REPORT ON MEASURES TO COMBAT DISCRIMINATION
Directives 2000/43/EC and 2000/78/EC

COUNTRY REPORT 2010

SLOVAKIA

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State of affairs up to 1st January 2011

This report has been drafted for the **European Network of Legal Experts in the Non-discrimination Field** (on the grounds of Race or Ethnic Origin, Age, Disability, Religion or Belief and Sexual Orientation), established and managed by:

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INTRODUCTION

0.1 The national legal system

Explain briefly the key aspects of the national legal system that are essential to understanding the legal framework on discrimination. For example, in federal systems, it would be necessary to outline how legal competence for anti-discrimination law is distributed among different levels of government.

The Slovak Republic is a country with the parliamentary form of government and a statutory law system, its basic law being the Constitution[1] which lays down the scope of guaranteed fundamental rights. The Constitution and other laws are adopted by a unicameral parliament. The Constitution represents the framework and basis of all other laws; no law can be in conflict with the Constitution (should such a law be enacted, the Constitutional Court can, upon a proposal, repeal it, using the prescribed procedure). Furthermore, it is important to note that international treaties on human rights and fundamental freedoms, international treaties for the exercise of which no other law is necessary, and international treaties which directly confer rights or impose duties on natural persons or legal persons and which were ratified by the Slovak Republic and promulgated as prescribed by the law, take precedence over national laws.[2] Slovakia is a party to the European Convention on Human Rights[3] (hereinafter "ECHR") as well as the International Convention on the Elimination of all Forms of Racial Discrimination.[4] It is also important to note that, pursuant to Article 7 paragraph 2 of the Constitution, legally binding acts of the European Union take precedence over laws of the Slovak Republic.

Along with the Constitution, the Act on Equal Treatment in Certain Areas and Protection against Discrimination ("Anti-discrimination Act" hereinafter)[5] adopted by the National Council of the Slovak Republic (the Slovak parliament) on May 20, 2004, has established the basic legal framework of the Slovak anti-discrimination law.

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[1] Ústava Slovenskej republiky č. 460/1992 Zb. v znení neskorších zmien [The Constitution of the Slovak Republic No. 460/1992 Coll. as amended] (Ústava Slovenskej republiky), ("Constitution" hereinafter). The English text of the Constitution can be found at www.concourt.sk. All other laws published in the Collection of Laws from 1998 onwards can be found in the Slovak language at www.zbierka.sk.

[2] Article 7, paragraph 5 of the Constitution that came into effect on 1 July 2001, in the wording of the latest amendment in February 2001 - Constitutional Statute No. 90/2001 Coll. Until then, the precedence of international human rights instruments over the national law was guaranteed only if the international law provided for "broader fundamental rights and freedoms" than the relevant national law.

[3] Oznámenie Federálneho Ministerstva zahraničných vecí č. 209/1992 Zb. [Announcement of the Federal Ministry of Foreign Affairs No. 209/1992 Coll.]. The Slovak Republic signed but has not yet ratified Protocol No. 12 to the ECHR.

[4] Oznámenie Federálneho Ministerstva zahraničných vecí č. 95/1974 Zb. [Announcement of the Federal Ministry of Foreign Affairs No. 95/1974 Coll.]

[5] Zákon č. 365/2004 Z. z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (Antidiskriminačný zákon) [Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination, amending and supplementing certain other laws (Anti-discrimination Act)], as amended

The Anti-discrimination Act came into force on July 1, 2004. The Act in its provisions stipulates in more detail the constitutional guarantees of equal treatment. It extends, in some aspects, the scope of the anti-discrimination regulation over the fundamental rights and freedoms guaranteed by the Constitution.

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"[6]. The duty to observe the principle of equal treatment is defined as consisting in the prohibition of discrimination[7] on the prohibited grounds (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[8] or other status)[9], and also in "adopting measures for protection against discrimination"[10] (without specific reference to prohibited grounds of discrimination) – which is legislatively framed as a legal duty. The Anti-discrimination Act also stipulates that "when observing the principle of equal treatment, it is also necessary to take into consideration good morals for the purposes of extending the protection against discrimination"[11]. Thus, the duty to follow good morals does not have an independent legally enforceable character and can be perceived more or less as giving an interpretative framework to the provision on the content of the duty to observe the principle of equal treatment.

