⁰⁹

The action plans for the Strategy of equality, inclusion and participation of Roma for 2022-2024, adopted by the Government in June 2022, contain a particular partial goal to 'increase access of children from marginalised Roma communities to the main educational stream by transforming the special stream of education'. This should be achieved by securing objective and culturally sensitive diagnostics of their special educational needs.²¹⁰ The State School Inspectorate highlighted that misdiagnosis leads to unauthorized segregation of pupils into the stream of special education. Based on inspections of relevant documentation for 2017–2020 in 40 % of cases, the objectivity of the diagnosis was questioned and in almost 40 % of cases a rediagnosis of the child was ordered.²¹¹

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.²¹² In addition to the research already referred to, carried out by the Office of the Roma Plenipotentiary for Roma communities from November 2022 (EU SILC_MRK), the on-going segregation of Roma children in standard mainstream schools and classes was comprehensibly mapped by quantitative research by the Ministry of Finance.²¹³ By using the established research method of a '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.²¹⁴ More information on this research can be found in the previous country report on Slovakia.²¹⁵

²⁰⁹ From June 2019, the Research Institute for Child Psychology and Psychopathology implemented the project 'Standardisation of the system of counselling and prevention for inclusion and success in the labour market'. Additional information is available at: [NP Štandardy » VÚDPaP \(vudpap.sk\)](https://www.vudpap.sk/).

²¹⁰ *Akčné plány k stratégii rovnosti, inklúzie a participácie Rómov do roku 2030* (Action plans to the Strategy for equality, inclusion and participation of Roma to 2030), adopted by the Government of the Slovak Republic on 6 April 2022. Priority area education: partial goal 4., measure 4.3.

²¹¹ State School Inspectorate (2021), 'Misdiagnosis leads to unauthorised separation of pupils into the stream of special education', 22 June 2021, available at: <https://www.ssi.sk/2021/06/22/nespravna-diagnostika-vedie-k-neopravenemu-vy clenovaniu-ziakov-do-prudu-specialneho-skolstva/>.

²¹² For more information on the segregation of Roma children in education, see also Centre for Civil and Human Rights (2019), *Submission to the UN Committee on Economic, Social and Cultural Rights concerning Slovakia*, pp. 4–7. 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>.

²¹³ 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>.

²¹⁴ Ministry of Finance of the Slovak Republic d(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>.

²¹⁵ Durbáková, V. (2022), *Country report: Non-discrimination – Transposition and implementation at national level of Council Directives 2000/43 and 2000/78 – Slovakia*, European Commission, European network of

The strategies discussed above, as well as the Recovery and resilience plan, include general commitments for the prevention and elimination of segregation of Roma children in educational process at all levels of the education system (while being interconnected in this area). The support for school desegregation is one of the reforms of the Recovery and resilience plan, which specifically includes the introduction of a definition of segregation into legislation, monitoring of segregation, realisation of pilot projects for school desegregation and financial support for the school founders to ensure transportation of Roma children from marginalised communities to schools.²¹⁶ The same general activities are supposed to be key for the implementation of the Strategy for equality, inclusion and participation of Roma to 2030 in the coming years. However, it should be noted, that the previous relevant strategic Government documents, particularly the Strategy for integration of Roma to 2020 and its related action plans, contained a range of declared commitments and activities to address the desegregation of Roma children in education and, according to the assessment of this report, their implementation has been largely insufficient. It can therefore be questioned how effectively in practice the Government authorities will implement all the new commitments declared in the adopted documents.

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. In the school year 2021-22, the Inspectorate identified segregation of marginalised Roma children in mainstream education as well as their discriminatory placement in special schools and classes. The Main School Inspector, in summing up, stated in particular that the monitoring in the given school year showed serious shortcomings, including segregation of pupils in the form of teaching them in inappropriate premises, arbitrary assignment of pupils to special classes or unqualified staff in special education facilities. She also stressed that the lack of sanction mechanisms to protect children from poor-quality education causes regression in the educational system.²¹⁷

The act amending the Schools Act²¹⁸ 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 five, which had been promoted in recent years by the Government's Plenipotentiary for Roma Communities as a priority measure for his office. The measure addresses the fact that only a third of Roma children from marginalised communities attend kindergartens for at least a year. 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. The Supreme Audit Office of the Slovak Republic, based on its monitoring of this area, concluded that municipalities face a range of problems in securing the availability of preschool education, which include insufficient capacity of kindergartens, their problematic financing, lack of inclusive workers as well as long distances to kindergartens for socially disadvantaged families who also have problems with various formal and informal fees.²¹⁹ The Government intends to increase the capacities

legal experts in gender equality and non-discrimination, pp. 49-50. Available at:

<https://www.equalitylaw.eu/downloads/5805-slovakia-country-report-non-discrimination-2022-1-51-mb>.

²¹⁶ Recovery and Resilience Plan of Slovakia, Component 6: accessibility, development and quality of inclusive education at all levels, Reform 5: Support for school desegregation.

²¹⁷ State School Inspectorate (2022), *Správa o úrovni výchovy a vzdelávania v školách a školských zariadeniach v školskom roku 2021/2022* (Report on the state and level of education in schools and the school facilities in the school year 2021/2022), introductory comments of the Main School Inspector, p. 5, available at: https://www.ssi.sk/wp-content/uploads/2022/12/sprava_2022.pdf.

²¹⁸ Act No. 209/2019 amending the Act No. 245/2008 on Education (Schools Act).

²¹⁹ Supreme Audit Office (Najvyšší kontrolný úrad) (2022), *Správa o výsledku kontroly 2021: Dostupnosť predprimárneho vzdelávania pre deti zo sociálne znevýhodneného prostredia na úrovni obcí* (Report on the results of the inspection 2021: Availability of preschool education for socially disadvantaged children on the level of municipalities), available at: <https://www.nku.gov.sk/documents/10157/265201/96782-0-110.pdf>.

of kindergartens by investment from the Recovery and resilience plan.²²⁰ In the author's opinion, 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 in the forthcoming years.

Segregation of Roma children in Roma-only schools built near Roma marginalised communities.

Furthermore, the Government in previous years continued 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 money is used for the school's construction.²²¹ In 2015, the NGO the Center for Civil and Human Rights even responded to this approach by launching a strategic *actio popularis* claim against the state and one of the municipalities where such school was built, and in December 2022 the Supreme Court of the Slovak Republic confirmed its discriminatory nature against Roma children.²²² The Recovery and resilience plan aims to address this problem and includes investment to expand the capacity of schools where the number of pupils exceeds the capacity, and schools with a two-shift operation, with the emphasis on schools attended by a large number of marginalised children. The plan describes this investment in the context of declared desegregation efforts, stating that it will enable the redistribution of pupils in segregated areas into newly created classes. However, in the author's opinion, there are significant risks that the Government authorities and the municipalities in practice - due to the overall complexity and public opposition to desegregation efforts in this area - may narrow their goals and simply resort to solving the lack of school capacities by expanding close to marginalised Roma communities without addressing school segregation.

Segregation of Roma children in the secondary education system - external branches of vocational schools

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.²²³ 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.²²⁴ The Strategy for the

²²⁰ The Recovery and resilience plan of Slovakia, Component 6.

²²¹ 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 results of its field monitoring, available at: <https://www.amnesty.org/en/latest/news/2015/03/slovakia-segregation-of-roma-schoolchildren-worsens/>. The Center 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.

²²² Decision of the Supreme Court of the Slovak Republic from 15 December 2022, No. 5Cdo/102/2020. The decision was delivered to the claimant on 3 February 2023 after the cut-off date for this report.

²²³ 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?* (Allocated 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/>.

²²⁴ Balážová, Z. (2015), *Elokované pracoviská stredných odborných škôl pri marginalizovaných rómskych komunitách: Cesta k začleneniu alebo vylúčeniu rómskej mládeže?* (Allocated Branches Of Secondary Trade Schools Situated Near Marginalised Romani Communities: A path toward inclusion or exclusion of Romani youth?), CVEK, pp. 62-64.

equality, inclusion and participation of Roma to 2030 acknowledges this problem and plans to address it. In particular, it points to the low quality of education in these external branches that in some cases contribute to segregation of Roma children and demotivates them from attending the other schools with children from the majority. In the school year 2021-22, the State School Inspectorate monitored in particular the quality of education in these vocational schools, including their external branches, and concluded that: 1./ more than half of the children educated in these schools come from low-stimulation backgrounds, suggesting a degree of segregation based on the socio-economic background of the pupils. 2./ The majority of these schools do not ensure a sufficient level of expertise in the teaching of general education, especially in the external branches.²²⁵ There is a lack of basic classroom space and material and technical equipment for teaching of practical training at some of these schools. Moreover, there were even monitored vocational schools operating without being included in the official school network.²²⁶

Access to education during COVID-19

In 2022, the COVID-19 pandemic did not significantly restrain in-person education in primary schools, since the restrictions did not cover whole areas and essentially resulted only from epidemiological situations in individual schools. However, in 2020-2021, due to the pandemic, education in schools was interrupted for significant periods and the use of remote forms of education had a disproportionate impact on socially disadvantaged children and particularly on marginalised Roma children, since many of them lacked the necessary technology, such as computers and access to the internet, and were widely excluded from the remote educational process.²²⁷ The Ministry of Education did not respond to this issue effectively.²²⁸

Case law of domestic courts

The first landmark case on the class-level segregation of Roma children in education in Slovakia was decided by the District Court in Prešov in December 2011 and confirmed by the Regional Court in Prešov in October 2012, based on the *actio popularis* lawsuit filed by the NGO Center for Civil and Human Rights. 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.²²⁹

On 15 December 2022, the Supreme Court of the Slovak Republic decided another landmark case on the segregation of Roma children in Roma-only schools. The Court ruled based on the *actio popularis* claim brought by the NGO the Center for Civil and Human Rights in 2015. The Supreme Court reversed the decisions of the lower courts²³⁰ and ruled that the defendant town of Stará Ľubovňa and the state, represented by the Ministry of Education, had violated the principle of equal treatment by failing to take sufficient preventive measures to protect against discrimination and to eliminate discrimination

²²⁵ The external branches are established by a central school and operate as its affiliate branches closed to the marginalised Roma communities. They do not have the character of temporary mobile classrooms.

²²⁶ The State School Inspectorate (2022), *Správa o úrovni výchovy a vzdelávania v školách a školských zariadeniach v školskom roku 2021/2022* (Report on the state and level of education in schools and the school facilities in the school year 2021/2022), p. 12-13.

²²⁷ The Institute of Educational Policy working under the Ministry of Education found that 7.5 % of pupils were completely excluded from remote forms of education in the spring of 2020 and the most critical situation was in schools with high percentage of socially disadvantaged children and special schools for the education children with disabilities. Main findings of the research available at: <https://www.minedu.sk/data/att/17338.pdf>.

²²⁸ Center for Civil and Human Rights (2022), *Submission to the UN Committee on the Elimination of Racial Discrimination concerning Slovakia*, pp. 11-12.

²²⁹ 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>.

²³⁰ Decision of the Regional Court in Bratislava in the case brought by the NGO Center for Civil and Human Rights against the State represented by the Ministry of Education and the city of Stará Ľubovňa from 29 April 2020. No. 4Co/260/2017 – 441 confirming the Decision of the District Court Bratislava III from 6 2016. No. 11C/351/2015-387.

against Roma children at the Podšadek Primary School in Stará Ľubovňa based on their ethnic origin. This school for a long time was attended solely by socially disadvantaged Roma children from the nearby marginalised Roma community. In 2015, the municipality in question and the state - instead of adopting remedial measures to eliminate segregation – expanded the capacity of this primary school by adding a new modular building. The Supreme Court ruled that the education of Roma children in an ethnically homogeneous Roma-only school close to the local marginalised Roma community constitutes discrimination against them on the basis of ethnicity.²³¹ It specifically recognised that the state institutions are responsible also for the segregation, which arose spontaneously (*de facto*) and not with the intention of separating Roma children from majority children and stressed their positive legal obligation to remove and prevent such segregation. The judgment of the Supreme Court of the Slovak Republic is final in the part that found that there was segregation at the Podšadek primary school in Stará Ľubovňa. The lower courts are bound by its legal opinion and will decide only on the obligation to introduce and implement a desegregation plan. It is the first judgment of the Supreme Court addressing the systemic and widespread issue of segregation of Roma children in education (for more details on this case, see section 12.2. of this report).

Currently, other *actio popularis* claims addressing different forms of segregation of Roma children in education are pending before Slovak Supreme Court after being dismissed by the lower courts. Both were initiated by the NGO the Center for Civil and Human Rights. The first addresses the segregation of Roma children in segregated mainstream Roma-only schools, as does the case referred to above, decided by the Supreme Court in December 2022.²³² The second 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.²³³

In addition, there is another case decided by domestic courts that specifically addresses the illegal placement of Roma children in the special educational system. The Prešov District Court, as a first instance court, upheld the lawsuit to a substantial extent.²³⁴ It ruled that the defendant Centre for Special Pedagogical Counselling in Prešov and the primary school had discriminated against Roma children in education on the ground of their Roma ethnicity. In 2022, the case was pending before the appellate regional court in Prešov.

3.2.8 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. Gender identity/expression and sex characteristics are not specifically covered in national legislation.

²³¹ Decision of the Supreme Court of Slovak Republic, No. Cdo/102/2020. The decision was delivered to the claimant on 3 February 2023 after the cut-off date for this report.

²³² Decision of the Regional Court in Bratislava, No. 10Co/84/2020, 27 October 2021, in a case brought by the NGO Center for Civil and Human Rights against the state represented by the Ministry of Education confirming the decision of the Prešov District Court from 6 February 2020, No. 21C/698/2015.

²³³ Decision of the Prešov Regional Court from 20 August 2020 in case brought by the NGO Center for Civil and Human Rights against the state represented by the Ministry of Education and the district office in Prešov, No. 16 Co/21/2019 - 483 confirming the Decision of the Prešov District Court, No. 29C14/2016 - 411, 27 February 2019.

²³⁴ Decision of the Prešov District Court, No. 15C/14/2016-557, 24 November 2021.

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).

3.2.9 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.²³⁵ 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'. Gender identity/expression and sex characteristics are not specifically covered in national legislation.

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

²³⁵ Recent monitoring findings confirm that difficulties experienced by Roma in renting or buying an apartment due to opposition from members of the majority population continue to exist. See Center for Civil and Human Rights, Minority Rights Group Europe and EPEKA Slovenia, *Equality and justice on the sidelines: Comparative report on discrimination against Roma and their access to justice in Slovakia and Slovenia*, November 2022, p. 7, available at: <https://poradna-prava.sk/en/publications/equality-and-justice-on-the-sidelines-comparative-report-on-discrimination-against-roma-and-their-access-to-justice-in-slovakia-and-slovenia/>.

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*.²³⁶ The data has been further interpreted in a publication released by the research team of the former Plenipotentiary of Roma Communities, Abel Ravazs.²³⁷

The Atlas contains data on 417 000 Roma living in 825 towns and villages, which amounts to about 7.6 % of the total population of Slovakia. It corresponds with a general estimate of 450 000 people of Roma origin in Slovakia (since not all Roma live in the municipalities included in the Atlas). Within the municipalities included, the Atlas documented 300 000 Roma living in 1 102 concentrations.²³⁸ In particular, 56 000 Roma live in concentrations outside towns/villages, 151 000 on the outskirts of towns/villages and 92 000 inside the towns/villages. The remaining 117 000 Roma from the Atlas live among the majority population. The Atlas sums up that two thirds of Roma in Slovakia live in concentrated areas and the remaining one third is integrated among the majority population. However, not all concentrations are segregated Roma settlements and this category also includes municipalities with the Roma majority, 'Roma neighbourhoods' or 'Roma streets'. The Roma concentrations have significantly worse living conditions compared to the majority population. Moreover, with the increasing distance of the concentration from the centre of the town/village, the quality of housing, engineering networks, availability of services and level of infrastructure decreases. The Atlas concludes that these factors fundamentally negatively influence all aspects of the life of Roma communities and contribute to perpetuating and deepening generational poverty.

The data from the Atlas further shows that two third of inhabitants of Roma communities live legally, i.e. in flats or legally built family houses on settled land. The infrastructure of housing in Roma communities is significantly worse compared to the majority population. Only 64 % of the population of Roma communities have access to the water supply network, (while 93 % from the majority population has such access). About 33 000 Roma continue to draw water from non-standard, unsecured sources. Only 40 % of the population of Roma communities uses sewerage (while 83 % from the majority in the same municipalities use it). However, the Atlas notes that, in general, the situation in the monitored areas has been gradually improving over the years.²³⁹

²³⁶ Available to download at: <https://www.minv.sk/?atlas-romskych-komunit-2019>.

²³⁷ Ravazs, A. Kováč, Ľ. Markovič, F. (2021), *Atlas rómskych komunít 2019* (Atlas of Roma communities 2019), Bratislava, VEDA., available at: <https://imb-bmi.org/wp-content/uploads/2021/03/atlas-romskych-komunit-2019.pdf>. The publication has spurred a media conflict with the designated Roma Plenipotentiary who intended to officially publish interpretation of the data under the Office of the Plenipotentiary since the Atlas was financed from EU funds. But reportedly given that the data processing has taken an excessively long time, the former Plenipotentiary analysed the data and published their interpretation on their own.

²³⁸ The term 'Concentration' has been used in the previous Atlas of Roma Communities in Slovakia from 2013 and continues to be used also in the new Atlas 2019.