According to Section 3 para 2 of the Anti-discrimination Act, "the principle of equal treatment only applies in connection with rights of persons that are stipulated by special laws."

Although this provision may on the one hand appear to be a practical and technically feasible way of transposing the Directives (discrimination is usually taking place in legal relations that are regulated by the legal order, the rights can have a very wide scope and meaning as they are not defined as fundamental rights, and do not even have to be explicit), problems arise in legal relationships where only one of the sides is a clear and incontestable rights-bearer as against the other side. For example, in situations connected to sexual harassment of teachers carried out by pupils/students, pupils/students are clear bearers of the right to education as against the teachers (the rights of students/pupils stem from school legislation), but students/pupils have no explicit and also hardly an implicit duty to treat their teachers well and in a non-discriminatory manner (this duty is rather incumbent on schools as teachers´ employers).

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[6] See Section 3 para 1 of the Anti-discrimination Act.
[7] According to Section 2a para 1 of the Anti-discrimination Act, discrimination can have the following forms: direct discrimination, indirect discrimination, harassment, sexual harassment, victimisation, instruction to discriminate and incitement to discriminate.
[8] Lineage and gender both stand for the Slovak word *„rod"* which can be translated as either of these.
[9] See Section 2 para 1 of the Anti-discrimination Act.
[10] See Section 2 para 3 of the Anti-discrimination Act.
[11] See Section 2 para 2 of the Anti-discrimination Act. Good morals are not legally defined in any piece of the Slovak legislation. By good morals are understood generally recognized principles of behaviour in legal relationships – honesty, non-abusive rights exercise etc.

This means it is highly questionable whether students/pupils are legally obliged not to treat their teachers in a discriminatory manner under the Slovak legislation. Besides, the rigid and exclusive reference to "laws" raises serious concerns about proper implementation of the Directives, as it excludes other forms of generally binding legal acts than laws (e. g. governmental decrees, ministerial ordinances, generally binding ordinances of municipalities and self-governing regions – that are also bound to observe the principle of equal treatment) from its application. Thus if the Slovak Republic wanted to exclude a matter that would otherwise be falling under the scope of Directives from the scope of their application in the national legal system, it could regulate the particular matter by generally binding legal acts of lower legal force than laws and thus circumvent the duty to properly transpose directives.

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

0.2 Overview/State of implementation

List below the points where national law is in breach of the Directives. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report.

This section is also an opportunity to raise any important considerations regarding the implementation and enforcement of the Directives that have not been mentioned elsewhere in the report.
This could also be used to give an overview on the way (if at all) national law has given rise to complaints or changes, including possibly a reference to the number of complaints, whether instances of indirect discrimination have been found by judges, and if so, for which grounds, etc.

Please bear in mind that this report is focused on issues closely related to the implementation of the Directives. General information on discrimination in the domestic society (such as immigration law issues) are not appropriate for inclusion in this report.

Please ensure that you review the existing text and remove items where national law has changed and is no longer in breach.

The Anti-discrimination Act basically meets the minimum standards determined by the Directives[12], with some exceptions listed below.

[12] Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework of equal treatment in employment and occupation (hereinafter "Directives").

Together with other laws making reference to the Anti-discrimination Act and/or containing further provisions on protection against discrimination, it goes beyond the scope of the Directives in some instances (such as the grounds protected, the existence of the judicially enforceable duty to adopt measures to prevent discrimination, the existence of *actio popularis* etc.). The Directives were transposed as of 1July, 2004.