²³⁹ Ravazs, A. Kováč, Ľ. Markovič, F. (2021), *Atlas rómskych komunít 2019* (Atlas of Roma communities 2019), Bratislava, pp. 17-18. For an overview of ongoing issues concerning discrimination of Roma in adequate access to housing see also European Roma Rights Centre (2021), *Submission to the Special Rapporteur on the Right to Adequate Housing to the General Assembly in 2021 and to the Human Rights Council in 2021*. Available at: http://www.errc.org/uploads/upload_en/file/5307_file1_submission-special-rapporteur-april-2021.pdf.

Data from the EU SILC_MRK survey of the Office of the Roma Plenipotentiary for Roma communities conducted in autumn 2020, the results of which were published in October 2022, is another source of complex information about the housing of Roma in marginalised communities, including their social exclusion. In comparison with the Atlas of Roma communities, which offers a global overview of housing conditions at the level of concentrations, the EU SILC_MRK provides a perspective on individual households.²⁴⁰ As the Atlas does, it also provides data concerning the access to basic infrastructure. However, it also shows the on-going inequalities of Roma living in marginalised communities in terms of the material quality of their housing, expenses for their housing and risks of losing their housing. The survey shows, for example, that almost half of persons living in marginalised Roma communities (47 %) live in places with pollution, dirt or other environmental problems. Within the overall population, this is 10 % of persons. Almost nine out of 10 (88 %) persons living in marginalised Roma communities live in households that are considered overcrowded according to the Eurostat definition. Within the overall population, 30 % of people live in overcrowded households.²⁴¹

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 Charter²⁴².

In recent years, the Government authorities have made efforts to address the issue of illegal Roma settlements that are situated on private land. The 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.²⁴³ During the first phase of the project implementation to 2019, 143 municipalities had joined this project and asked for the assistance.²⁴⁴ In August 2020, the Ministry of the Interior opened a new call for proposals, which would draw on the preliminary results of the national project and would be available specifically to municipalities that had already joined the national project and made a certain amount of progress in solving the issue of illegal Roma settlements in their territories. After four evaluation rounds, in September 2021, the Ministry of the Interior closed the call due to insufficient demand from the municipalities.²⁴⁵ This indicates a possible lack of interest among some municipalities to address this problem. The call was funded from the European Social Fund.

The issue of illegal Roma settlements that are situated on private land remains an on-going challenge for the Slovak Government. 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 became owned by private persons or municipalities.²⁴⁶ Due to not addressing the problem effectively over previous years, Roma in Slovakia living in segregated settlements face an increased threat

²⁴⁰ Office of the Roma Plenipotentiary for Roma Communities (2022), *Príjmy a životné podmienky v marginalizovaných rómskych komunitách: Vybrané ukazovatele zo zisťovania EU SILC_MRK 2020* (Income and living conditions in marginalised Roma communities: Selected indicators from the survey), p. 70.

²⁴¹ Office of the Roma Plenipotentiary for Roma Communities (2022), *Príjmy a životné podmienky v marginalizovaných rómskych komunitách: Vybrané ukazovatele zo zisťovania EU SILC_MRK 2020* (Income and living conditions in marginalised Roma communities: Selected indicators from the survey). pp. 70 - 79. For overview of the main findings from this survey see its executive summary available in English, pp. 7-11.

²⁴² In particular, Article 31(1), which sets out the commitment to take measures to support access to housing at an appropriate level.

²⁴³ Additional information about this project is available at: <https://www.minv.sk/?oznamenie-2>.

²⁴⁴ Office of the Plenipotentiary for Roma Communities (2019), 'Splnomocnenec pre rómske komunity hodnotí rok 2018 ako úspešný' (Plenipotentiary for Roma communities evaluates the year 2018 as successful), press release, 10 April 2019, available at: <https://www.minv.sk/?tlacove-spravy&sprava=splnomocnenec-pre-romske-komunity-hodnoti-rok-2018-ako-uspesny>.

²⁴⁵ Announcement of the Ministry of the Interior from 10 August 2021. Available at: <https://www.minv.sk/?aktualne-informacie-10&sprava=oznam-o-termine-uzavretia-vyzvy-zameranej-na-podporu-vysporiadania-majetkovopravných-vztahov-k-pozemkom-v-obciach-s-mrk-postupom-jpu>.

²⁴⁶ European Roma Rights Centre (2018), *Written comments for the consideration of the Committee on Economic, Social and Cultural Rights at its 62nd session concerning Slovakia*, p.2. Available at: [Treaty bodies countries \(ohchr.org\)](https://treaty.bodies.countries.ohchr.org).

of forced eviction. Notably, decreasing the number of illegal Roma settlements in marginalised communities is among the goals of the Strategy for equality, inclusion and participation of Roma to 2030.²⁴⁷ The action plans under the Strategy for 2022-2024 include specific activities to continue with the national project (referred to above) addressing the issue of illegal Roma settlements that are situated on private land until the end of 2022, and from 2023 to introduce the same follow-up national project. In addition, it proposes to introduce and implement additional demand-driven projects in this area. These projects are aimed in particular at supporting municipalities to legalise the unsettled land under the Roma communities in accordance with the applicable domestic legislation, and they propose two options for the planned legalisation: 1. Either through enabling Roma residents to legalise the land under their houses they occupy or enable them to build a house on the land they own. 2. Or the municipality may also acquire legal ownership of these lands and will subsequently implement measures on them that will contribute to the increased quality of housing conditions for members of marginalised communities (e.g. the possibility of establishing access to utility networks).²⁴⁸ All these initiatives are proposed to be financed mostly from EU structural funds.²⁴⁹

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.

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.

The research of the Ministry of Finance raised ongoing issues in accessibility of housing for vulnerable groups including marginalised Roma, stating that the offer of rental housing with regulated rent in Slovakia is among the lowest in the EU and the rate of severe housing deprivation in the at-risk-of-poverty population is significant and is deteriorating over time. The research also pointed out that the high degree of independence of local government in determining the conditions and process of allocating rented flats creates space for discrimination and limited access for some vulnerable groups. While discussing the reasons for this problem, the research states with references to other research data that even though the municipalities declare their support for building rental housing, they generally face barriers in this regard, particularly the lack of suitable land in their ownership where rental housing could be built, considerable bureaucracy associated with applying for support, as well as ambiguities regarding good practice in the procurement of rental

²⁴⁷ *Stratégia rovnosti inklúzie a participácie Rómov fo roku 2030* (Strategy for equality, inclusion and participation of Roma to 2030), Priority area of housing, partial goal 1 of the Strategy.

²⁴⁸ The details of these projects are not specified in the action plans under the strategy for 2022-2022, but are available on the website of the Ministry of Interior referring to the realisation of the particular project in this area, which shall be continued further. [Národný projekt Podpora vysporiadania právnych vzťahov k pozemkom v obciach s prítomnosťou marginalizovaných rómskych komúní, Ministerstvo vnútra SR - Európske programy \(minv.sk\)](#).

²⁴⁹ Akčné plány k stratégii rovnosti, inklúzie a participácie Rómov do roku 2030 (Action plans to the Strategy for equality, inclusion and participation of Roma to 2030), adopted by the Government of the Slovak Republic on 6 April 2022. Priority area housing: partial goal 1.1. and related measures.

housing, which leads to financial penalties in the event of a mistake.²⁵⁰ The Government in its programme declaration stated its ambition to support access to adequate housing for all citizens,²⁵¹ which in May 2022 led to the adoption of the Act on state support for rented accommodation.²⁵² This legislation aims to create an environment that allows the construction of state-supported rental housing with regulated rents and a guarantee of long-term housing. It is intended to address insufficient physical and affordable availability of housing for broad groups of the population. More information on this legislation can be found in chapter 3.2.6 of this report.

The Government Strategy for the equality, inclusion and participation of Roma to 2030 addresses the problem of residential segregation and set as one of its partial goals the reduction of such segregation. The strategy also highlights other persisting inequalities in housing between the majority population and marginalised Roma and aims to address them.²⁵³ The action plans under the Strategy include partial goals to decrease residential segregation of Roma and reduce the discrimination they experience in access to housing. It includes in particular activities introducing rental housing projects to decrease residential segregation in cooperation with municipalities; analysing possible approaches for decreasing residential segregation; and mapping discrimination against Roma in respect of rental housing. There is a responsibility on the municipalities, which will own and maintain the rental housing; they can submit their projects for introducing it and receive a subsidy for this.²⁵⁴

So far, only one final case alleging discrimination in housing has been decided by national courts where the decision has become final.²⁵⁵ The case concerns moving Roma families who previously lived in the centre of the town of Sabinov in commercially attractive houses (mainly by virtue of their location) to social housing owned by the municipality in a new location distant and isolated from the town boundary.

More information on this decision can be found in the previous country report on Slovakia.²⁵⁶

In January 2022, the Košice District Court upheld the claim of nine complainants of Roma ethnicity who claimed that they were forcibly evicted from their homes in Košice (district of Nižné Kapustníky) in 2012, under the pretext of waste removal by the city authorities.²⁵⁷ They claimed the violation of their right to dwelling, interference with their human dignity and discrimination. The complainants were offered no alternative accommodation after their homes were demolished, and as a result they became homeless. The Court ruled that the City of Košice, by the forced eviction of the complainants, 1./ unjustifiably interfered with their human dignity and the right to privacy and 2./ committed their illegal discrimination on the basis of their ethnicity. The Court specifically ruled that the complainants had experienced discrimination in the form of harassment in the area of providing public services as covered by the domestic Anti-discrimination Act. The Court

²⁵⁰ Ministry of Finance of the Slovak Republic (2019), *Revízia výdavkov na skupiny ohrozené chudobou a sociálnym vylúčením: Záverečná správa* (Revision of expenses for groups threatened by poverty and social exclusion: Final report), March 2020, p. 159-167, Available at: <https://www.mfsr.sk/files/archiv/65/ReviziavydavkovnaohrozeneskupinyZSverziaFINAL3.pdf>.

²⁵¹ Programme declaration of the Slovak Government for the years 2021-2024, p. 92.

²⁵² Act No. 222/2002 on state support for rented accommodation adopted on 25 May 2022.

²⁵³ *Stratégia rovnosti inklúzie a participácie Rómov do roku 2030* (Strategy for equality, inclusion and participation of Roma to 2030) adopted by the Government of the Slovak Republic on 7 April 2021, priority area of housing.

²⁵⁴ *Akčné plány k stratégii rovnosti, inklúzie a participácie Rómov do roku 2030* (Action plans to the Strategy for equality, inclusion and participation of Roma to 2030), adopted by the Government of the Slovak Republic on 6 April 2022. Priority area housing: partial goals 5.1, 6.1 and 62, and related measures.

²⁵⁵ Decision of the Prešov Regional Court, No. 13 Co 38/2017, 20 March 2018.

²⁵⁶ Durbáková, V. (2022), *Country report: Non-discrimination – Transposition and implementation at national level of Council Directives 2000/43 and 2000/78 – Slovakia*, European Commission, European network of legal experts in gender equality and non-discrimination, p. 59. Available at: <https://www.equalitylaw.eu/downloads/5805-slovakia-country-report-non-discrimination-2022-1-51-mb>.

²⁵⁷ Decision of the District Court Košice II, No. 15C/190/2014-650, 21 January 2022.

ordered the defendants to grant each of the complainants financial compensation of EUR 1 000. In the author's opinion, the decision has broader importance for the prevention of forced evictions in Slovakia (for more details on this case, see section 12.2 of this report). According to the author of this report, this decision may have a broader positive impact on the protection of housing rights for the Roma minority in Slovakia. It is arguably the important decision in favour of Roma concerning the practice of forced evictions in the country and it may be preventing municipalities from undertaking such arbitrary actions without any legal grounds towards people in similar situations. The Court fully upheld the claim of the claimants. In any case, the claim and the further decision did not address the actual housing of the claimants, which is why there are doubts as to the effectiveness of the remedies requested.

A particularly strategic decision in terms of preventing discrimination in the area of housing for LGBTI+ persons in Slovakia is an administrative decision of the regional court in Žilina from 31 October 2022 that ruled in favour of a gay man. The man was a citizen of Argentina married to a male citizen of Slovakia under the Argentinian legislation, and Slovak authorities refused to grant him permanent residence on the grounds that Slovakia does not recognise same-sex unions. According to the Slovak Foreign Police, their marriage was in violation of the Slovak Family Act. In the administrative lawsuit, the couple invoked the European Convention for the Protection of Human Rights and Fundamental Freedoms, which protects all forms of family cohabitation. The court confirmed that the rejection of the application in this case constituted unjustified discrimination on the basis of sexual orientation and a violation of the right to respect for private and family life and freedom of residence, while relying on the ECtHR judgment in *Taddeucci and McCall v. Italy* and the CJEU judgment in the *Coman* case.²⁵⁸ The case was not framed as an antidiscrimination dispute based on the Anti-discrimination Act, but as an administrative claim that referred also to the prohibition of discrimination as laid down by Article 14 of the European Convention and Article 12(2) of the Constitution of the Slovak Republic. The decision is the first on this matter in Slovakia and is final. More information on this decision can be found in chapter 12.2 of this report.

²⁵⁸ Decision of the Regional Court in Žilina, No. 30S 168/2020, 31 October 2022.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4 Directive 2000/43, Article 4(1) Directive 2000/78)

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 legitimate²⁵⁹ 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

²⁵⁹ A comma is missing between the words 'fundamental' and 'legitimate' in the act.

of any provisions enabling religious organisations to exercise exceptions that would impact on other rights to non-discrimination and the existing case law indicate that in (potential) conflicts, other rights to non-discrimination would take precedence.

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.²⁶⁰

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,²⁶¹ concerned a priest of the Roman Catholic Church, who had made a claim related to his employment rights (right to remuneration) before the ordinary courts against his church, which was also his employer.

More information on this decision can be found in the previous country report on Slovakia.²⁶²

4.3 Armed forces and other specific occupations (Article 3(4) and Recitals 18 and 19 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).

In Slovakia, the scope of the exception is limited to safeguarding the combat effectiveness of the armed forces.

In Slovakia, the scope of the exception does not extend to other non-combat staff, such as civilians employed in administrative positions in the army. For those non-combat staff, their employment relationship is under Labour Code, not under the legal acts regulating the service of the armed forces.

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.'

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.'

²⁶⁰ 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'.

²⁶¹ Decision of the Constitutional Court of the Slovak Republic, No III. US 64/00-65, 31 January 2001.

²⁶² Durbáková, V. (2022), *Country report: Non-discrimination – Transposition and implementation at national level of Council Directives 2000/43 and 2000/78 – Slovakia*, European Commission, European network of legal experts in gender equality and non-discrimination, p. 61. Available at: <https://www.equalitylaw.eu/downloads/5805-slovakia-country-report-non-discrimination-2022-1-51-mb>.

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.²⁶³ 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.²⁶⁴

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.²⁶⁵

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.

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 at work (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.

²⁶³ 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.

²⁶⁴ Anti-discrimination Act, 365/2004, Section 4(1)(a).

²⁶⁵ Anti-discrimination Act, 365/2004, Section 2(1).

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 disability and in setting working times.²⁶⁶

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

a) Exceptions to the prohibition of direct discrimination on grounds of age

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).²⁶⁷

b) 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 – 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).

The wording of the relevant part of the 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.’

The law does not explicitly list potential legitimate aims (as in Article 6 of the Directive), and thus is silent on this issue.

c) 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.

²⁶⁶ Labour Code, 311/2001, Sections 66, 68 (3), 87(3), 158 and 159.

²⁶⁷ 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.

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 provides for the following:

- 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 court judgment in a case where the claimant sued a potential employer for discrimination on the ground of age.²⁶⁸ The court dismissed the claim reasoning that 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 - disadvantaged job seeker under the age of 25) 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

²⁶⁸ Regional Court Banská Bystrica, No. 12 Co/6/08, 27 March 2008. The court probably made a mistake in the official judgment as it states the date of issue of the judgment of the regional court as 27 March 2007. However, this would not have been possible as the district court issued its decision on 20 November 2007 and regional court decisions always follow district court ones.

of 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*²⁶⁹ is not applicable to Slovakia).

d) Fixing of ages for admission to occupational pension schemes

In Slovakia, national law allows occupational pension schemes to fix ages for admission to the scheme, taking up the possibility provided for by Article 6(2). The legislation allows for the use of age criteria in actuarial calculations and lists no restrictions on the use of this criteria.

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.²⁷⁰ Also, under Section 8(6) of the Anti-discrimination Act, differences of treatment on grounds of age or disability in the provision of insurance services will not be deemed to constitute discrimination where such treatment results from different levels of risk, verifiable by statistical or similar data, and where the terms of insurance services adequately reflect such risk. Different treatment on the ground of age is permitted in areas regulating the service of members of the armed forces, armed security services, armed corps, the National Security Office, the Slovak Information Service, the Fire and Rescue Service, voluntary military training, training for the exercise of extraordinary service in the armed forces, and the exercise of tasks of armed forces by reservists who are categorised as active reservists.²⁷¹

4.6.2 Special conditions for younger or 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.²⁷²

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.

²⁶⁹ CJEU, C-447/09 *Reinhard Prigge and Others v. Deutsche Lufthansa AG*, judgment of 13 September 2011.

²⁷⁰ Anti-discrimination Act, 365/2004, Section 8(4).

²⁷¹ Anti-discrimination Act, 365/2004, Sections 4(1)(b) and 4(1)(c).

²⁷² Labour Code, 311/2001, Sections 172 and 173.

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).²⁷³

Other laws regulate, for example, the minimum age for: a work assistant for a person with a disability (18 years);²⁷⁴ a prosecutor (25 years);²⁷⁵ the general prosecutor (40 years);²⁷⁶ and judges (30 years – see also section 4.6.1 above).²⁷⁷ The President may, upon a recommendation of the Judicial Council, withdraw a judge who has reached the age of 65.²⁷⁸ 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.²⁷⁹ 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).²⁸⁰

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.²⁸¹

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 age of entitlement to a state pension is fixed by law.²⁸²

The minimum pensionable age is capped at the age of 64. Women are able to collect their state pension earlier if they raised a child. According to the legislation, the pensionable age

²⁷³ Constitution of the Slovak Republic, Articles 74, 103, 134, 145 and 151a.

²⁷⁴ Employment Services Act, 5/2004, Section 59(3).

²⁷⁵ 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.

²⁷⁶ Act No. 153/2001 on Prosecution, as amended (*zákon č. 153/2001 Z. z. o prokuratúre v znení neskorších predpisov*), Section 7(3).

²⁷⁷ 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.

²⁷⁸ Constitution of the Slovak Republic, Article 147(2)(b).

²⁷⁹ Labour Code, 311/2001, Section 11.

²⁸⁰ Small Business Act, 455/1991, Section 6.

²⁸¹ Employment Services Act, 5/2004, Section 51.

²⁸² Constitutional Act No. 9/2019 on amending the Constitution of the Slovak Republic, Article 39(2)(3).

is adjusted so that every insured woman who has raised children has a reduced pensionable age by six months for each child brought up compared to the pensionable age of a childless insured person who was born in the same calendar year.²⁸³

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.

Pensionable age and the 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.²⁸⁴ 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.²⁸⁵

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.²⁸⁶

²⁸³ Act No. 275/2020 amending Act No. 461/2003 on social insurance, as amended, and on amendments to certain laws.

²⁸⁴ 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.

²⁸⁵ See Social Insurance Act, 461/2003, Section 67(4), in conjunction with Section 4(1)(d).

²⁸⁶ 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 the age of retirement. 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. According to the Slovak Constitution, as of 1 January 2021, a judge of the Constitutional Court is dismissed on the last day of the month in which he or she has reached the age of 72 and a judge of general court is dismissed on the last day of the month when she or he has reached the age of 67.²⁸⁷ According to the explanatory note to the amendment, the legislators consider the age limit to be beneficial. They suggest it is justified by the need for protection against the possibility that the administration of the judiciary would lose the necessary pace, energy and alertness, as this is lost by the judges, as the embodiment of the judiciary, as they age.²⁸⁸

In addition, 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.²⁸⁹

There are otherwise no state-imposed mandatory retirement ages.

There is no case law on the issue.

d) Retirement ages imposed by employers

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

²⁸⁷ See Constitutional Act, 422/2020, amending the Constitution of the Slovak Republic, Articles 138(3), 146(2).

²⁸⁸ Explanatory note to the Constitutional Act, 422/2020, amending the Constitution of the Slovak Republic, para 14.

²⁸⁹ See Act on Prosecutors And Prosecutor Candidates, 154/2001, Sections 14-17 for more detailed information.

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.

According to Article 63(1)(f) introduced by an amendment of the Labour Code,²⁹⁰ employers can terminate the employment contract of an employee who has reached the age of 65 and pensionable age for entitlement to a retirement pension. The legislation was originally intended to be effective from 1 January 2022. This legislation was questioned by some members of the Slovak Parliament representing the opposition party SMER-SD, who claimed in the proceeding they initiated before Slovak Constitutional Court that the provision constitutes discrimination on the ground of age. This provision has not yet entered into force due to the pending proceedings before the Constitutional Court.²⁹¹

Thus so far the employer still may not 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.²⁹²

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*).²⁹³ 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. The amended Slovak Constitution, effective from 1 January 2021, introducing mandatory retirement ages for judges, is also in violation of the CJEU case law. In addition, the new amendment to the Labour Code allowing employers to terminate a contract after an employee reaches the age of 65 and pensionable age, on the ground of age alone is in violation of Article 6 (1) in conjunction with Article 2 (1) of the Slovak Anti-discrimination Act and as such constitutes discrimination on a ground of age; a decision by the Slovak Constitutional Court on this issue is still expected.

²⁹⁰ Act 76/2021 amending Act 311/2001 Labour Code as amended and amending certain laws.

²⁹¹ The Constitutional Court did not decide the case on its merits till the end of 2022.

²⁹² Anti-discrimination Act, 365/2004, Section 8(7)(a).

²⁹³ CJEU, C-411/05 *Félix Palacios de la Villa v. Cortefiel Servicios SA*, judgment of 16 October 2007.

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 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).²⁹⁴

4.7 Further exceptions necessary in a democratic society: 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 (on any ground covered by this report) provided in national law are set out below.

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]²⁹⁵ 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.'

²⁹⁴ Labour Code, 311/2001, Section 76.

²⁹⁵ 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 as the legislation explicitly cites the only grounds in respect of which positive action is permitted.

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 Act²⁹⁶ 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.'²⁹⁷

The Anti-discrimination Act lists the possible 'temporary equalising measures', which is the term used for positive action measures in Slovak legislation, 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.'²⁹⁸

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.²⁹⁹ The temporary equalising measures can only be adopted in the fields falling under the material scope of the Anti-discrimination Act³⁰⁰ (employment and occupation, social security and social advantages, healthcare, education and access to and provision of goods and services including housing).³⁰¹ 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.³⁰²

The ability to adopt positive action measures is further provided for in specific legal provisions in the areas of employment³⁰³ and education.³⁰⁴

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,

²⁹⁶ 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.

²⁹⁷ Anti-discrimination Act, 365/2004, Section 8a(1).

²⁹⁸ Anti-discrimination Act, 365/2004, Section 8a(1).

²⁹⁹ Anti-discrimination Act, 365/2004, Section 8a(2).

³⁰⁰ Anti-discrimination Act, 365/2004, Section 8a(3).

³⁰¹ Anti-discrimination Act, 365/2004, Sections 3(1), 6 and 5.

³⁰² Anti-discrimination Act, 365/2004, Section 8a(3).

³⁰³ Labour Code No. 311/2001, Section 66, Act No. 5/2004 on Employment Services, Sections 63–65.

³⁰⁴ Act No. 245/2008 on Education (Schools Act), Sections 19(4) and 60(4).

and must provide the relevant information to the Slovak National Centre for Human Rights (the equality body).³⁰⁵ In 2022, the centre did not monitor, register or evaluate any new temporary equalising measures.³⁰⁶ The centre repeatedly did not register any temporary measures in the last few years, which may suggest that bodies adopting temporary measures may not have sufficient information about their obligation to monitor, evaluate and report them or that they are ignoring their obligations. In order to raise awareness in this area, in 2022 the centre released a preparatory study on the practical use of temporary equalising measures in Slovakia and abroad³⁰⁷ as well as a handbook for employers on how to proceed in the process of their adoption and implementation.³⁰⁸ These provide fairly complex information on temporary equalising measures including their public benefits, ongoing challenges in their implementation and examples of good practice.

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

The Constitutional Court decided that the former Section 8(8) of the Anti-discrimination Act was not in compliance with the Constitution.³⁰⁹

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.

The recent 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.³¹⁰

b) Quotas in employment for persons with disabilities

In Slovakia, national law provides for quotas for the employment of persons 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 employees³¹¹ is obliged to ensure that at least 3.2 % of their workforce

³⁰⁵ Anti-discrimination Act, 365/2004, Section 8a(4).

³⁰⁶ Response of the centre of 22 February 2023 to a request for information of 10 February 2023 (on file with the author).

³⁰⁷ Slovak National Centre for Human Rights (2022), *Pripravná štúdia o praktickom využívaní dočasných vyrovnávacích opatrní doma aj v zahraničí* (Preparatory study on practical using of temporary equalising in Slovakia and abroad). Available at: https://www.snslp.sk/wp-content/uploads/DVO-studia_web-1.pdf.

³⁰⁸ Slovak National Centre for Human Rights (2022) *Dočasné vyrovnávacie opatrenia: Ako postupovať v procese ich prijímania a implementácie* (Temporary equalising measures: How to proceed in the process of their adoption and implementation). Available at: https://www.snslp.sk/wp-content/uploads/DVO-metodika_web.pdf.

³⁰⁹ Decision of the Constitutional Court, PL. ÚS 8/04, 18 October 2005, <http://www.concourt.sk/>.

³¹⁰ Akčný plán predchádzania všetkým formám diskriminácie na roky 2016-2019 (Action plan on the prevention of all forms of discrimination 2016 – 2019), available at: http://www.gender.gov.sk/diskriminacia/files/2016/09/AP_ADZ-.pdf. The action plan in the given thematic area had not been revisited by the end of 2022.

³¹¹ Excluding some categories of employees such as members of the police, prison guards, firefighters etc.

is made up of persons with disabilities,³¹² 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 persons with disabilities). According to recent statistics on this special quota, covering the year 2021: 8 548 employers met their legal obligation in this regard by ensuring that at least 3.2 % of their workforce is made up of persons with disabilities; 1 358 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; 509 employers met the obligation by paying a levy to the labour office; and 1 180 employers met the obligation by combining the options.³¹³ The percentage of employers meeting the legal obligation by ensuring that at least 3.2 % of their workforce is made up of persons with disabilities accounts for approximately 70 % and remains at the same level as in recent years. The statistics for 2022 are not yet publicly available.

³¹² In the context of these legal provisions, persons 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.

³¹³ Response of the Central Office of Labour, Social Affairs and Family of 13 February 2023 to a request for information of 10 February 2023 (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.³¹⁴ 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,³¹⁵ 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)³¹⁶ are the three types of disputes that incur protection of a weaker party.³¹⁷ In the regulation of anti-discrimination disputes,³¹⁸ the act refers to anti-discrimination legislation (in practice mainly the Anti-discrimination Act),³¹⁹ 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.³²⁰ 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;³²¹ the ability of the court to seek evidence on its own initiative;³²² the right of the complainant to submit evidence until the decision on the merits is delivered (as compared to other

³¹⁴ Anti-discrimination Act, 365/2004, Section 9.

³¹⁵ Civil Dispute Act, 160/2015.

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

³¹⁷ Civil Dispute Act, 160/2015, Sections 290-323.

³¹⁸ Civil Dispute Act, 160/2015, Sections 307-315.

³¹⁹ Civil Dispute Act, 160/2015, Section 307.

³²⁰ Civil Dispute Act, 160/2015, Section 315(2).

³²¹ Civil Dispute Act, 160/2015, Section 309.

³²² Civil Dispute Act, 160/2015, Section 311.

proceedings where the period for submitting evidence is shorter);³²³ and the duty of courts to conduct hearings in all anti-discrimination proceedings (except for when the complainant agrees to omitting the hearing).³²⁴ 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).³²⁵

- 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).³²⁶ 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.³²⁷

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 efforts in effectively resolving complaints concerning discrimination. In some cases of discrimination against Roma in access to services, the Inspectorate has even used situation testing to uncover discrimination, in cooperation with an NGO. According to the statistics provided, in 2022, the Slovak Trade Inspectorate received 15 complaints concerning discrimination: 10 of them were closed as unjustified; two were classed as justified; one was forwarded to another body; and two complaints are still pending.³²⁸ The number of complaints received by the Inspectorate from individuals who are discriminated against remains generally very low.

On sanctions, in 2022 the Slovak Trade Inspector issued five decisions imposing financial sanctions for violation of the principle of equal treatment, in amounts ranging from

³²³ Civil Dispute Act, 160/2015, Section 312.

³²⁴ Civil Dispute Act, 160/2015, Section 314.

³²⁵ Civil Dispute Act, 160/2015, Section 429(2)(b).

³²⁶ 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.

³²⁷ Civil Dispute Act, Sections 193 and 205.

³²⁸ Response of the Slovak Trade Inspectorate of 15 February 2023 to a request for information of 10 February 2023 (on file with the author).

EUR 300 to EUR 1000.³²⁹ Arguably, the inspectorate tends to impose either no sanctions, or only a low level of sanctions, which may not have a sufficient deterrent effect.

The NGO Center for Civil and Human Rights, in its report analysing the inspection work of the Slovak Trade Inspectorate concerning cases of discrimination against the Roma minority, made 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 in some localities.³³⁰ The recent research findings from this area note that discrimination against Roma remains present in Slovakia in some municipalities in particular. While in many localities these issues do not occur, in some others they appear to be deep-rooted, even though discriminated Roma have taken some legal action against them.³³¹

In 2022, the National Labour Inspectorate received 184 complaints concerning discrimination in employment, of which 36 complaints were found to be justified as a result of the checks conducted. Of the justified complaints, 23 addressed the gender pay gap. The National Labour Inspectorate does not document statistics concerning grounds of discrimination identified and the sanctions imposed for discrimination specifically.³³²

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.³³³ The process of mediation is regulated by the Act on Mediation,³³⁴ which does not cover discrimination-specific mediation. Although the possibility of mediation undoubtedly extends (at least theoretically) the scope of remedial options for victims of discrimination, it is highly questionable whether the concept is suitable for some types of discrimination or cases of discriminatory behaviour (mainly harassment and sexual harassment, but also any kind of intentional discrimination) and whether it might not, in some cases, perpetuate the

³²⁹ Response of the Slovak Trade Inspectorate of 15 February 2023 to a request for information of 10 February 2023 (on file with the author). The reported imposed financial sanctions may concern complaints received in previous years.

³³⁰ Center for Civil and Human Rights (2019), 'Situačný 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/situacny-testing-ako-nastroj-preukazovania-diskriminacie-v-oblasti-poskytovania-tovarov-a-sluzieb/>.

³³¹ Center for Civil and Human Rights, Minority Rights Group Europe and EPEKA Slovenia, *Equality and justice on the sidelines: Comparative report on discrimination against Roma and their access to justice in Slovakia and Slovenia*, November 2022, p. 9.

³³² Response of the National Labour Inspectorate of 16 February 2023 to a request for information of 10 February 2023 (on file with the author).

³³³ Anti-discrimination Act, 365/2004, Section 9(5).

³³⁴ Act No. 420/2004 on Mediation and supplementing certain acts (*zákon č. 420/2004 Z. z. o mediácii a o doplnení niektorých zákonov*).

inequality. The mediation agreement is binding for the parties to the mediation.³³⁵ If the agreement is written in the form of notary minutes or approved by a court, it is also legally enforceable.³³⁶

- 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.³³⁷ 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

The most significant barrier in access to justice for cases of discrimination in Slovakia 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 16 years³³⁸; in another example, the first instance court decided, on its merits, a case of alleged segregation of Roma women in maternity wards after more than eight years.³³⁹ This problem has been addressed by the Constitutional Court in its decisions finding a violation of the right to have one’s case heard within a reasonable timeframe.³⁴⁰

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.³⁴¹ This is certainly a barrier to seeking effective remedies in cases of discriminatory dismissal.

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.³⁴²

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’.³⁴³

³³⁵ Mediation Act, 420/2004, Section 15(1).

³³⁶ Mediation Act, 420/2004, Section 15(2).

³³⁷ 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.

³³⁸ The case was submitted to the first instance court in March 2008, and the case was finally decided by the general court by the decision of the Slovak Supreme Court, No. 5 Cdo 91/2019, 29.6.2021. See also the decision of the Constitutional Court of the Slovak republic, No. I ÚS 103/2019 – 51, 11 June 2019.

³³⁹ Decision of the District Court Bratislava III, No. 14C/288/2013, 29 July 2022.

³⁴⁰ See, for example, the recent decision of the Constitutional Court of the Slovak Republic, No. II. ÚS 470/2022-20, 14 December 2022.

³⁴¹ 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.

³⁴² See the judgment of the Supreme Court of the Slovak Republic, No. 2 Cdo 278/2007, 1 November 2008.

³⁴³ Civil Dispute Act, 160/2015, Section 254.

In practice, the physical accessibility of courts is not guaranteed for persons with disabilities, particularly in old court buildings. Newly constructed or reconstructed court buildings, as well as all other public buildings, must be accessible for persons 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,³⁴⁴ 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.³⁴⁵ The threshold for entitlement to free legal aid or for legal aid with a symbolic financial contribution from the person affected is relatively low,³⁴⁶ 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).³⁴⁷

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 2022, the Slovak National Centre for Human Rights provided legal representation before courts in only four cases of discrimination, while three of them were pending from previous years and only one of them was newly initiated in 2022 (for more details see chapter 7 of this report).³⁴⁸

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 a lawyer to represent him/her in proceedings before the Constitutional Court.³⁴⁹

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.³⁵⁰ More information on the findings of this report can be found in the previous country report.³⁵¹

³⁴⁴ 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*).

³⁴⁵ Act on Providing Legal Aid to Persons in Material Need, 327/2005, Section 3(1).

³⁴⁶ Act on Providing Legal Aid to Persons in Material Need, 327/2005, Sections 6 and 6a.

³⁴⁷ 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).

³⁴⁸ Response of the centre of 22 February 2023 to a request for information of 10 February 2023 filed by the NGO Center for Civil and Human Rights (on file with the author).

³⁴⁹ Act on the Constitutional Court, 314/2018, Section 37 (1).

³⁵⁰ 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/>.

³⁵¹ Durbáková, V. (2022), *Country report: Non-discrimination – Transposition and implementation at national level of Council Directives 2000/43 and 2000/78 – Slovakia*, European Commission, European network of legal experts in gender equality and non-discrimination. Available at: <https://www.equalitylaw.eu/downloads/5805-slovakia-country-report-non-discrimination-2022-1-51-mb>.