These are the main instances of incorrect/insufficient/otherwise problematic transposition:

- The protection against discrimination guaranteed under the Anti-discrimination Act is only provided in connection with "rights of persons provided for under special laws" regulating the fields falling under the material scope of the directives.
  Although the reference to rights provided for in national legislation is in principle not a problem (the act does not insist on fundamental rights and freedoms and does not say that the rights have to be expressed in the respective legislation explicitly), the exclusive reference to "laws" is very problematic as it may exclude various areas and legal regulation (such as social advantages provided by municipalities through their generally binding ordinances, or benefits or rights provided by governmental legislation of lower legal force than laws) and even lead to circumventing the duty to properly implement directives on the side of the State through adopting generally binding legal acts other than laws. It may also lead to reducing the scope of protection provided to certain categories of persons in certain environments (for example to teachers as against pupils or students).See mainly Chapters 0.1 and 3.2.7 for further details.
- Although the definition of indirect discrimination contained in the Anti-discrimination Act seems to be more favourable than the definition contained in the directives in some aspects (individual instead of collective approach, no requirement of "specific" disadvantage), the fact that it does not seem to admit any conditionality with regard to the disadvantageous impact casts doubts on whether the definition of indirect discrimination is in full compliance with the directives (under the definition contained in the Directive it is sufficient that the provision, criterion or practice in question "would put" persons having a particular feature at a disadvantage, whereas the definition in the Slovak Anti-discrimination Act requires that the apparently neutral regulation, decision, instruction or practice that "puts" a person at a disadvantage; see also Chapter 2.3 for more details).
- The definition of harassment contained in the Slovak Anti-discrimination Act does not explicitly stipulate that the conduct in question shall be unwanted. Also, following a systematic interpretation of the Anti-discrimination Act, it seems that pursuant to this act harassment has to take place "on" one of the prohibited grounds, not "in relation" to them as the directives stipulate, which may be restrictive when compared to the directives´ requirements (see also Chapter 2.4 for more details).

- The definition of disability, existing in labour and social security legislation (the Anti-discrimination Act does not contain such definition) is very restrictive as compared to the definition as developed by the Court of Justice of the EU in *Chacon Navas* (see Chapter 2.1.1).
- The Act No. 235/1998 Coll.[13] On Childbirth Subsidy on Subsidy to Parents of Concurrently Born Three or More Children or to Parents of within Two Years Repeatedly Born Twins clearly appears to be indirectly discriminatory towards Roma women, in particular in its sections 3 paragraph 5 and 3a paragraph 4. Section 3 paragraph 5 stipulates that the woman who after birth left her child in a maternity hospital without prior consent of her physician has no right to a childbirth subsidy including extra subsidy for the first born child (Section 3a, paragraph 1a). It has been proved by statistics that 100 % of women leaving the hospital after birth are of Roma origin, and in majority of cases they come back to pick up their child. The legitimacy, necessity and proportionality of the regulation is more than questionable.
  The same can be said about Section 3a paragraph 4 on the supplement to the birth subsidy which states that the supplement entitlement can only come into existence if the respective woman has visited gynaecologist once a month from the fourth month of pregnancy till giving birth. The act also contains other discriminatory provisions. See Chapter 3.2.7 for more details.
- The Labour Code still contains a few specific provisions that are discriminatory (either directly or indirectly or both) in relation to family/marital/personal status and with regard to sexual orientation. These concern paid leave in special personal circumstances (see Chapter 4.5 for more details).
- The concept of shift in the burden of proof only applies to judicial proceedings (and not to administrative proceedings carried out, for example, by labour inspectorates or inspectorates of the Slovak Trade Inspection). This makes it almost impossible for administrative bodies that are formally authorised to identify and sanction breaches of the principle of equal treatment to carry out their responsibilities in the field of equality efficiently.
- Invalidity of job termination is not explicitly contained among the claims that can be invoked before courts relying on the Anti-discrimination act in cases of discriminatory job termination. Although the right to claim invalidity of job termination is contained under a special procedure provided for by the Labour Code and theoretically can also be invoked under the Anti-discrimination Act, the first information on the practice available shows that courts may tend to exclude these claims into separate proceedings and so increase the costs and decrease effectiveness and legal certainty of the proceedings. (See Chapter 6.1 for further details.)
- NGOs cannot recover costs of legal representation from defendants in cases of successful anti-discrimination claims brought to courts. This type of legal regulation creates an absurd situation that those who have been affected by discrimination (plaintiffs) and/or those who assist them to assert their rights pay for someone's else's discriminatory behaviour.

[13] Coll. is an abbreviation for the official „Collection of Laws of the Slovak Republic".

This might also be the reason why there have so far only been a very few instances when NGO have represented persons affected by discrimination before courts formally (the representation is almost always provided by cooperating attorneys). (See Chapter 6.2 for further details.)

- Segregation of Roma children remains a very serious problem. Albeit formally prohibited after the adoption of new school legislation in 2008[14], there seem to be indirectly discriminatory legislative provisions (mainly Section 13 of the Ordinance of Ministry of Education No 3202008 Coll. on Primary School that contains provisions on placing children into "specialised classes") as well as practices (such as the process of diagnostics) that amount to segregation and other forms of discrimination of Roma children in education (see Chapter 3.2.8 for further details).
- From 1 September 2009 an amendment of the Act on State Language is in effect. The amendment brought quite many strict rules with regard to the duty to use the Slovak language in the public (such as in schools, when providing medical services or social services etc.) that may also have indirect discrimination implications with regard to race, ethnicity, nationality etc.
- It is very likely that some of its provisions are not in compliance with the Race Equality Directive: for example, the requirement to draft all the legal acts in employment relationship in the state language, or the requirement for health professionals to predominantly use the state language in communication with patients (another language can only be used if a patient does not have command of the state language or is a member of a national minority). (See also Chapter 2.3 section f) for more details).
- Act No. 308/1991 Coll. on Freedom of Religious Belief and the Status of Churches and Religious Societies amended in May 2007 can be discriminatory on the ground of religion for members of certain religions or religious societies. The amendment introduced much stricter rules for obtaining State registration. The registered churches and religious societies are significantly advantaged in regard to legal and economic environment in which they operate.(See more in Chapter 2.1.1)

0.3 Case-law

Provide a list of any <u>important</u> case law within the national legal system relating to the application and interpretation of the Directives. This should take the following format:

Name of the court
Date of decision
Name of the parties
Reference number (or place where the case is reported).
Address of the webpage (if the decision is available electronically)

[14] Zákon č. 245/2008 Z. z. o výchove a vzdelávaní (školský zákon) a o zmene a doplnení niektorých zákonov, v znení neskorších predpisov [Act No 245/2008 Coll. on Education (School Act) and on amending and supplementing certain laws, as amended].

Brief summary of the key points of law and of the actual facts (no more than several sentences)
➔Please use this section not only to update, complete or develop last year's report, but also to include information on important and relevant case law concerning the equality grounds of the two Directives (also beyond employment on the grounds of Directive 2000/78/EC), even if it does not relate to the legislation transposing them - e.g. if it concerns previous legislation unrelated to the transposition of the Directives

Name of the court: The Constitutional Court of the Slovak Republic
Date of decision: 15 October 1998
Reference number: PL US 19/1998
Address of the webpage: http://www.concourt.sk/Zbierka/1998/8_98s.htm
Name of the parties: A group of Members of Parliament against the Parliament of the Slovak Republic
Brief summary: The case dealt with statutory mandatory ethnic quotas in local municipality elections.

These quotas reserved a certain percentage of seats in local parliaments for Slovaks - the representatives of majority population - in the constituencies in which ethnic Slovaks are a minority.

The Constitutional Court abolished these provisions by reference to the general anti-discrimination principle (Art. 12 of the Constitution), and stated in its reasoning that, *"irrespective of the legal force of a legal act, neither the legal act nor its application by public administrative bodies can favour or disadvantage certain groups of citizens in their access to elected and other public offices (...)" The Constitution of the Slovak Republic does not contain any provision that could be interpreted as justifying any policy permitting the restriction or modification of the fundamental rights of citizens with a view to improving the situation of persons belonging to ethnic minorities or groups."*

Name of the court: The Constitutional Court of the Slovak Republic
Date of decision: 11 December 2003
Reference number: PL. ÚS 10/02
Address of the webpage:
http://www.concourt.sk/rozhod.do?urlpage=dokument&id_spisu=14853
Name of the parties: A group of Members of Parliament against the Parliament of the Slovak Republic
Brief summary: The Constitutional Court examined constitutionality of a legal provision regulating work of students working on temporary basis stated that preferential treatment for certain groups of people (women, juveniles and disabled) can be justified under Art. 38 of the Constitution: *„Legal provision favourising certain group of persons, cannot be considered as violating the principle of equality just for this reason. In the areas of economic, social, cultural and minority rights are the principles of favouritism, which are appropriate, not only acceptable, but sometimes necessary in order to eliminate natural inequalities in different groups of people.*

This is confirmed by the Constitution, which by certain fundamental rights directly anticipates preferential treatment of certain groups of natural persons (women, juveniles, disabled) and gives to this favouritism constitutional basis."