The recent comparative research report from 2022, which partly covered Slovakia and was developed by the NGO Center for Civil and Human Rights, specifically explored reasons as to why Roma who felt they had been discriminated against decided not to challenge discrimination by legal means and did not seek legal assistance. It concluded that the reasons are complex, including an overall lack of information about where to turn to for assistance; people's fear that the situation may turn against them (victimisation); lack of trust in the justice system; overall social deprivation and poverty forcing them to focus on other daily issues; and that they perceive discrimination as something so common and unchangeable that they do not see the point in trying to oppose it.³⁵²

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 in recent years has 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 provided complete statistical data about cases in 2021 and preliminary statistics for 2022. The data included the name of the court, the file number, the type of claim, type of proceeding as well as how the claim was decided. In recent years, the Ministry of Justice has addressed serious shortcomings concerning inaccurate data collection by courts (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 minimised the existing problems by on-going secondary analysis of cases being collected. According to the preliminary statistical data provided by the Ministry of Justice, ordinary courts in 2022 issued 88 final decisions concerning discrimination in anti-discrimination disputes. Of these, only 10 are registered as anti-discrimination disputes, others are not specified, or only generally mentioned as disputes with protection of the weak party.³⁵³ The statistics do not contain the case registration number, so it is not possible to verify the nature of the cases registered as weak party disputes. Out of 10 anti-discrimination disputes, the court decided in favour of applicants in three cases – in the other cases the claims were dismissed.³⁵⁴

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).

Although the number of final decisions provided by the ministry seems to be high, only 10 are registered specifically as anti-discrimination disputes, which is, according to the author of this report, a desperately low number, 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 that discrimination is a very widespread phenomenon in Slovakia.

³⁵² Center for Civil and Human Rights, Minority Rights Group Europe and EPEKA Slovenia, *Equality and justice on the sidelines: Comparative report on discrimination against Roma and their access to justice in Slovakia and Slovenia*, November 2022, p. 14.

³⁵³ Under the Civil Dispute Act, weak party disputes include customer disputes, anti-discrimination disputes and individual labour disputes.

³⁵⁴ Response from the Ministry of Justice of 20 February 2023 to a request for information of 10 February 2023 – data are preliminary (on file with the author). The statistics are not available online and were provided on demand.

d) Registration of national court decisions on discrimination cases

In Slovakia, court decisions on discrimination cases are registered as such by national courts.

The registration of national court decisions by courts and the subsequent data collection for statistical purposes, as well as making the data accessible to the public has reportedly been improved. The courts have the option to choose 'anti-discrimination dispute' as the type of judicial proceeding. However, based on the data provided for 2022, it appears that the registration of court decisions by national courts is still a challenge as it seems that other disputes concerning a weak party, which do not concern discrimination, might be included into the statistics.

The courts are obliged to publish all of their final decisions (after the necessary anonymisation) online. The Constitutional Court publishes each of its decisions online. 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.³⁵⁵

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.³⁵⁶

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.

³⁵⁵ Civil Dispute Act, 160/2015, Section 317.

³⁵⁶ 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'.³⁵⁷ 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.³⁵⁸

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.³⁵⁹ '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'.³⁶⁰ The Centre uses its mandate to represent the victims of discrimination in anti-discrimination disputes only in a limited number of cases. More details on the reasons for this are mentioned in chapter 7.7 of this report. It does not report any problems from the courts in accepting this representation, nor do NGOs report any potential problems in this regard, although in most cases an NGO provides victims with representation by cooperating lawyers who are members of the Bar Association.

- 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.'³⁶¹

³⁵⁷ Administrative Code, 71/1967, Section 17(1).

³⁵⁸ Administrative Judicial Act, 162/2015, Section 50.

³⁵⁹ Criminal Procedure Code, 301/2005, Section 53.

³⁶⁰ 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).

³⁶¹ Civil Dispute Act, 160/2015, Section 95.

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. The NGO using this form of engagement does not report any difficulties from the courts in implementation of this provision. For example, in a recent case of the forced eviction of Roma decided by District Court Košice II in 2022, the Court accepted the international human rights NGO European Roma Rights Centre as a third party intervener based on the provision of the Civil Dispute Act cited above.³⁶²

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). The Public Defender of Rights submitted, for the first time, an amicus brief to the first instance court in a case of discrimination against Roma children in education.³⁶³ Expert opinions issued by the Slovak National Centre for Human Rights³⁶⁴ 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 Center 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.

³⁶² Decision of the Košice II District Court, No. 15 C 190/2014- 650, 21 January 2022.

³⁶³ Prešov District Court, case *Poradňa pre občianske a ľudské práva (Center for Civil and Human Rights) v the Ministry of Education and the District Office in Prešov*, proceedings file n. 29C/14/2016.

³⁶⁴ 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 2021, the centre issued 29 expert opinions.

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 are party to the proceedings, the court can decide that only one claimant should represent the group.³⁶⁵

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.’³⁶⁶

The Constitutional Court provided some additional clarifications in relation to selected aspects of the burden of proof in anti-discrimination proceedings.³⁶⁷ 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

³⁶⁵ Civil Dispute Act, 160/2015, Section 75.

³⁶⁶ 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.

³⁶⁷ Finding of the Constitutional Court of the Slovak Republic, No III. ÚS 90/2015-40, 1 December 2015.

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',³⁶⁸ 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.³⁶⁹ The Constitutional Court, referring to case law from the Czech Constitutional Court,³⁷⁰ also held that 'the requirement for the claimant to prove that their discrimination has taken place because of their racial (ethnic) origin and not for another reason can apparently not be fulfilled since proving the motivation (incentive) of the defendant is simply impossible, due to the nature of the issue itself'.³⁷¹ 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 another relevant case, 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).³⁷²

The implementation of this measure by Slovak courts is still problematic in practice. For example, in a case on the segregation of Roma children in education, the domestic courts in their decisions³⁷³ concluded that the claimant (the grassroots NGO Center 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. 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 of the Elimination of Racial Discrimination in its decision against Slovakia concerning an individual case of discrimination against a Roma woman in accessing employment has also highlighted 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.³⁷⁴ The improper

³⁶⁸ This wording (except for the words in brackets) is contained in Section 11(2) of the Anti-discrimination Act.

³⁶⁹ Finding of the Constitutional Court of the Slovak Republic, No III. ÚS 90/2015-40, 1 December 2015, p. 15.

³⁷⁰ Finding of the Constitutional Court of the Czech Republic, No Pl. ÚS 37/04, 26 April 2006.

³⁷¹ Finding of the Constitutional Court of the Slovak Republic, No III. ÚS 90/2015-40, 1 December 2015, pp. 17-18.

³⁷² 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.

³⁷³ Decision of the District Court in Prešov, No. 29C/14/2016, 13 March 2019 confirmed by the Decision of the Regional Court in Prešov, No. 16Co/21/2019, 20 August 2020.

³⁷⁴ 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/>.

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).³⁷⁵

The Act on Labour Inspection³⁷⁶ 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.³⁷⁷ 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.³⁷⁸ 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.³⁷⁹

³⁷⁵ See CEDAW (2016), 'Views of the UN Committee on the Elimination of All Forms of Discrimination Against Women in *D.S. v. Slovakia*', Communication no. 66/2014, adopted on 21 November 2016, available at: <https://www.poradna-prava.sk/en/documents/views-adopted-by-the-cedaw-committie-in-the-case-of-d-s/>.

³⁷⁶ 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*).

³⁷⁷ Anti-discrimination Act, 365/2004, Section 2a (8).

³⁷⁸ 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.

³⁷⁹ 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, 13 December 2016.

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) Applicable sanctions in cases of discrimination – in law and in practice

As mentioned above, victims of discrimination have the right to sue the perpetrator – be it a natural person or a legal entity, a public or private body – and request a number of remedies, including (the list is not exhaustive) that they be made to refrain from such conduct and, where possible, rectify the illegal situation or provide adequate satisfaction. If the adequate satisfaction is insufficient, generally in cases where the violation of the principle of equal treatment has considerably impaired the dignity, social status or social achievement of the victim, a claimant may also seek financial compensation for non-pecuniary damage. The amount of this financial compensation is determined by the court, which must take into account the seriousness of the non-pecuniary damage and all underlying circumstances. Material damages resulting from such treatment may also be claimed.³⁸⁰ 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.³⁸¹

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 000³⁸² (and in some cases up to EUR 200 000)³⁸³ 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.³⁸⁴

As for access to employment, the offices of labour, social affairs and family are entitled to investigate complaints regarding potentially discriminatory job announcements.³⁸⁵ If the labour office finds a 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 the advertising agency in question is not examined.³⁸⁶ 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 331.³⁸⁷ The State School Inspectorate arguably faces serious difficulties in enforcement its findings on illegal conduct in schools including practices of discrimination, given the lack of competences to impose effective sanctions. The Head

³⁸⁰ Anti-discrimination Act, 365/2004, Section 9.

³⁸¹ 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).

³⁸² Labour Inspection Act, 125/2006, Section 19(1)(a).

³⁸³ Labour Inspection Act, 125/2006, Section 19(2)(b)(1) in conjunction with Section 19(3)(c).

³⁸⁴ Labour Inspection Act, 125/2006, Section 19(1)(c).

³⁸⁵ Employment Act, 5/2004, Sections 12 and 13 in conjunction with Section 62(2).

³⁸⁶ 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.

³⁸⁷ Act No. 596/2003 on State Administration of the School System and School Self-Governance, Section 37a(2)(b).

School Inspector specifically reported that the lack of sanction mechanisms to protect children from poor-quality education gives rise to regression in the educational system.³⁸⁸

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 1000. The sanctions for discrimination have so far proven to be ineffective or insufficiently dissuasive in practice.

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 by an NGO, the Center for Civil and Human Rights,³⁸⁹ 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.³⁹⁰ 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

³⁸⁸ The State School Inspectorate (2022), *Správa o úrovni výchovy a vzdelávania v školách a školských zariadeniach v školskom roku 2021/2022* (Report on the state and level of education in schools and the school facilities in the school year 2021/2022). Introductory word of the Main School Inspector, p. 5. Available at: https://www.ssi.sk/wp-content/uploads/2022/12/sprava_2022.pdf.

³⁸⁹ 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>.

³⁹⁰ 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.

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.³⁹¹ 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. In respect to the amount of compensation, particularly in cases of discrimination against Roma, the NGO the Center for Civil and Human Rights, which is leading strategic litigation in this area, constantly reports the on-going extreme reluctance of domestic courts to award financial compensation for non-pecuniary damages; if compensation is awarded, it is generally symbolic.³⁹²

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 2022. The amount of compensation is not data that is required to be collected. However, it can be seen from the 10 final decisions by courts in 2022 that only three cases were decided in favour of the applicants, and the other claims were dismissed.³⁹³

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.³⁹⁴ In a case of discrimination against a Roma woman in access to employment,³⁹⁵ the court awarded the claimant EUR 2 500 out of EUR 5 000 requested. In a case of discrimination against a child with disability in access to education, the first instance court awarded the claimant non-pecuniary damages of EUR 3 000 – the full amount that she had requested.³⁹⁶ In a case of discrimination of Roma children, who were illegally placed in special classes for children with intellectual disabilities, the first instance court awarded the claimants non-pecuniary damages of EUR 5 000 each – the full amount that they had requested.³⁹⁷ Also in a case of forced eviction of Roma, the first instance court awarded nine applicants EUR 1 000 each.³⁹⁸

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.

³⁹¹ 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.

³⁹² Center for Civil and Human Rights (2022) NGO Submission to the Committee on the Elimination of Racial Discrimination concerning shortcomings in the implementation of the Convention in Slovakia, p. 9.

³⁹³ Response from the Ministry of Justice of 20 February 2023 to a request for information of 10 February 2023 (on file with the author).

³⁹⁴ 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/>.

³⁹⁵ Decision of the Spišská Nová Ves District Court in, No 8 C 268/2016 – 523, 23 March 2017 upheld by the decision of the Košice Regional Court by its decision of 7 February 2018, No. 9Co 259/2017.

³⁹⁶ Decision of the Žilina District Court, No 73/2019- 159, 27 July 2020.

³⁹⁷ Decision of the Prešov District Court from 24 November 2021, No. 15C/14/2016-557.

³⁹⁸ Decision of the District Court Košice II, No. 15C/190/2014-650, 21 January 2022.

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.³⁹⁹

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.⁴⁰⁰ Thus, instead of bringing the perpetrators to justice, the individuals affected by discrimination often have to go through their trauma again, including during the judicial proceedings, and remain disillusioned after the judicial decision is announced. A change in legislation reflecting the need for a paradigm shift (judging the behaviour and treatment of the perpetrator instead of burdening and re-traumatising the victim) would be more than welcome.

As regards financial compensation for non-pecuniary damage, there is another problematic issue, namely the judicial fees. According to Slovak legislation, the claimant is supposed to pay 3 % of any sum claimed as financial compensation for non-pecuniary damage. This means that the higher the amount claimed as compensation for non-pecuniary damage, the higher the judicial fee – which hinders claimants from even requesting amounts that would be effective, proportionate and dissuasive. The judicial fees are paid in advance and in every instance, and they are doubled before the Supreme Court.⁴⁰¹

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.

³⁹⁹ See section 6.1(a) for the full wording of the relevant provision.

⁴⁰⁰ 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'.

⁴⁰¹ 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 BODY FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)

7.1 Body 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 the Anti-discrimination Act in 2004,⁴⁰² 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.⁴⁰³

According to the Act on the Centre, the centre is an independent, non-judicial body, subsidised by the state. According to Section 1 of the Act on the Centre, the centre fulfils tasks in the field of fundamental rights and freedoms. To these ends, the centre does the following:

- monitors and evaluates the observance of human rights and the observance of the principle of equal treatment, in accordance with the Anti-discrimination Act;
- gathers information on racism, xenophobia and anti-Semitism in Slovakia and provides this information on request;
- conducts research and surveys for the purpose of providing data in the field of human rights, gathers and, on request, provides information in this field;
- prepares educational activities and takes part in information campaigns with the aim of increasing tolerance in society;
- secures legal aid for victims of discrimination and intolerance;
- issues, on request of natural persons or legal entities or on its own initiative, expert opinions in matters of observance of the principle of equal treatment in accordance with the Anti-discrimination Act;
- carries out independent inquiries concerning discrimination.

The services of the centre are accessible on an equal basis to all, without costs.

The centre operates a central office in the capital Bratislava, as well as three regional branches in three regional towns (Žilina, Banská Bystrica and Košice) located in the western, central and eastern part of the country. It is also reachable by phone and email.

The centre provides reasonable accommodation to persons with disabilities to a certain extent. In particular, it currently has two fully barrier-free offices (in Žilina and Banská Bystrica). This is not yet the case in Bratislava and Košice. Recently, the centre introduced a special measure in relation to providing legal aid to persons with disabilities in its office in Žilina, where it secured the provision of a mobile 'access ramp' in order to remove a barrier – a step – in front of the entrance to the building. As regards other measures, the centre has purchased the ReadSpeaker application to facilitate the accessibility of digital documents on its website. The application serves as a text reader.⁴⁰⁴

The centre runs a website, publishes press releases regularly and communicates with the media. The centre has increased its overall public visibility in recent years, but arguably still falls short of the overall visibility of the second independent human rights body in

⁴⁰² Act No. 365/2004 on Equal Treatment in Certain Areas and Protection against Discrimination and on amending and supplementing certain other laws as amended.

⁴⁰³ 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*).

⁴⁰⁴ Response of the centre of 21 July 2023 to a request for information of 17 July 2023 (on file with the author).

Slovakia – the Public Defender of Rights (Ombudsperson). In addition, recent research findings point out its low visibility among Roma living in marginalised communities.⁴⁰⁵

Through an amendment to the Slovak Constitution and the adoption of the Act on the Public Defender of Rights in 2001, the Public Defender of Rights (Ombudsperson) became a specialised body for protecting the fundamental rights and freedoms of natural persons and legal entities with respect to the activities, decision making or inactivity of public administration bodies if such activities, decision making or inactivity is in conflict with the legal order or the principles of the democratic state and the rule of law.⁴⁰⁶ Although this body was not specifically designed to promote equal treatment, in practice, it addresses discrimination if it has been committed by the state administrative and self-government bodies, pursuant to Article 12(2) of the Slovak Constitution, which is the general non-discrimination clause. In this respect, the Public Defender of Rights provides independent assistance to victims,⁴⁰⁷ conducts surveys, produces reports and makes recommendations. It is a quasi-judicial institution. It has a responsibility to deal with the claims of individuals and to reach findings in individual cases, although conclusions in these cases are not legally binding.

7.2 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.⁴⁰⁸ In recent years, these objections have been repeatedly highlighted in recommendations of the UN treaty monitoring bodies and other international human rights institutions. The UN Committee on the Elimination of Racial Discrimination, in its Concluding Observations from September 2022, reiterated the importance of adopting the relevant legislative amendment to ensure that the centre is fully compliant with the Paris Principles and to ensure adequate resources and institutional guarantees to enable the centre to discharge its mandate effectively and independently, as both a national human rights institution and an equality body.⁴⁰⁹

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.

⁴⁰⁵ Minority Rights Group Europe, *Poradňa pre občianske a ľudské práva, EPEKA Slovenia, Equality and justice on the sidelines: Comparative report on discrimination against Roma and their access to justice in Slovakia and Slovenia*, November 2022, p. 14. Available at: <https://poradna-prava.sk/en/publications/equality-and-justice-on-the-sidelines-comparative-report-on-discrimination-against-roma-and-their-access-to-justice-in-slovakia-and-slovenia/>.

⁴⁰⁶ Constitution of the Slovak Republic, Article 151a, para 1. Act No. 564/2001 on the Public Defender of Rights (*zákon č. 564/2001 o verejnom ochrancovi práv*).

⁴⁰⁷ Act on the Public Defender of Rights, 564/2001, Section 13.