Name of the court: District Court in Zvolen
Date of decision: June 11, 2003
Reference number: No. 7C 190/02-309
Brief summary: Decision is based on the anti-discrimination provisions of the Labour Code and was made before the adoption of the Anti-discrimination Act. The plaintiff (a woman)[15], a research worker with more than 20 years long working experience in the field of forestry filed an action against her employer to the court since she was excluded from the position of a coordinator of a project, even though she worked out the project proposal and she was mentioned as the coordinator of the project in the project documentation. The employer decided on her exclusion without consulting her and he appointed another employee, a less experienced man with lower qualification, to be a coordinator.

The plaintiff sustained that such decision constituted an act of direct discrimination under the Section 13 of the Labour Code. The District Court in Zvolen decided in favour of the plaintiff and declared the change in the personnel engagement invalid.

Section 13 of the Labour Code guaranteed to employees all rights in employment relationships without direct or indirect discrimination in the ground of sex, marital and family status, race, colour of skin, language, age, state of health, belief and religion, political or other opinion, trade union activity, national or social origin, nationality or ethnicity, property, lineage or other status, except for case stipulated by law or when there is a factual reason for carrying out work based on prerequisites or requirements and nature of activity which an employee is to carry out.

Name of the court: The Supreme Court of the Slovak Republic
Date of decision: 26 August, 2003
Reference number: No. 2CDO 67/03
Brief summary: The decision was based on the anti-discrimination provisions incorporated in the Labour Code. The Supreme Court decided upon an extraordinary judicial remedy for a woman employee who, while on maternity leave, was notified of the termination of her employment (nurse in a public hospital). The reason for the job termination was her failure to take an oath of office according to the new law on public service. The employer informed the employees of their obligation through the notice board in the work place. The dismissed employee did not get any information since she was at home with her baby on regular maternity leave. The District Court declared the dismissal invalid. However, the court of second instance (Regional Court) changed the decision of the District Court and confirmed the termination of her employment.

[15] The copy of the decision was handed to the author with names of the participants deleted

The Supreme Court, examining the Regional Courts' decision, stated: „*Since the employer did not create relevant opportunity for taking the oath of office, the employment has not been terminated under Article 54, par. 2 of the Act on public service. ...The conduct of the defendant towards the petitioner is also to be considered as discriminatory. The defendant put at a disadvantage a certain group of its employees who where on maternity or further maternity leave, when it did not inform them, as it informed the other employees, about the date of taking the oath and about changes in their employment. Therefore it acted in contradiction to the prohibition of discrimination, which is regulated by Art. 13 of the Labour code.*"

Name of the court: The District Court in Michalovce and the Regional Court in Košice
Date of decision: 31 August 2006 (District Court in Michalovce), 25 October 2007 (Regional Court in Košice), 29 January 2008 (District Court in Michalovce), 15 July 2010 (Regional Court in Košice)
Reference number: No. 12C/139/2005 (District Court in Michalovce), 2Co/430/2006-148 (Regional Court in Košice – first decision of appeal), 2Co/115/2008-192 (Regional Court in Košice – second decision of appeal)
Name of the parties: Not published
Brief summary: Three Roma activists lodged a petition with the Michalovce District Court against an owner of a bar. They claimed discriminatory treatment on the ground of their ethnicity and requested that the owner of the bar be ordered to issue a written apology and to pay financial compensation. Three Roma activists, together with activists from the NGO Poradňa pre občianske a ľudské práva (the Centre for Civil and Human Rights) who later followed them, decided to use the services of a local bar and to test it in its policies towards customers of Roma ethnic origin. They were refused access into the bar as they were not able to prove a "club membership" (i.e. they were not in possession of "club cards"). They made a sound recording of the encounter with the bar personnel.