⁴⁰⁸ See, for example, Center for Civil and Human Rights (2022), NGO Submission to the Committee on the Elimination of Racial Discrimination concerning shortcomings in the implementation of the Convention in Slovakia, pp. 10-11. Center for Civil and Human Rights, Minority Rights Group Europe and EPEKA Slovenia, *Equality and justice on the sidelines: Comparative report on discrimination against Roma and their access to justice in Slovakia and Slovenia*, November 2022, pp. 12-15.

⁴⁰⁹ Concluding Observations of the Committee on the Elimination of Racial Discrimination from September 2022, CERD/C/SVK/13, para. 8-11. See also recommendations of Advisory Committee on the Framework Convention for the Protection National Minorities. Fifth opinion on Slovak republic from February 2022. Council of Europe, pp. 13-15.

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. 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, but was not adopted.

In 2021, the Ministry of Justice prepared an amendment to the Act on the Public Defender and incorporated into this amendment a specific partial amendment to the Act on the Centre. This legislative initiative was in response to the requirement of the European Commission raised within the proceeding EU Pilot no. 4446/13/JUST to supplement a provision defining the particular competence of the centre on issuing reports and recommendations in the field of non-discrimination with the word 'independent' to meet the obligations of the EU anti-discrimination law. However, the legislative process concerning the amendment was pending at the end of 2022.⁴¹⁰ The ministry plans to propose such an amendment in the future, based on the outcomes of the current initiative of the European Commission to strengthen equality bodies by setting minimum standards on how they operate in all grounds of discrimination and areas covered by EU equality rules through the directive.⁴¹¹ The ministry recently reported that it observes on-going negotiations about proposals of two EC directives in this regard and it intends to propose the amendment to the Act on the Centre once the texts of these directives are finalised.⁴¹² In December 2022, the centre publicly welcomed the proposals of the respective EC directives and called on the Slovak Government to support them as well as to ensure their rapid and effective transposition into the Slovak legal order.⁴¹³

7.3 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 United Nations.⁴¹⁴ 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.

7.4 Status of the designated body – general independence and resources

a) Status of the body

- Separate or other legal status or personality:

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.

⁴¹⁰ Response of the Ministry of Justice of 20 February 2023 to a request for information of 10 February 2023 (on file with the author). The proposed amendment and information about the course of the on-going legislative process are available at: <https://www.slov-lex.sk/legislativne-procesy/-/SK/dokumenty/LP-2021-391>.

⁴¹¹ Response of the Ministry of Justice of 19 January 2022 to a request for information of 10 January 2021 (on file with the author). Detailed information about the initiative of the European Commission is available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13098-Equality-bodies-binding-standards_en.

⁴¹² Response of the Ministry of Justice of 20 February 2023 to a request for information of 10 February 2023 (on file with the author).

⁴¹³ See the public statement of the centre from 8 December 2022 in this regard. Available at: <https://www.snsip.sk/aktuality/vitame-navrhy-smernic-o-standardoch-pre-organy-pre-rovnake-zaobchadzanie/>.

⁴¹⁴ Notice of the Ministry of Foreign Affairs of the Slovak Republic, No. 29/1995.

- Selection of governing body:

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,⁴¹⁵ 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).

- Powers to recruit and manage staff:

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.

- Sources of funding:

The centre is financed by subsidies from the state budget and partially from project funds; in 2022, these funds came from European Commission, EEA and Norway grants and the Council of Europe.

- Accountability

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).⁴¹⁶ 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). 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 the property of the state.

b) 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.⁴¹⁷

⁴¹⁵ Act on the Centre, 308/1993, Section 2(1),(2) and 3b.

⁴¹⁶ See Act on the Centre, 308/1993, Section 3b(4), for more details.

⁴¹⁷ 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. European Commission against Racism and Intolerance (ECRI) (2020) *ECRI report on the Slovak republic: 6th monitoring cycle*, Council of Europe, para 3. The report was adopted on 1 October 2020.

c) Resources

- The annual budget of the body:

In 2022, the overall subsidy for the centre from the state budget was EUR 944 287. The centre had additional income of approximately EUR 170 000 from the implementation of four projects.⁴¹⁸ In comparison with the previous two years, the centre's funding has gradually increased to some extent (EUR 849 874 in 2021, EUR 797 822 in 2020). As well, the centre substantially increased its additional income from implementation of projects (EUR 25 734 from one implemented project in 2021). The share of the annual budget dedicated to the equality body mandate is not set out.⁴¹⁹ In the author's opinion, the resources designated to the centre remains insufficient with regard to the range of its competences, which may arguably limit their effective fulfilment.

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.

- The share of the annual budget dedicated to the equality body mandate:

The share of the annual budget dedicated to the equality body mandate is not set out.⁴²⁰

- The total number of staff of the body:

In December 2022, the centre had 26 in-house employees (two of them are currently on parental leave), which is on the same level as in 2021. As of the end of 2022, it also had 16 external employees contracted on agreements outside employment. They are working mostly on projects implemented by the centre.⁴²¹

- The number of staff dedicated to the equality body mandate:

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 all employees of the centre carry out both mandates simultaneously.⁴²²

⁴¹⁸ Response of the centre of 22 February 2023 to a request for information of 10 February 2023 (on file with the author). It included in particular EUR 38 442 for the implementation of the project 'Reducing the overuse of the institution of detention by means of harmonisation and the promotion of alternative methods of detention' funded by the European Commission (Justice Programme 2021-2027) and EUR 116 990 for the implementation of the project 'Support to domestic human rights institutions in monitoring fundamental rights and human rights aspects of the rule of law state' funded by the EEA and Norway grants. The length of implementation of these projects goes beyond the year 2022.

⁴¹⁹ Response of the centre of 17 January 2022 to a request for information of 10 January 2022 (on file with the author).

⁴²⁰ Response of the centre of 17 January 2022 to a request for information of 10 January 2022 (on file with the author).

⁴²¹ Response of the centre of 22 February 2023 to a request for information of 10 February 2023 (on file with the author).

⁴²² Response of the centre of 22 February 2023 to a request for information of 10 February 2023 (on file with the author).

7.5 Grounds covered by the designated body

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 in respect of providing support to victims it has not sufficiently addressed pressing and widely documented discrimination in Slovak society on specific grounds. Given the limited legal 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.

7.6 Competences of the designated body – and their independent exercise

a) Independent assistance to victims

The centre has a duty to provide independent assistance to victims.⁴²³ It receives claims from individuals by post, email 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 centre has competence under national anti-discrimination legislation to submit *actio popularis* claims in cases of systemic discrimination. The assistance to victims is not provided by a third party, but the centre, outside the central office in Bratislava, operates by three small local-level offices in the regions.

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 2022, the centre received 122 complaints where discrimination was reasonably claimed, and the centre found them to fall within its remit.⁴²⁴ The available data shows that the number of complaints received from people who have been discriminated against remains very low.⁴²⁵ For comparison, the Office of the Slovak Ombudsman according to recent available data in 2022, dealt with 873 complaints, which – regardless of the broader and different mandate of the Ombudsman's Office – indicates that it has higher visibility and, arguably, greater credibility.⁴²⁶ In the author's opinion, the low number of complaints received by the centre

⁴²³ Act on the Centre, 308/1993, Section 1 (2e).

⁴²⁴ Response of the centre of 22 February 2023 to a request for information of 10 February 2023 (on file with the author).

⁴²⁵ Response of the centre of 17 January 2020 to a request for information of 10 January 2020 (on file with the author). In 2020 the centre received 101 complaints and in 2021 the centre received 130 complaints.

⁴²⁶ Office of the Public Defender of Rights (2023), *Správa o činnosti verejného ochrancu práv za obdobie roka 2022* (Report on the activity of the Public Defender of Rights for a period of 2022), p. 14. Available at: https://vop.gov.sk/wp-content/uploads/2023/04/Sprava_2022_final2.pdf.

can arguably be attributed to its on-going insufficient visibility and overall outreach to victims of discrimination, and at the same time may also be negatively influenced by on-going barriers to access to justice in cases of discrimination, which discourage persons who feel they have been discriminated against from seeking justice in Slovakia in general.⁴²⁷

A new NGO research report from November 2022 analysed, among other aspects, activities of the centre in terms of addressing discrimination of Roma and ensuring access to justice for them. The report pointed out that the centre received only a very small number of complaints concerning racial discrimination submitted by Roma applicants. The reasons for such a low number of complaints received despite the on-going prevalence of discrimination against Roma in Slovakia are arguably many, but may obviously include also very low awareness of the Centre among Roma. This confirmed the findings of the qualitative research conducted – interviews with over 30 Roma activists – which showed that only a few were aware of the existence of the Slovak equality body. Considering that the respondents are activists who have defended themselves against discrimination and have a higher awareness of legal remedies, this suggests that the awareness of the equality body among Roma communities is extremely low.⁴²⁸

The research in question included interviews with several domestic legal experts on anti-discrimination law (including the country experts on non-discrimination and gender). They generally reflected that the change of the equality body's director in 2020 had enhanced its public relations and visibility. However, some argued that the organisation does not focus sufficiently on the most pressing discrimination-related issues or on their legal repercussions, suggesting that it should give its litigation competence higher priority and have a clear litigation strategy. Legal experts raised the importance of building up the institutional authority of the centre in relation to the Government and other state institutions, so that its findings and recommendations would have an increased public impact.⁴²⁹

Moreover, the research also included an interview with the executive representative of the centre, who acknowledged some challenges that need to be addressed. He highlighted recent efforts by the centre to raise its public profile and emphasised the importance of enhancing its overall credibility and visibility so that the public is aware that the equality body can provide effective legal assistance and can be trusted. However, he stated that the organisation lacks sufficient staff, given the extent of its responsibilities. According to the representative, the recommendations of the equality body are widely ignored by other state institutions, which is very difficult to change as they are not binding. As for addressing discrimination against Roma, the equality body found it important to raise public awareness and publicise the accessibility of legal help, while acknowledging that it should be more proactive in this regard: in particular by developing closer relationships with Roma communities and providing more legal assistance so they could take more legal action with their support.⁴³⁰

⁴²⁷ Response of the centre of 22 February 2023 to a request for information of 10 February 2023 (on file with the author).

⁴²⁸ Minority Rights Group Europe, *Poradňa pre občianske a ľudské práva, EPEKA Slovenia, Equality and justice on the sidelines: Comparative report on discrimination against Roma and their access to justice in Slovakia and Slovenia*, November 2022, available at: <https://poradna-prava.sk/en/publications/equality-and-justice-on-the-sidelines-comparative-report-on-discrimination-against-roma-and-their-access-to-justice-in-slovakia-and-slovenia/>.

⁴²⁹ Minority Rights Group Europe, *Poradňa pre občianske a ľudské práva, EPEKA Slovenia, Equality and justice on the sidelines: Comparative report on discrimination against Roma and their access to justice in Slovakia and Slovenia*, November 2022, p. 13.

⁴³⁰ Minority Rights Group Europe, *Poradňa pre občianske a ľudské práva, EPEKA Slovenia, Equality and justice on the sidelines: Comparative report on discrimination against Roma and their access to justice in Slovakia and Slovenia*, November 2022, p. 13.

b) Independent surveys and reports

The centre has a duty to conduct independent surveys and publish independent reports.⁴³¹ In practice, it includes in particular publishing an annual report on the observance of human rights including the principle of equal treatment, and publishing various analytical materials.

Moreover, the centre regularly develops and submits its alternative reports to international human rights bodies concerning the implementation of international human rights obligations by the Slovak Government. In 2022, the centre submitted its observations to the UN Committee on the Elimination of Racial Discrimination and raised relevant shortcomings concerning the protection of the rights of racial minorities in Slovakia.⁴³² As well, it e.g. submitted an interim follow-up of recommendations addressed to the Slovak Republic by the European Commission against Racism and Intolerance (ECRI) within the 6th monitoring cycle and made a submission to the UN High Commissioner for Human Rights on the impact of the COVID-19 pandemic on the realisation of the right to education for all girls without discrimination. In general, the centre, in these reports from recent years, consistently addresses relevant human rights and confronts the Government authorities with a wide range of on-going relevant human rights issues. In this context, the submissions to international bodies can be considered to be independent.

In addition, the centre reportedly develops and submits a number of other reports or written comments to human rights or other international institutions. These e.g. included several written submissions to the European Commission particularly as the result of a request for information or within public consultations as well as reports submitted by the centre as part of its engagement in the EQUINET and ENNHRI networks. Its reports were generally aimed at providing information on relevant human rights issues in Slovakia or about the activities of the centre in these areas.⁴³³ Many such reports were apparently submitted at the request of these institutions, rather than being produced proactively.

In addition, the centre is generally engaged in consensual cooperation with the Government institutions on particular Government documents, often through its participation in established working groups.

The research activities of the centre in 2022 included e.g. an analysis assessing the impacts of the COVID-19 pandemic on the exercise of fundamental rights and freedoms and areas protected by the Anti-discrimination Act; analysis discussing the issue of segregation in education in the context of Slovakia; and reports from thematic monitoring focusing on discrimination in pre-contractual employment relationships as well as the occurrence of hate speech and extremist crimes. It also assessed the availability of community-based social services for people with disabilities. Apart from research reports, the centre in 2022 also published a manual on how to protect against discrimination and human rights violations in the area of health care for the general public.⁴³⁴ In the author's opinion, the centre's research activities generally focus on relevant issues concerning protection against discrimination in Slovakia, including the most pressing issues.

The centre does not conduct strategic planning in terms of developing and adopting a formal multi-annual strategy setting out their priorities and prospective activities or adopting individual strategies on specific aspects of its mandate. However, it develops plans for its activities on an annual basis, which sum up its planned activities, strategic

⁴³¹ Act on the Centre, 308/1993, Section 1(2)(g) and (h).

⁴³² The submission is available at: <https://www.snslp.sk/aktuality/informovali-sme-o-stave-implementacie-medzinarodneho-dohovoru-o-odstraneni-vsetkych-foriem-rasovej-diskriminacie-na-slovensku/>.

⁴³³ The centre on request provided a list of all the produced reports. Response of the centre of 22 February 2023 to a request for information of 10 February 2023 (on file with the author).

⁴³⁴ All the released research reports are published on the website of the centre at: <https://www.snslp.sk/vysledky/publikacna-cinnost/>.

topics to focus on, its commitments resulting from various action plans and strategies as well as plans for reporting to international human rights bodies.⁴³⁵

c) Recommendations

The centre is competent to issue independent recommendations on discrimination issues.⁴³⁶ In practice, the centre issues the recommendations in its annual reports on the observance of human rights, including the principle of equal treatment, in Slovakia. In addition, it regularly includes recommendations in its reports on inquiries, analytical reports or alternative reports for international human rights bodies. Recommendations are primarily addressed to the Government, Government institutions or other state institutions.

In 2022, the centre formulated and included a wide range of independent recommendations in its report on the observance of human rights, including the principle of equal treatment, in Slovakia. In this regard, it focused on selected issues that have resonated in the public discourse, including e.g. women's reproductive rights and the impact of the COVID-19 pandemic on selected human rights and fundamental freedoms in Slovakia. In the author's opinion, the centre, in its recent annual report, generally addresses relevant issues concerning protection against discrimination in Slovakia and as such can be considered to be independent.⁴³⁷

The centre engages in commenting on some legislative proposals or proposed Government policies within its human rights focus, and its inputs commonly take the form of recommendations. In particular, it commented on an amendment to the School Act proposed by the Ministry of Education in August 2022, which specifically contained the proposal for the definition of segregation. In addition, the centre is generally engaged in consensual cooperation with the Government institutions on particular Government documents, often through its participation in established working groups. In 2022, for instance, the centre cooperated with the Office of the Government Plenipotentiary for Roma Communities on the development and implementation of action plans for 2022-2024 under the Strategy for Roma Equality, Inclusion and Participation 2030, including specifically the priority area of health. It also coordinated the meetings of the established platform on ensuring the protection of the rights of individuals in the area of healthcare regardless of the protected characteristics of ethnicity. For the Ministry of Justice, the centre provided inputs and opinions on the drafting of proposals and texts of directives on equal treatment standards and the impact of their future transposition on the legislative regulation of the mandate and powers of the centre or national anti-discrimination legislation.⁴³⁸

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 7.6.(e)).

d) Prevention, promotion and awareness-raising

The centre reported that in 2022 it carried out 34 educational activities – training sessions aimed at raising awareness of the fight against discrimination through educational events organised at primary and secondary schools, universities, public institutions and upper management of private companies. It addressed the issue of discrimination and its prevention through a number of training modules with various focuses. These included, for instance, discrimination in the form of sexual harassment in the workplace or non-discrimination under the Convention on the Rights of Persons with Disabilities, as well as

⁴³⁵ These annual plans are available at: <https://www.snslp.sk/nasa-cinnost/plan-cinnosti/>.

⁴³⁶ Act on the Centre, 308/1993, Section 1(2)(h).

⁴³⁷ Slovak National Centre for Human Rights (2022), *Report on the observance of human rights including the principle of equal treatment for the Year 2021*, available in English at: https://www.snslp.sk/wp-content/uploads/Human-rights-report_-for-the-year-2021.pdf.

⁴³⁸ Response of the centre of 22 February 2023 to a request for information of 10 February 2023 (on file with the author).

the management of diversity and equal treatment, within the framework of which the centre encourages learners to implement and promote diversity. Moreover, in 2022, the centre published 18 podcasts and several blogs on human rights issues, including those focusing on raising awareness of discrimination and the need for its prevention. It has also been involved in awareness-raising campaigns launched by other subjects, such as Violence Against Women, Bratislava Without Hate, It's About Our Lives and Rainbow PRIDE. It also intensively raised awareness in the context of the adoption of temporary equalisation measures between public and private legal entities.⁴³⁹ (see chapter 5: Positive action).

e) 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 (see section 7.8.a below for further information).

7.7 Legal standing of the designated body

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 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 2022, the centre provided legal representation in one new case of discrimination that was filed with domestic courts. The case concerns alleged discrimination in access to employment based on age.⁴⁴⁰

In addition, the centre provided on-going representation in three other pending cases. The second case concerned discrimination against a child in preschool education based on the ground of disability. The child diagnosed with a behavioural disorder was not enrolled in a kindergarten because the director claimed that the kindergarten was not able to provide education for children with special educational needs. In July 2020, the district court confirmed discrimination against the child, ordering the school to apologise and to

⁴³⁹ Response of the centre of 22 February 2023 to a request for information of 10 February 2023 (on file with the author).

⁴⁴⁰ Response of the centre of 22 February 2023 to a request for information of 10 February 2023 (on file with the author).

financially compensate the child (EUR 3 000). After partial success on the merits of the case, the centre, on behalf of the client, brought an extraordinary appeal in the remaining part to the Supreme Court of the Slovak Republic.⁴⁴¹

Low visibility and few cases may also play a role in the number of people who have been discriminated against who are represented by the centre in court proceedings. In 2022, the centre overall represented five people in four proceedings, and the overall number still remains strikingly low.⁴⁴²

The centre is also authorised by domestic legislation to join judicial proceedings in cases of discrimination, either on the side of the claimant or on the side of the defendant. In 2022, the centre joined one judicial proceeding concerning alleged discrimination in employment relationships based on 'other status'.⁴⁴³

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 itself can invoke the protection of the right to equal treatment in its own name (*actio popularis*). So far (as of the end of 2022), the centre had not filed any such *actio popularis* claims in its own name. The centre noted that it continuously analysed the possibilities of filing such claims in particular cases. At the same time, it also reported that it favours an out-of-court solution in cases of so-called structural discrimination, which may eventually be targeted by *actio popularis*. It considers this procedure to be a more effective way of combating structural discrimination, since – in its opinion – the institute of *actio popularis* lacks a comprehensive domestic legislative procedural basis. In this context, the centre directly reported that it currently finds *actio popularis* to be an ineffective tool for elimination of structural discrimination in the conditions of the Slovak legal order.⁴⁴⁴ The author of the report does not find this opinion of the centre to be justified, while supporting a different view that *actio popularis* in Slovakia has the potential to address the exposure of systemic discrimination in Slovakia.

A new NGO research report from November 2022 analysed, among other aspects, activities of the centre in terms of addressing discrimination of Roma and ensuring access to justice for them. The report pointed out that the centre remains inactive in providing legal representation in court proceedings to Roma who feel they have experienced discrimination, stating that from 2019 onwards the centre has provided no legal representation to such Roma in court proceedings at all. It also highlighted that the centre has never brought *actio popularis* cases addressing instances of systemic racial discrimination on its own initiative.⁴⁴⁵

In general, the centre continues to be engaged in only a small number of cases of discrimination before courts 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 over the years have related to discrimination in employment on the ground of 'other status' and so do not sufficiently address the

⁴⁴¹ Decision of the Žilina District Court, No. 7C/83/2019-159, 27 July 2020. Decision of the Regional court in Žilina, No. 10Co/58/2021-243, 16 December 2021.

⁴⁴² Response of the centre of 20 February 2023 to a request for information of 10 February 2023 (on file with the author).

⁴⁴³ Response of the centre of 20 February 2023 to a request for information of 10 February 2023 (on file with the author).

⁴⁴⁴ Response of the centre of 20 February 2023 to a request for information of 10 February 2023 (on file with the author).

⁴⁴⁵ Minority Rights Group Europe, *Poradňa pre občianske a ľudské práva, EPEKA Slovenia, Equality and justice on the sidelines: Comparative report on discrimination against Roma and their access to justice in Slovakia and Slovenia*, November 2022, p. 19. Available at: <https://poradna-prava.sk/en/publications/equality-and-justice-on-the-sidelines-comparative-report-on-discrimination-against-roma-and-their-access-to-justice-in-slovakia-and-slovenia/>.

pressing and widely documented discrimination in Slovak society. 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.

7.8 Dispute resolution

a) Quasi-judicial functions

In Slovakia, the equality body – the Slovak National Centre for Human Rights – is a quasi-judicial institution.⁴⁴⁶ It has a responsibility to deal with claims of individuals and reach findings on discrimination in individual cases.⁴⁴⁷

Within its competences, the centre can also decide to carry out its own specific independent inquiries to investigate possible discriminatory practices, which the centre has either received information about from individuals or documented itself (e.g. from reports in the media). In 2022, the centre conducted five such independent inquiries; reports from three of these are published on its website. One of them concerned alleged discrimination against Roma in access to a recreational area for swimming – a lake run by the municipality of one of the town areas in Košice. The municipality placed conditions on the access of Roma persons to the lake by providing fictional ‘club cards’ and the centre found this practice discriminatory. The other two inquiries related to assessing organisational changes in Slovak Labour offices leading to the dismissal of 31 employees, indicating possible discrimination as well as assessing the constitutionality of the legal regulation on the reimbursement of so-called exceptional medicines.⁴⁴⁸ The remaining two independent inquiries concerned the segregation of Roma children in education, reports from which are not published on the centre’s website.⁴⁴⁹

In addition, the centre has a competence to issue expert opinions on the observance of the equal treatment principle under the Anti-discrimination Act. The centre develops expert opinions whenever requested from third parties claiming potential discrimination and in cases where it assesses that the content of the opinion and its subsequent publication may be beneficial in the context of the protection and prevention of discrimination.⁴⁵⁰ Its expert opinions arguably fall within providing legal aid to victims and thus to exercising its quasi-judicial function. In 2022, the centre issued 20 expert opinions assessing possible violations of the principle of equal treatment, while 17 of them were published on the website. Three of them were not published at the request of complainants.⁴⁵¹ The centre provided, through communication with the claimant, supportive expert opinions to the courts in a case of segregation of Roma women in maternity wards and also in a case of misdiagnosis of Roma children. There is no indication that these opinions are not independent. However, according to the author of this report, they sometimes unnecessarily assess and address issues that are not particularly relevant given the prevalent and deeply rooted discriminatory practices in Slovakia and the fact that in 2022, a significant number of them dealt with discrimination on the grounds of ‘other status’,⁴⁵² instead of targeting widespread discrimination on the fundamental discrimination grounds such as ethnicity,

⁴⁴⁶ 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.

⁴⁴⁷ Act on the Centre, 308/1993, Section 1 (2f).

⁴⁴⁸ The reports from independent surveys are published here: <https://www.snsip.sk/nasa-cinnost/pravne-sluzby/nezavisle-zistovanie/>.

⁴⁴⁹ Response of the centre of 22 February 2023 to a request for information of 10 February 2023 (on file with the author).

⁴⁵⁰ Response of the centre of 21 July 2023 to a request for information of 17 July 2023 (on file with the author).

⁴⁵¹ Response of the centre of 22 February 2023 to a request for information of 10 February 2023 (on file with the author).

⁴⁵² The ground ‘other status’ is not defined in the ADA so, in principle, it could include anything.

gender, disability and others that the centre should, by necessity, focus on, given its limited capacities. This aspect may arguably be influenced by the nature of alleged discrimination in requests or complaints received by the centre. It is positive that the centre issues opinions on its own initiative without individual applications and thus selects particularly relevant issues to address.

The centre monitors the impact of its expert opinions and its conclusions in respect of complaints received in which it has identified discrimination and evaluates measures that recipients take in response. However, its ability to check their implementation effectively is limited.⁴⁵³

i) Power to impose sanctions

The centre cannot issue binding enforceable decisions or impose sanctions. It can issue non-binding opinions. Its opinions can only serve as a relevant opinion, which can be presented, for instance, in court proceedings when victims decide to take additional legal steps.

ii) Nature and level of sanctions

Not applicable as the centre cannot impose sanctions.

iii) Possibility to appeal (to the body itself or to the court)

Not applicable. The centre can issue only non-binding opinions, which cannot be appealed.

iv) Enforcement of binding decisions

Not applicable. The centre can issue only non-binding opinions.

v) Implementation of non-binding opinions

The centre monitors how clients make use of its opinions 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 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.⁴⁵⁴

b) Amicable settlements

The centre has a competence to represent persons affected by discrimination in out-of-court settlements in court proceedings where it represents a party. However, it is not a mediator and does not cooperate with mediators in that context.⁴⁵⁵

In 2022, one case in which the centre represented a person claiming discrimination was discontinued due to an out-of-court settlement. Details have not been disclosed.⁴⁵⁶

⁴⁵³ Response of the centre of 22 February 2023 to a request for information of 10 February 2023 (on file with the author).

⁴⁵⁴ Response of the centre of 17 January 2022 to a request for information of 10 January 2022 (on file with the author).

⁴⁵⁵ Response of the centre of 22 February 2023 to a request for information of 10 February 2023 (on file with the author).

⁴⁵⁶ Response of the centre of 17 January 2022 to a request for information of 10 January 2022 (on file with the author).

7.9 Procedural safeguards

There are no limitations/procedural safeguards set by the centre and/or by legislation in respect of how the centre, as the equality body, exercises its different powers.

7.10 Data collection by the designated body

a) Registration of complaints and decisions

In Slovakia, the designated 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.⁴⁵⁷In 2022, the centre received 122 complaints. As for the field of discrimination, 81 complaints concerned employment and access to employment, 15 access to goods and services, eight social security, 11 education and six access to healthcare, and one concerned the execution of a custodial sentence. In two cases, the centre assessed the possible violation of the general anti-discrimination clause set out in Article 12(1)(2) of the Constitution of the Slovak Republic. The grounds of the complaints received were: 10 on age; nine on Roma ethnic origin; 10 on sex; seven on disability; two on sexual orientation; one on reporting criminality or other anti-social activity; two on family status; one on nationality, one on race, one on trade union activity, and 31 on 'other status'. The complaints on 'other status' were attributed by the centre to criteria of permanent residency, level of education or health status. The centre found that 45 complaints were not linked to any discriminatory ground, although the centre still considered that it was competent to deal with them as it looked at the complaints through the lens of the principle of equal treatment. Of 122 total received complaints, the centre found a violation of anti-discrimination legislation in 14 complaints. In seven cases, the identified discrimination was based on the different status of a refugee, receiving pension from a special social security scheme, level of education attained, health status in the field of provision of goods and services, performance of work tasks, membership in a school body and the nature of the insurance relationship. The other two cases concerned discrimination on grounds of sex, of which one specifically concerned maternity. Two cases concerned discrimination on the grounds of disability, one case on the ground of nationality, one case on the ground of notification of crime or other anti-social activity and one case on the ground of age.⁴⁵⁸

b) Equality data collection

In Slovakia, the designated body collects general equality data.

The centre reported that all data handled by its research unit can be considered equality data. Findings from its analytical work are available in the research reports and related datasets and data are available on request. In 2022, this data specifically included:⁴⁵⁹

⁴⁵⁷ Slovak National Centre for Human Rights (2022), *Ročná záverečná správa o činnosti Slovenského národného strediska pre ľudské práva za rok 2021* (Annual report on the activities of the Slovak National Centre for Human Rights for the Year 2020). Available at: <https://www.snslp.sk/wp-content/uploads/Rocna-zaverecna-za-rok-2021.pdf>.

⁴⁵⁸ Response of the centre of 22 February 2023 to a request for information of 10 February 2023 (on file with the author).

⁴⁵⁹ Response of the centre of 22 February 2023 to a request for information of 10 February 2023 (on file with the author).

- data obtained during focus groups and public consultations on the topic of discrimination in employment relations (target groups - women 50+, transgender persons, Roma women, Roma community);
- administrative data collected in connection with the notification and reporting of collective dismissals by employees;
- conceptual documents relating to adaptation and mitigation policies of the Slovak Republic;
- administrative and statistical data relating to energy poverty;
- data from media monitoring relating to reporting on discrimination and hate ideologies;
- data from a questionnaire survey on the attitudes of secondary school pupils;
- administrative data on the availability of social services for people with disabilities.

It is not clear whether the centre has access to other equality data from other institutions/bodies.

7.11 Roma and Travellers

The centre does not treat Roma as a priority issue, but it gives discrimination against Roma particular attention. Notably, it is currently engaged in the implementation of some tasks following from the action plans for 2022-2024 adopted under the Strategy for Equality, Inclusion and Participation of Roma until 2030. In 2022, the centre carried out a wide range of educational and research activities focusing on the prevention of discrimination against Roma. For instance, it conducted a number of educational meetings for pupils in primary and secondary schools and other target groups, while following the implementation of the Action Plan to the Strategy (Priority areas of employment and combating anti-Roma racism). It also published a legal analysis entitled 'Segregation in education – an analysis of knowledge' highlighting the widespread problem of segregation of Roma children in Slovakia. In addition, it published a manual entitled 'Options for addressing discrimination and violations of human rights in relation to the provision of health care, which is also the task resulting from the implementation of the Action Plan for 2022-2024 to the Strategy (Priority area of health). Further, the centre monitored legislative processes with a particular focus on the identification of legislative and non-legislative materials that could have an impact on the issue of equal treatment of Roma. It also specifically monitored the implementation of measures to prevent the segregation of Roma children in education as set out in the Recovery plan and engaged in commenting on measures in this area. Its alternative report submitted to the UN Committee on the Elimination of Racial Discrimination largely focused on issues concerning ongoing discrimination of Roma.⁴⁶⁰ However, its activities on the prevention of discrimination against the Roma minority do not include bringing 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* claims to challenge structural discrimination against the marginalised Roma minority in education, housing or healthcare.

⁴⁶⁰ Response of the centre of 20 February 2023 to a request for information of 10 February 2023 (on file with the author).

8 IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

Some information about legal protection against discrimination (including in English) is contained on the website of the Slovak National Centre for Human Rights (the equality body, www.snslp.sk). The Ministry of Labour, Social Affairs and Family runs a website that provides a wider range of information concerning protection against 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.⁴⁶¹ The Ministry of Justice operates a grant scheme to promote, support and protect human rights and freedoms and to prevent all forms of discrimination including all grounds as well as racism, xenophobia, antisemitism and other acts of intolerance, and regularly gives financial support to projects on raising awareness in this area.⁴⁶² The Ministry of Labour, Social Affairs and Family, in response to a request for information about action taken in this area by the Slovak Government in 2022 specifically referred to the status of the Slovak National Centre for Human Rights and its competences to carry out activities in this area.⁴⁶³

- 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.⁴⁶⁴ 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.⁴⁶⁵ The Council has 40 members⁴⁶⁶ 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, persons 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, antisemitism and other forms of intolerance, and the rights of lesbian, gay, bisexual, transgender and intersex persons.⁴⁶⁷

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

⁴⁶¹ The website is available in Slovak at: <http://www.gender.gov.sk/diskriminacia/>.

⁴⁶² Response of the Ministry of Labour, Social Affairs and Family of 19 January 2022 to a request for information of 10 January 2022 (on file with the author).

⁴⁶³ Response of the Ministry of Labour, Social Affairs and Family of 22 February 2023 to a request for information of 10 February 2023 (on file with the author).

⁴⁶⁴ 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/.

⁴⁶⁵ 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/>.

⁴⁶⁶ 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/>.

⁴⁶⁷ 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).

per se for its efficient functioning. It does not have clear and flexible mechanisms for assessing legislation that is under preparation concerning human rights (including the right to non-discrimination) and giving opinions by the Council thereon (including a clear and efficient mechanism for entering the legislative process), and so there have been many instances when the Council did not address human rights and equality issues of critical importance. Similarly, there is no mechanism for monitoring the compliance of the Government and its ministries with the recommendations of the Council and its committees. Furthermore, it can be said that the Government does not take the recommendations of the Council very seriously and that it is often a forum for formal discussion only.

It can be generally noted that in some cases the Government authorities, particularly ministries, when preparing policy documents and legislative proposals, consult experts from NGOs, mostly via establishing working groups. For instance, NGOs were reportedly involved in working groups concerning the preparation of the national strategy and action plans for equality between women and men and equal opportunities for 2021–2027 and the Strategy for equality, inclusion and participation of Roma to 2030 and related action plans for 2022–2024. However, the effective and participative functioning of such groups varies, depending on the state institution establishing and coordinating them. All natural and legal persons including NGOs are also eligible to access the legislative process and comment on legislative proposals at the stage of the interdepartmental comment procedure through the online Slov-lex platform that was established as a space to strengthen direct democracy in Slovakia.⁴⁶⁸ If comments on the draft of the legislation is supported by a larger number of people, it is a collective comment and as such may be the subject of negotiations between a representative of the public and the submitter of the draft legislation. If at least 500 people support the collective comment, the submitter of the bill is obliged to negotiate with representatives of the public in what is called a dispute settlement. In December 2022, the Slovak Government amended the current e-government legislative rules concerning public participation in the legislative process during the inter-ministerial comment procedure. The change concerns two points: 1./ comments during the MPC shall be submitted exclusively via an online platform Slov-lex, no other way will be possible (so far it was possible e.g. in the form of paper sheets), 2./ support for collective comments can only be collected through the online Slov-lex portal; support cannot be collected in any other way. This amendment was widely criticised by civil society organisations, which pointed out that this makes it significantly more difficult for the public to participate in commenting on legislation, as they will be able to do so only through the online platform Slov-lex, which is complicated and requires internet access and computer skills.⁴⁶⁹

- 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 is taking 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 provided no additional information in respect of 2022. It previously described the general framework of communication in this area, noting that dialogue with social partners essentially takes place continuously. Questions concerning discrimination in particular cases (legislative proposals, existing issues in legal provisions, various issues in practice) are addressed with the social partners on an ad hoc basis.⁴⁷⁰

⁴⁶⁸ Online platform www.slov.lex.sk. The public engagement in the legislative process does not apply in exceptional cases if the bill is submitted for approval in an abbreviated mode, which sometimes tends to be used excessively by the bodies with legislative powers.