The Non-Roma activists from Poradňa who followed them few minutes later had no problem entering the bar. The court ordered the owner to issue a written apology but it did not grant any financial compensation which was claimed by the applicants (it argued, inter alia, that the direct discrimination did not take place in public and that the plaintiffs must have expected the discrimination, given the whole action was planned). The court failed to state on what ground discrimination occurred and at the same time it did not accept the applicant's arguments that they were discriminated against on the ground of their ethnicity.

On the basis of an appeal submitted by the applicants the Regional Court in Košice abolished the decision and returned it back to the first instance court for a new decision. The Regional Court in Košice expressed its binding legal opinion that there had been discrimination on the ground of ethnicity.

The Court also held that "when deciding the claim it should be borne in mind that in proceedings under the Anti-Discrimination Act, the principle of the so-called reverse burden of proof[16] applies where the one who is sued by the injured person must prove that the principle of equal treatment was not breached".

On 29 January 2008 the Michalovce District Court decided that there has been discrimination on the ground of ethnic origin and obliged the defendant to send the victims a written apology. The court has refused again the applicants´ claim for financial compensation. The applicants therefore appealed against this part of the judgement. It is, however, important to note that the District Court Michalovce accepted a transcribed sound recording that was produced by the Roma activists in front of the club and submitted as evidence in the proceedings. The District Court Michalovce stated that "no provision of the Civil Procedure Act nor any other piece of legislation prevents [a court – note of the author] from carrying out evidence - transcript of a sound recording which was made in the public and which in no way interferes with the privacy of the parties to the proceeding or of third parties."

On 15 July 2010, The Regional Court Košice as an appeal Court upheld the decision of the District Court Michalovce. The injured Roma activists, together with activists from Poradňa, are considering what kind of further legal action to take on either the national or international level.

Name of the court: The District Court Kežmarok
Date of decision: 10 November 2006
Reference number: No. 3C 157/05
Name of the parties: Not published
Brief summary: The District Court decided on another testing case in which two Roma children were refused to be served in a confectionery. The court decided that there was direct discrimination that had occurred on the ground of ethnicity. The court did not grant any financial compensation as, according to the court the children (when testing) had expected to be refused service and as a consequence of this expectation there was no cause to award the compensation. The petitioners lodged an appeal against the decision. According to information provided by the Regional Court in Prešov in February 2011 on request of a co-author of this report, the plaintiffs have eventually withdrawn their lawsuit and hence the proceedings came to an end.

Name of the court: The Constitutional Court of the Slovak Republic
Date of decision: 18 October 2005
Reference number: PL. ÚS 8/04
Name of the parties: The Government of the Slovak Republic against the Parliament of the Slovak Republic

[16] The court used the term „reverse burden of proof", although the Slovak laguage has a word for „shift in burden of proof".

Brief summary: The Constitutional Court decided that Section 8, paragraph 8 of the Anti-discrimination Act is not in compliance with the Constitution. The impugned provision introduced a general positive action regulation in relation to racial and ethnic minority: *"With a view to ensuring full equality in practice and compliance with the principle of equal treatment specific balancing measures to prevent disadvantages linked to racial or ethnic origin may be adopted."*

The Constitutional Court decided that Section 8(8) of the Anti-discrimination Act is not in compliance with:

- Art. 1, paragraph 1 of the constitution (The Slovak Republic is a sovereign, democratic state governed by the rule of law. It is not bound to any ideology or religion.),
- Art. 12 first sentence of the paragraph 1 of the constitution (All human beings are free and equal in dignity and in rights.) and
- Article 12, paragraph 2 of the constitution (Fundamental rights shall be guaranteed in the Slovak Republic to everyone regardless of sex, race, colour, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, descent or any other status. No one shall be aggrieved, discriminated against or favoured on any of these grounds.).[17] (See more in Chapter 5)

Name of the court: The District Court Košice
Date of decision: 28 March 2007
Name of the parties: Not published
Brief summary: The case was iniciated by a Romani man who was refused service in a local pub. The court did not accept the explanation of the pub owner that his pub is a private one and access to it is only for the club members.
The court declared that there was an unjustified direct discrimination in access to services on the ground of ethnic origin. The court ordered the defendant to issue a written apology to be sent to the Roma man and to be exposed at the entrance of his pub for 30 days. In addition the court awarded the Roma man non-pecuniary damages to be paid by the defendant in the amount of 20 thousand Slovak crowns (approx. 600 EUR). It was the very first case based on the Anti-discrimination Act in which the court awarded damages for discrimination on the ground of ethnic origin. At the same time it is the first case of direct discrimination of Roma in access to services which does not rely on situation testing to prove the discrimination. The decision is not final as there was an appeal lodged against the decision.

Name of the court: The District Court Banská Bystrica, The Regional Court Banská Bystrica
Date of decision: 20 November 2007

[17] Decision of the Constitutional Court, PL. ÚS 8/04, http://www.concourt.sk/S/s_index.htm

Reference number: No 8C/119/2006 – 107 The District Court Banská Bystrica
Address of the webpage:
http://jaspi.justice.gov.sk/jaspiw1/htm_sudr/jaspiw_maxi_sudr_fr0.htm), 27 March 2008 (The Regional Court Banská Bystrica), No 12 Co/6/08[18] (upheld the decision of the district court; not available)
Name of the parties: anonymised
Brief summary:
The applicant was a 38-year-old unemployed man who saw a violation of the prohibition of discrimination in publishing a job advertisement by the defendant through which the defendant intended to fill a vacancy for a technician. The condition stated by the defendant for the job of the technician was that the applicant must be a "disadvantaged job seeker younger than 25 years". This was pursuant to the defendant´s contract with an office of labor, social affairs and family (concluded under the Act on Employment Services[19]) under which the defendant committed himself to create four jobs for "disadvantaged applicants" (i. e. for applicants younger than 25 years of age who have completed their systematic preparation for an occupation through a daily form of study in a time period shorter than two years ago and have not yet acquired their first regularly paid job) and the labour office to grant non-returnable financial support to create these jobs. The applicant alleged that the age condition contained in the job advertisement was the only reason that had deterred him from applying for the job.

The District Court Banská Bystrica concluded that the defendant had not breached the Anti-Discrimination Act. The court justified its decision in the following way:

"The defendant has not committed discriminatory behaviour (…) by the wording of an advertisement that he published in a newspaper called Pardon because he acted in accordance with section 8 para 3a of the act No 5/2004 Coll.[20] when he stated, as a condition for admission to a job, an age limit for a job applicant who is a disadvantaged job applicant in the sense of section 8 para 3a of the act No 5/2004 Coll., i. e. a citizen younger than 25 years of age who has completed his systematic preparation for an occupation through a daily form of study in a time period shorter than two years ago and has not yet acquired his first regularly paid job (further on as "school graduate") and (because he acted in accordance with) (…) the conditions stated in a contract that he [the defendant] had concluded with the Office of Labour, Social Affairs and the Family. The defendant has therefore pursued a legitimate aim and acted in accordance with special regulations (…)."[21]

[18] The Court probably made a mistake in the official judgement as it states the date of issue of the judgement of the regional court is 27 March 2007. However, this would not have been possible as the district court was deciding on 20 November 2007 and regional courts´ decisions always follow district courts´ ones.
[19] Act No 5/2004 Coll.
[20] Zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov v znení neskorších predpisov [Act. No 5/2004 Coll. on Employment Services, amending and supplementing certain other laws, as amended].
[21] The District Court Banská Bystrica, decision No 8C/119/2006 – 107 from 20 November 2007.

Although the applicant appealed, the appellate court (the Regional Court Banská Bystrica) upheld the decision of the district court.