⁴⁶⁹ See the call of the NGO Via Iuris, which was widely supported by dozens of other NGOs, <https://viaiuris.sk/aktuality/vyzva-vlade-slovenskej-republiky/>.

⁴⁷⁰ Response of the Ministry of Labour, Social Affairs and Family of 19 January 2022 to a request for information of 10 January 2022 (on file with the author).

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'.⁴⁷¹ Between 2012 and 2020, the Plenipotentiary – albeit still remaining an advisory body of the Government and officially accountable to it – was in practice subordinate to the Minister of the Interior with whom the Plenipotentiary was supposed to 'coordinate her/his activities'.⁴⁷² As well, the Office of the Plenipotentiary operated under the Ministry of the Interior.⁴⁷³ However, in 2020, the new Government approved the amendment of the Statutes of the Plenipotentiary and since 1 February 2021, the Plenipotentiary is subordinate to the Office of the Government.⁴⁷⁴ The previous subsuming of the Plenipotentiary and its office under the Ministry of Interior was non-systemic given the cross-sectional thematic focus of their work linked to various Government measures. Moreover, it also had a very negative and dangerous flavour, as part of the Ministry of the 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 treaties approved by the Slovak Parliament and ratified and proclaimed in the manner prescribed by law. According to the amendment to the Constitution approved in 2020, and effective from 1 January 2021, the Constitutional Court is not entitled to decide on the compliance of the constitutional laws with the Constitution.⁴⁷⁵

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.

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 the Judicial Council.⁴⁷⁶

⁴⁷¹ See: https://www.minv.sk/?ulohy_usvrk.

⁴⁷² 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: <https://archiv.vlada.gov.sk/romovia/1794/statut-splnomocnenca-vlady-slovenskej-republiky-pre-romske-komunity.html>.

⁴⁷³ See Article 3(4) of the Statutes of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities.

⁴⁷⁴ Resolution of the Government of the Slovak Republic No. 759 of 2 December 2020, available at: <https://rokovania.gov.sk/RVL/Resolution/18910/1>.

⁴⁷⁵ Constitutional Act, 422/2020, on amending the Constitution of the Slovak Republic.

⁴⁷⁶ Act on Constitutional Court, 314/2018, Section 74.

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 were 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.

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,⁴⁷⁷ 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'.⁴⁷⁸

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.⁴⁷⁹ In the author's opinion, the Ministry of Justice has been falling short of effective execution of all its tasks in this area in recent years, while it is particularly symptomatic that the Ministry of Justice, in recent years, has not yet submitted an update to the Action Plan to Prevent All Forms of Discrimination 2016-2019, as referred to below.

Following the adoption of the National Strategy for the Protection and Promotion of Human Rights in the Slovak Republic in 2015,⁴⁸⁰ on 13 January 2016, the Slovak Government adopted the 'Action Plan to Prevent All Forms of Discrimination 2016-2019'.⁴⁸¹ 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'.⁴⁸² No updated strategies had been adopted by the end of 2022. In January 2021, the Slovak Government adopted the 'Conception against radicalism and extremism' that aims to promote respect for universal values and prevent the emergence of prejudices, stereotypes and hate speech, national, racial, ethnic, religious or other intolerance.⁴⁸³ In August 2021, the Government adopted the Action plan for the protection of persons belonging to the national minorities and ethnic groups 2021 – 2025, which sets out as a general strategic goal the legislative and institutional security of the protection of the rights and status of national minorities.⁴⁸⁴ In December 2021, the Slovak Government adopted the 'Strategy for an inclusive approach in upbringing and education' as a key framework document, which sets out the direction of strategic public policies to bring about change in the education of children, pupils and students towards inclusive education by 2030.⁴⁸⁵

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.⁴⁸⁶ However, as of the end of 2022, this action plan had still not been adopted, which can arguably be attributed to the on-going lack of political will particularly at the Government and parliamentary level. The European Commission against Racism and Intolerance (ECRI) in its report in October 2020 raised on-going deficiencies in the protection of the rights of LGBTI people and called on the Government to develop and implement an action plan for

⁴⁷⁷ Act on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration, 575/2001.

⁴⁷⁸ 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).

⁴⁷⁹ 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.

⁴⁸⁰ Available at: <https://rokovania.gov.sk/RVL/Material/11579/1>.

⁴⁸¹ *Akčný plán predchádzania všetkým formám diskriminácie na roky 2016-2019*. Available at:

http://www.gender.gov.sk/diskriminacia/files/2016/09/AP_ADZ-.pdf.

⁴⁸² *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>.

⁴⁸³ *Koncepcia boja proti radikalizácii a extrémizmu do roku 2024*. Available at:

<https://rokovania.gov.sk/RVL/Material/25631/1>.

⁴⁸⁴ Resolution of the Government of the Slovak Republic No. 461/2021 of 25 August 2021. Available at <https://rokovania.gov.sk/RVL/Resolution/19438/1>. The action plan was submitted by the Office of the Slovak Government and developed by the Government Plenipotentiary for National Minorities.

⁴⁸⁵ *Stratégia inkluzívneho prístupu vo výchove a vzdelávaní*. Available at: <https://www.slov-lex.sk/legislativne-procesy/SK/LP/2021/659>.

⁴⁸⁶ *Akčný plán pre LGBTI ľudí na roky 2016-2019*.

LGBTI persons, in close consultation with civil society.⁴⁸⁷ In December 2022, ECRI in its report on the implementation of its recommendations in respect of the Slovak Republic subject to interim follow-up concluded that the action plan for LGBTI persons was not adopted and reiterated its call on the Slovak Government in this regard.⁴⁸⁸

In April 2021, the Slovak Government adopted the Recovery and resilience plan of Slovakia that was subsequently adopted by the Council of the EU. The plan responds to the crisis due to the pandemic as well as new challenges and sets out a comprehensive package of reforms and investments to be implemented by 2026. The plan was supported by EUR 6.3 billion in grants; 21 % of the funds will support digital transition.⁴⁸⁹

The Government's policy concerning the integration of Roma living in marginalised communities is set out in the Strategy for equality, inclusion and participation of Roma to 2030.⁴⁹⁰ The strategy provides starting points and goals, aiming to eliminate segregation of Roma communities, achieve a significant positive turnaround in social inclusion of Roma and prevent their discrimination. The preparation of the strategy was coordinated by the Office of the Plenipotentiary for Roma Communities and drafted by working groups involving members of NGOs. On 6 April 2022, the Slovak Government adopted the first action plans under this Strategy, setting out particular tasks and activities for its implementation in the period 2022-2024 in all priority areas.⁴⁹¹ However, there are relevant aspects raised by NGOs indicating that the Strategy and the action plans may be falling short of their implementation and in terms of a tangible impact.⁴⁹²

In December 2022, a National Council of the Slovak Republic (the Slovak Parliament) issued a vote of no confidence in the Slovak Government, which subsequently led to the election period being brought forward. The parliamentary elections in Slovakia are scheduled for 30 September 2023. The unstable governing situation in 2022 may arguably have negative impact the adoption of policies regarding anti-discrimination.

⁴⁸⁷ European Commission against Racism and Intolerance (ECRI) (2020) *ECRI report on the Slovak Republic: 6th monitoring cycle*, Council of Europe, para. 29.

⁴⁸⁸ ECRI conclusions on the implementation of its recommendations in respect of the Slovak republic subject to interim follow-up adopted on 7 December 2022. Available at: <https://rm.coe.int/ecri-conclusions-on-the-implementation-of-the-recommendation-in-respec/1680aa6867>.

⁴⁸⁹ *Plán obnovy a odolnosti Slovenska* (Recovery and resilience plan of Slovakia) adopted by the Slovak Government on 28 April 2021 and by the Council of the EU on 13 July 2021. Available at: <https://www.planobnovy.sk/kompletny-plan-obnovy/>.

⁴⁹⁰ Slovak Government (2021), *Stratégia rovnosti, participácie a inklúzie Rómov do roku 2030* (Strategy for equality, inclusion and participation of Roma to 2030). Available at: <https://rokovania.gov.sk/RVL/Material/8177/1>. For additional information see European network of legal experts on gender equality and anti-discrimination, Slovakia, flash report from 10 June 2020, available at: <https://www.equalitylaw.eu/downloads/5399-slovakia-the-slovak-government-adopted-the-strategy-for-equality-inclusion-and-participation-of-roma-till-2030-83-kb>.

⁴⁹¹ *Akčné plány k stratégii rovnosti, inklúzie a participácie Rómov do roku 2030* (Action plans to the Strategy for equality, inclusion and participation of Roma to 2030), adopted by the Government of the Slovak Republic on 6 April 2022, available at: <https://rokovania.gov.sk/RVL/Resolution?NegotiationID=1202>.

⁴⁹² In 2022, a coalition of Slovak NGOs evaluated the Roma Strategy and the related action plan for 2022-2024 and concluded that they both create the conditions for improving the quality of life of Roma from marginalised communities. However, some of the activities are less ambitious and this can be attributed to, for example, departmental rigidities and the ambition to start the implementation of the NRSF with activities that will be easier to manage. Moreover, problems may arise in the implementation of individual activities for a variety of reasons. See Roma Civil Monitor (2022), *Civil society monitoring report on the quality of the national strategic framework for Roma equality, inclusion, and participation in Slovakia*, pp. 39-40. Available at: <https://romacivilmonitoring.eu/wp-content/uploads/2022/09/RCM2-2022-C1-Slovakia-FINAL-PUBLISHED.pdf>.

10 CURRENT BEST PRACTICES

In 2022, the Slovak National Centre for Human Rights (equality body) continued paying increased attention to the issue of artificial intelligence, while following up its activities on this issue from the previous year. It engaged in commenting on upcoming legislative intentions at the level of the European Union (e.g. the Artificial Intelligence Act) and the Council of Europe (e.g. the Council of Europe Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law), as well as in discussions on potential cases of so-called algorithmic discrimination or the protection of human rights and fundamental freedoms. The centre has also remained active as a member of working groups on artificial intelligence and digital governance established at the Ministry of Investment, Regional Development and Informatisation of the Slovak Republic. Moreover, in June 2022 the centre participated in the NHRI Academy organised by ENNHRI and OSCE-ODIHR, focusing on human rights and artificial intelligence. In October 2022, the centre organised an internal workshop focused on strategic planning with regard to future potential cases of algorithmic discrimination.⁴⁹³

The NGO Centre for Civil and Human Rights, within its strategic litigation programme addressing various exposures of racial discrimination against the Roma minority in December 2022, achieved a ground-breaking landmark judgment of the Supreme Court of the Slovak Republic on segregation of Roma children in a Roma-only school. (Details of the judgment are provided in section 12.2.). The judgment was achieved based on its *actio popularis* claim filed in 2015. It is the first judgment of the Supreme Court addressing the systemic and widespread issue of segregation of Roma children in education and recognising the positive obligation on the state for its prevention.⁴⁹⁴ The centre is the only Slovak NGO leading strategic litigation concerning racial discrimination on a long-term, sustainable basis. From the adoption of the Anti-discrimination Act in Slovakia, the centre has invested a lot of resources into the strategic litigation efforts and as a result it has been achieving strategically important court judgments that have significantly contributed to the implementation of this Act over years and spurred public and policy discussion about discrimination against Roma. It links its strategic litigation with monitoring in the field and with advocacy activities in close cooperation with local Roma activists to maximise its strategic impacts towards the overall prevention of discrimination against the Roma in Slovakia. Its strategic litigation exemplifies the importance of this traditional method of promoting human rights of minorities in Slovakia, and it is only thanks to financial support from mainly private foundations that it has been possible to sustain this activity for almost 20 years now.⁴⁹⁵

In 2022, a group of representatives of Slovak NGOs promoting the human rights of LGBTI+ people, the Slovak Institute of Linguistics, the Psychology Department of the Faculty of Arts of the Comenius University and Slovak media and business companies launched an initiative entitled 'Rainbow Compass', within which they developed a set of four tools for media, organisations and individuals who want to talk about LGBTI+ people and issues sensitively, respectfully and without prejudice. These tools include 1. Principles of communication 2. A 'rainbow dictionary' 3. A list of organisations to approach regarding LGBTI+ 4. How to select photos and illustrations when providing information on LGBTI+. The initiative has its own website where all the tools are available. There is no information on the website of the initiative with regard to the evaluation of the impact of these tools in practice.⁴⁹⁶ The initiative was launched with the creative and project support of international collective of communication planners, visual artists and visual storytellers.

⁴⁹³ Response of the centre of 12 April 2022 to a request for information of 6 April 2022 (on file with the author).

⁴⁹⁴ Decision of the Supreme Court of Slovak Republic from 15 December 2022, No. 5Cdo/102/2020. The decision was delivered to the claimant on 3 February 2023, after the cut-off date for this report.

⁴⁹⁵ More information available at: <https://poradna-prava.sk/en/strategic-litigation/>.

⁴⁹⁶ Available at: <https://www.duhovykompas.sk/#top>.

In 2022, the NGO Platform of Families of Children with Health Disabilities launched a media campaign entitled: #IseeWhatIsImportant (#VidimToPodstatne), which addressed the situation of children with disabilities and their parents in the Slovak society. The campaign was about communicating to wider society the importance of seeing in children with disabilities their abilities and potential, not limitations and labels. The campaign also wanted to encourage parents of children with disabilities to search for solutions and ways of including both children with disabilities and their parents in mainstream life.

The campaign used several communication channels – video spot, radio spot, print formats – and cooperated with several Slovak social media influencers. The social media campaign was connected by the hashtag #VidimToPodstatne.⁴⁹⁷

In 2022, the international business company operating in Slovakia as Whirlpool s.r.o continued to give particular attention to hiring long-term unemployed people and especially those from the Roma minority as a disadvantaged group that continues to face discrimination in access to employment in Slovakia. Notably, Whirlpool has established its own educational centre called the 'requalification and training centre of equal opportunities', which gives even people without sufficient education and experience the possibility to work for the company. Its factory is situated in Poprad, Eastern Slovakia – near many marginalised Roma communities. Over the years, Whirlpool has established itself as one of the leaders in employing Roma from marginalised communities in Slovakia. For these activities in 2022, the company was nominated for the Roma Spirit award.⁴⁹⁸

⁴⁹⁷ More information including the created media spots are available at:
<https://www.platformarodin.sk/platforma-rodin/vidimtopodstatne/>.

⁴⁹⁸ The video promoting the company's activities in engaging Roma employees, which was created in the context of its nomination for the Roma Spirit award, is available at:
<https://www.youtube.com/watch?v=7PBBKsnwzfk>.

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 section 3.2.8 above for further details.
- The definition of harassment raises a few questions regarding full compliance with the directives. See section 2.6 for more details.
- The judicial interpretation of indirect discrimination is not in compliance with interpretation given by the CJEU case law. See section 2.5. 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*.⁴⁹⁹ See section 2.1.(c) 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 383/2013 on Childbirth Allowance and on Allowance for More Concurrently Born Children clearly appears to be discriminatory towards Roma women. See section 3.2.6 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 3.2.6 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 still fall short in addressing it effectively. See section 3.2.7 for further details.
- The only legal definition of disability is in Labour Code (Section 40(8)), which is used only for the purpose of identifying a duty to provide reasonable accommodation. See section 2.8 for more 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. for more details.

⁴⁹⁹ 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.

11.2 Other issues of concern

The key issues of concern with regards to the implementation and practical application of the anti-discrimination directives on the national level are the following:

- Barriers to access to courts and to justice in general.
- Extreme length of the judicial proceedings.
- 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.
- 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 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 section 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.
- Hate crimes, hate speech and discrimination against LGBTI+ persons including lack of their legal rights and deep-rooted reluctance of the state authorities to foster their equality.
- Lack of case law.
- Lack of effective implementation of public policies in the field of anti-discrimination.
- Potentially indirect discriminatory policy of financing social housing.
- Lack of mainstreaming of the principle of non-discrimination and lack of coordination among public bodies and institutions responsible for non-discrimination.
- A 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.
- Lack of adequate safeguards in using artificial intelligence.

12 LATEST DEVELOPMENTS IN 2022

12.1 Legislative amendments

There have been no amendments to anti-discrimination legislation in 2022.

12.2 Case law

Relevant discrimination ground(s): Racial or ethnic origin

Name of the court: District Court Košice II

Date of decision: 21 January 2022

Name of the parties: *X.Y and others v. City Košice*

Reference number: 15C/190/2014-650.

ECLI reference: SK:OSKE2:2022:7214229026.26

Address of the webpage: n/a

Brief summary: In 2014, nine complainants of Roma ethnicity filed a case with the District Court Košice II, claiming they were forcibly evicted from their homes in Košice (district of Nižné Kapustníky) in 2012 under the pretext of waste removal by the city authorities. They claimed the violation of their right to dwelling, interference with their human dignity and discrimination. The complainants were offered no alternative accommodation after their homes were demolished, and as a result, they became homeless. Representatives of the city of Košice described the eviction as the removal of an illegal landfill site where 'inadaptable people' had built their dwellings. In 2013, the Public Defender of Rights found that there had been a breach of the constitutional right of the inviolability of the dwelling of the evicted persons. The complainants were represented by a lawyer *pro bono* and the international NGO the European Roma Rights Centre joined the court proceedings as a third party.

The District Court, as a first instance court, upheld the lawsuit, ruling that the City of Košice, by the forced eviction of the complainants, had 1./ unjustifiably interfered with their human dignity and the right to privacy and 2./ committed illegal discrimination against them on the basis of their ethnicity. The Court further reasoned that the defendants had caused the complainants to lose their residence and put them in a situation of uncertainty such that they found themselves without a roof over their heads from day to day. The Court, in line with the claim, specifically ruled that the complainants had experienced discrimination in the form of harassment in the field of providing public services as covered by the domestic Anti-discrimination Act.

Referring to the jurisprudence of the European Court of Human Rights, the District Court 1./ found no legal relevance in the fact that the dwellings in question were built illegally (on land belonging to the Slovak Republic and the defendant), or the fact that these were illegal 'black buildings' and 2./ underlined the specific position of the Roma as disadvantaged and vulnerable minority, therefore requiring special protection.

The Court ordered the defendants to grant each of the complainants financial compensation of EUR 1 000. There is no information available as to whether this decision was appealed.

Relevant discrimination ground(s): Racial or ethnic origin

Name of the court: Regional Court in Bratislava

Date of decision: 27 October 2021, delivered on 4 April 2022

Name of the parties: *Poradňa pre občianske a ľudské práva (Center for Civil and Human Rights) v. the Slovak Republic represented by the Ministry of Education of the Slovak Republic*

Reference number: 10Co/84/2020

ECLI reference: SK:KSBA:2021:1315223696.1

Address of the webpage: <https://poradna-prava.sk/wp-content/uploads/2022/05/rozsudok-KS-BA-MDL-z-27102021.pdf>

Brief summary: A claimant – a Slovak human rights NGO – filed an *actio popularis* claim in December 2015 under the domestic Anti-discrimination Act with the District Court Bratislava III, against the state represented by the Ministry of Education, concerning the documented segregation of Roma children at a primary school in the village of Muránska Dlhá Lúka. The given village had a relatively small marginalised Roma community that was residentially segregated. Before September 2015, all children from the community (approx. 70) attended, until the fourth grade, a small ethnically homogenous Roma-only school located directly in the village, and from the fifth grade moved to the other, bigger schools in nearby villages and towns. All non-Roma children from the village already commuted to the other schools in nearby villages and towns from the first grade. Due to lack of space and capacity at the school in the village, the municipality in April 2014 made an agreement with the Ministry of Education to build a new low-cost modular school building made up of metal containers, located outside the main village area, in very close vicinity to the segregated Roma community. The new building was funded from the state budget under a project by the Ministry of Education. The claimant argued that the education of Roma children in the new low-cost school constituted their segregation and that the Ministry of Education did not take effective measures to prevent segregation. It asked the court to order the Ministry of Education to produce a desegregation plan that would propose effective measures to remove segregation and subsequently to implement the plan. In February 2022, the District Court Bratislava III dismissed the case⁵⁰⁰ and the claimant filed an appeal with the Regional Court in Bratislava.

The Regional Court in Bratislava, in its judgment No. 10Co/84/2020 of 27 October 2021, delivered on 4 April 2022, fully upheld the judgment of the District Court. As an appeal court, it agreed that the respondent had proved by its evidence that it did not violate the principle of equal treatment and that the claimant failed to bear the burden of proof. In particular, it had complied with the conclusion of the first instance court that the respondent had proved that the aim of the modular school, which was built in a locality inhabited only by those from the Roma ethnic group, was not to segregate Roma children and prevent them from meeting children from the majority. It stated that the Roma children attended the Roma-only school because it was located within the school catchment area, to which Roma as well as non-Roma children from the village belong, and that Roma parents did not enrol their children in other nearby schools, unlike parents of children from the majority who decided to do so.

The appeal court disregarded the legal argumentation of the claimant that the first instance court had ignored and made a decision that was contrary to relevant decisions of the European Court of Human Rights concerning the segregation of Roma children in education, in particular *Lavida and Others v. Greece*, in which the ECtHR explicitly stated that, even in the absence of any discriminatory intent, perpetuating the education of Roma children in a public school attended exclusively by Roma, and the renouncing of effective anti-segregation measures – for example, sending Roma children to mixed classes in other schools – cannot be considered as objectively justified by a legitimate aim. The appeal court concluded that the *Lavida* case could not be applied to the present case, as Roma children were equally educated in the Roma-only school; there was no proven lower quality of education in the present school; the Roma children were not denied enrolment in the other nearby schools and they attended the Roma-only school on the request of their parents as this school was the most accessible for them; and that the respondent had refuted the claim that there was a possible intention to segregate Roma children.

The Regional Court also rejected the claimant's proposal to approach the Court of Justice of the EU with a request for preliminary ruling on the interpretation of EU law in this case, reasoning that the questions proposed by the claimant related to the interpretation of national law, which the CJEU is not entitled to provide. The case is now pending before the Supreme Court based on the extraordinary claim (*dovolanie*) submitted by the claimant.

⁵⁰⁰ Decision of the District Court Prešov No. 21C/698/2015 of 6 February 2020. Available at: <https://bit.ly/3vZdxxZ>.

Relevant discrimination ground(s): Racial or ethnic origin

Name of the court: District Court Bratislava III

Date of decision: 29 July 2022

Name of the parties: *Poradňa pre občianske a ľudské práva (Center for Civil and Human Rights) v. Slovak republic represented by Ministry of Health of the Slovak republic and others*

Reference number: 14C/288/2013

ECLI reference: SK:OSBA3:2022:1313229814.9

Address of the webpage:

https://poradna-prava.sk/wp-content/uploads/2022/08/rozsudok-OS-BA-III_romske-izby_anonym.pdf

Brief summary: The claimant – a Slovak human rights NGO – filed an *actio popularis* claim in December 2013 under the domestic Anti-discrimination Act with the District Court Bratislava III against the state represented by the Ministry of Health, the Ministry of Health as a Government body and founder of the state-run hospital itself, and the Faculty Hospital with Polyclinic J. A. Reiman in Prešov. It claimed that the gynaecology and obstetrics wards of the hospital in question had a long-standing practice of placing Roma women in separate so-called 'Roma rooms'. The claimant objected that this practice constituted their segregation on the basis of ethnicity and sex. It argued that it has been documenting segregated Roma rooms in the hospital in question since 2002 and that many Roma women who have given birth there have repeatedly, and for a long time, been reporting this practice. Notably, the practice continued to be reported by the Roma women from 2013 onwards during the course of the court proceedings. The claimant asked the court to order the state-run hospital to remove the discriminatory practice. In addition, it asked to establish the responsibility of the remaining defendant parties – the state and the Ministry of Health – for not taking positive measures that would have effectively removed the existing segregation.

The District Court Bratislava III, in its judgment, dismissed the case. According to the Court, the claimant did not prove that Roma women were placed in separate rooms because of their Roma origin. Although several Roma women confirmed this practice through their testimony during the proceeding, the Court disregarded them and relied more on the testimonies of medical staff.

The Court further held that the placement of Roma women in a separate room in itself does not necessarily have to constitute unlawful segregation and may be justified by the patients' state of health, the occupancy of the maternity ward and epidemiological measures, as well as whether the women themselves preferred to stay in the room with other Roma women. In particular, it pointed out that, according to the defendant hospital, many Roma women wished to be placed in a joint room with other Roma women and that, in that case, the hospital was only respecting the women's wishes.

The Court also rejected as irrelevant the opinion of the Slovak National Centre for Human Rights (the national equality body), which had assessed the practice of placing Roma women in ethnically homogeneous rooms as discriminatory, in violation of the Anti-discrimination Act. The opinion was developed at the request of the claimant, which submitted it to the Court as evidence supporting its legal argumentation. The claimant appealed against the judgment to the second instance court – the Regional Court in Bratislava – where the case is still pending.

Relevant discrimination ground(s): Sexual orientation

Name of the court: Regional Court Žilina

Date of decision: 31 October 2022

Name of the parties: *M. R. v. Directorate of Border and Foreign Police Banská Bystrica*

Reference number: 30S/168/2020

ECLI reference: SK:KSZA:2022:5020200430.3

Address of the webpage: -

Brief summary: A claimant – a citizen of Argentina – got married in his homeland to a male citizen of Slovakia in line with the local legislation. In 2020, he filed an administrative claim against the Slovak Foreign Police after he was refused the granting of permanent residence on the grounds that Slovakia does not recognise same-sex unions. According to the Slovak authorities, their marriage was in violation of the Slovak Family Act. In the claim, the claimant invoked the European Convention for the Protection of Human Rights and Fundamental Freedoms, which protects all forms of family cohabitation. His spouse – a citizen of Slovakia – also joined the court proceedings as a third party.

The Court in its judgment agreed with the claim and annulled the contested administrative decisions. The Court confirmed that the rejection and refusal to grant the claimant permanent residence in this case constituted unjustified discrimination on the basis of sexual orientation and a violation of the right to respect for private and family life and freedom of residence. The Court noted that the interpretation of domestic laws must be approached in such a way as to ensure the protection of fundamental human rights and freedoms without discrimination, while protecting family life (cohabitation) with a close person undoubtedly belongs to such rights. It reasoned in particular that the defendant, the Foreign Police Office, had disregarded the ECtHR judgment in *Taddeucci and McCall v. Italy*, on which the case in question itself was primarily based, according to which the granting of permanent residence exclusively to opposite-sex spouses constituted discrimination against unmarried couples – same-sex partners as against unmarried same-sex partners. The Court considered that this ECtHR case was factually identical to the case under discussion. In a broader context, it also referred to the other relevant jurisprudence of the ECtHR (e.g. *Kopf and Scheck v. Austria*, *Vallianatos and others v. Greece*, *Orlandi and others v. Italy*).

Further, it also specifically referred to the judgment of the CJEU in case C-673/16 (*Coman*), while concluding that the exercise of rights by persons of the same sex who are spouses or registered partners arising under European Union law clearly places such persons on an almost equal footing with couples made up of heterosexual partners, and the state authorities must consistently respect and recognise these rights. The Court also stressed in general that the institution of marriage can be protected without the need to disadvantage other ways of life, and that it had taken into consideration human dignity as the highest value that a person possesses by virtue of his or her humanity. The Court concluded that it is a matter of protecting and respecting human beings and the nature of man as such – the ‘essence’ of man.⁵⁰¹

In addition, according to the Administrative Court, the annulled decisions issued by the administrative authorities also interfered with the right of the applicant’s spouse – a citizen of the Slovak Republic – to family (partner) life and to return to his place of permanent residence in the Slovak Republic, because such a decision restricted his entry into the country where he had family and where he wished to live with his partner.

The case was not framed as an anti-discrimination dispute based on the Anti-discrimination Act, but the administrative case also referred to the prohibition of discrimination laid down by Article 14 of the European Convention and Article 12(2) of the Constitution of the Slovak republic. The decision is the first on this matter in Slovakia and is final.

The administrative authorities have to decide a case again in line with the legal opinion of the Administrative Court, which is legally binding on them.

⁵⁰¹ Decision of the Regional Court in Žilina, No. 30S 168/2020 of 31 October 2022.

Relevant discrimination ground(s): Racial or ethnic origin

Name of the court: Supreme Court of the Slovak Republic

Date of decision: 15 December 2022

Name of the parties: *Poradňa pre občianske a ľudské práva (Center for Civil and Human Rights) v. Slovak Republic represented by Ministry of Education and Town of Stará Ľubovňa*

Reference number: 5Cdo/102/2020

ECLI reference: SK:NSSR:2022:1315209799.1

Address of the webpage:

<https://poradna-prava.sk/wp-content/uploads/2023/02/rozsudok-NS-SR-zo-dna-15122022.pdf>

Brief summary: A claimant – a Slovak human rights NGO, the Center for Civil and Human Rights (Poradňa pre občianske a ľudské práva) – filed an *actio popularis* claim in April 2015 with the District Court Bratislava III based on the domestic Anti-discrimination Act concerning the documented segregation of Roma children at a primary school in the town of Stará Ľubovňa (town district of Podsadek). The school, founded by the municipality of the town, has for a long time been attended solely by socially disadvantaged Roma children from the nearby marginalised Roma community. Non-Roma children living in this town district attended the other primary schools in the town. The claimant argued that the municipality and the responsible state authorities, including the Ministry of Education, had, by not adopting effective measures to eliminate the segregation of Roma children in the given primary school, violated the domestic and international anti-discrimination laws. Instead of adopting remedial measures to eliminate segregation, in 2015 they expanded the capacity of this primary school by adding a new modular building – a low-cost annexe – to the school made out of metal containers. The claimant argued that this latest measure was inappropriate and maintained the segregation of Roma children in this school. In the case, it pointed out that education in an ethnically segregated school is unable to provide socially disadvantaged Roma children with equal educational opportunities and asked the court to order the defendants to draw up and implement a desegregation plan that would ensure the integration of Roma children in other primary schools with the other children in the town.

The District Court dismissed the case in October 2016,⁵⁰² essentially reasoning that the claimant had not proven that the education of Roma children in the school was carried out on the ground of their ethnic origin and failed to bear its burden of proof as it did not sustain a *prima facie* case of discrimination. The claimant filed an appeal to the Regional Court in Bratislava, which in April 2020 fully upheld the judgment of the first instance court.⁵⁰³ It noted that even though the primary school is attended only by Roma children, this situation stemmed from demographic development, and that parents of the Roma children affected agreed with their education in the given school and the situation had arisen without intentional action by the state and local authorities as the defendants in the case. As a result, the claimant filed an extraordinary appeal with the Supreme Court of the Slovak Republic.

The Supreme Court of the Slovak Republic, in its judgment of 15 December 2022, delivered to the parties in February 2023, reversed the judgments of the lower courts. It ruled that the defendant town of Stará Ľubovňa and the state, represented by the Ministry of Education, had violated the principle of equal treatment by failing to take sufficient preventive measures to protect against discrimination and to eliminate discrimination against Roma children at the Podsadek Primary School in Stará Ľubovňa based on their ethnic origin.

The Supreme Court rejected the reasoning of the lower courts and agreed with the legal opinion of the claimant that the education of Roma children in an ethnically homogeneous school in the vicinity of the local marginalised Roma community constituted discrimination against them on the basis of their ethnicity. According to the Supreme Court, the

⁵⁰² Decision of District Court Bratislava III No. 11C351/2015-387 of 6 October 2016.

⁵⁰³ Decision of the Regional Court in Bratislava No. 4Co/260/2017-441 of 29 April 2020.

construction of the modular annexe/extension on the premises of the given primary school had expanded its capacity in such a way that children from the catchment area could attend a school situated as close as possible to their place of residence. However, this effectively separated Roma children from the children of the majority community and segregated them. According to the Supreme Court, this conclusion was not affected by the absence of an intention to discriminate purposefully against Roma children on the part of the defendants. It specifically noted that state institutions are also responsible for de facto segregation that arose spontaneously, e.g. as a consequence of demographic development or the establishment of school districts. In addition, it referred to the established case law of the European Court of Human Rights in Strasbourg in similar cases, to which the claimant had pointed during the court proceedings.

The Supreme Court also pointed to the overall importance of desegregation efforts in education, explicitly stating that 'the state, in cooperation with the municipality, must take effective measures (whether by legislative initiative, the creation of incentive conditions or the creation of school districts) to prevent segregation, not just stand by and refer to the strict, often misinterpreted dictum of the law. The determining factor in any approach is the best interests of the child. Indeed, it is in the interest of society as a whole that also children who come from socially disadvantaged backgrounds grow up to be full members of that society, and desegregation efforts in school education will contribute significantly to this goal.'

In the proceedings, the claimant also asked the Court to order the defendants to jointly draw up a so-called desegregation plan within three months of the judgment becoming final, i.e. to propose, on the basis of an analysis of the situation, effective measures to eliminate the discrimination in question, including the timeframe for their implementation, as well as to propose preventive measures to avoid discrimination in the future. Consequently, the defendants should be obliged to implement this plan within three years. In this respect, the Supreme Court returned the case back to the district court for further proceedings. The district court is obliged to decide this part of the claim after ascertaining the actual facts of the case, also taking into account the enforceability of this verdict. The district court will hear this part of the case in April 2023.

The judgment of the Supreme Court of the Slovak Republic is final in the part finding segregation at the Podsadek primary school in Stará Ľubovňa. The lower courts are bound by its legal opinion and will decide only on the obligation to introduce and implement a desegregation plan.

ANNEX 1: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Slovakia
Date: 1 January 2023

Instrument	Date of signature	Date of ratification	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals ?
European Convention on Human Rights (ECHR)	Signed 21.02.1991	Ratified 18.03.1992	No	Yes	Yes
Protocol 12, ECHR	Signed 04.11.2000	Not ratified	No	No	No
Revised European Social Charter	Signed 18.11.1999	Ratified 23.04.2009	Yes Reservations applied by Slovak Republic: Article 15 Paragraph 3 Article 18 Paragraph 3 Article 19 Paragraph 2, 3, 4c, 8, 10, 12 Article 31	Ratified collective complaints protocol? No	Yes
International Covenant on Civil and Political Rights	Signed 07.10.1968	Ratified 28.05.1993	No	Yes	Yes
Framework Convention for the Protection of National Minorities	Signed 01.02.1995	Ratified 14.09.1995	No	N/A	Yes
International Covenant on Economic, Social and Cultural Rights	Signed 07.10.1968	Ratified 28.05.1993	No	Yes	Yes

Instrument	Date of signature	Date of ratification	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals ?
Convention on the Elimination of All Forms of Racial Discrimination	Signed 07.10.1966	Ratified 28.05.1993	No	Yes	Yes
ILO Convention No. 111 on Discrimination	Signed 25.06.1958	Ratified 01.01.1993	No	N/A	Yes
Convention on the Rights of the Child	Signed 30.09.1990	Ratified 28.05.1993	No	No	Yes
Convention on the Rights of Persons with Disabilities	Signed 26.09.2007	Ratified 26.05.2010	No	Yes	Yes

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