Name of the court: The Constitutional Court of the Slovak Republic
Date of decision: 30 April 2009
Reference number: No IV. ÚS 16/09
Address of the webpage:
http://www.concourt.sk/rozhod.do?urlpage=dokument&id_spisu=300198
Name of the parties: PaedDr. J. D. (an initiator of a constitutional complaint on a judgement of the District Court Trnava)
Brief summary:
The subject of the complaint was the complainant's allegation that the Regional Court in Trnava, by its ruling from 27 November 2007 which upheld the decision of the District Court in Galanta from 26 April 2007 on rejection of the plaintiff´ s claims concerning alleged violations of his personal rights and of the principle of equal treatment by the defendant, violated his fundamental right to a fair trial under the Art. 46 para 1 of the Constitution of the Slovak Republic. One of the alleged reasons for the alleged breach of the right to a fair trial was, according to the complainant, the fact that the regional court did not apply the statutory provisions on reversed burden of proof correctly.

The Constitutional Court decided that the complaint was manifestly unfounded. Part of the constitutional court's argumentation regarding shift in the burden of proof was as follows:

"[B]urden of proof does not only and exclusively burden the defendant but it also burdens the plaintiff. The plaintiff 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 plaintiff 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, he must allege that his race or ethnic affiliation (origin) is the inducement for the discriminatory action. It is only thereafter that the burden of proof is shifted onto the defendant who has the right to prove her or his allegations that she or he has not breached the principle of equal treatment.

(…) [I]n order for the burden of proof to shift, it is not enough that the complainant declares himself to be of Roma ethnic origin and that he was notified on and sanctioned by the defendant for breaching employment discipline. [I]t was important that the complainant substantiates his allegations by additional facts establishing unequal treatment."

Name of the court: District Court Prievidza
Date of decision: 14 November 2007; the decision is final from 31January 2008.
Reference number: 7C/161/2005

Name of the parties: not published
Brief summary:
The case was lodged by an applicant who was working as the head of station-care services and a crisis centre. She sought compensation for non-pecuniary damages in the amount of 500,000 Sk (16 597 euro) for alleged discriminatory treatment by her employer, comprising in, *inter alia*, depriving her of her powers, excessive control of her work performance, requirements on her to carry out work that was not contained in her labour contract, accusing her of shortcomings in work-related documentation which however proved not to have been controlled by her employer – none of which proved to have been applied against other employees. She did not seek moral satisfaction against the defendant. She did not invoke any grounds on which she had been allegedly discriminated against.
The District Court Prievidza, deciding that the treatment of the applicant was indeed discriminatory, ordered the defendant to pay the applicant 120 000,- Sk (3 983, 27 euro) as non-pecuniary damages.

With regard to the fact that the court awarded financial compensation of non-pecuniary damages, the court argued in the following way:

"(…) [T]he employment relationship between the parties has already been terminated, and hence awarding non-pecuniary – moral satisfaction (by obliging the defendant (…) to send an excusatory letter or to apologise publicly in front of the current employees) would be so enfeebled that it would in a way lose its function, it would be ineffective. Therefore, even if the plaintiff would have claimed awarding an adequate [non-pecuniary] satisfaction, the court would consider, pointing to the facts listed, the possibility of awarding pecuniary satisfaction."
The court also added that *"[n]on-pecuniary satisfaction does in no way serve as compensation for a damage sustained, in particular for a loss of income. Loss of income is in its essence a pecuniary injury (…)"*.

The court did not deal with the fact that the plaintiff did not invoke any particular grounds of discrimination against her, nor it identified, on its own initiative, any grounds on which the plaintiff was discriminated against. It only made a general enumeration of the prohibited grounds of discrimination.

Name of the court: The Supreme Court of the Slovak Republic
Date of decision: November 2009.
Reference number: Decision not available.
Name of the parties: Not available
Brief summary: The Supreme Court confirmed that a decision of an office of labour, social affairs and family not to pay a Roma woman (a plaintiff supported by an NGO Poradňa pre občianske a ľudské práva) a child-birth subsidy was not in accordance with the law. The refusal to pay the subsidy followed an indirectly discriminatory provision (Section 3 para 5) of the Act No. 235/1998 Coll. On Childbirth Subsidy, on Subsidy to Parents of Concurrently Born Three or More Children or to Parents of within Two Years Repeatedly Born Twins that prohibits that the subsidy be paid to "a woman who after birth left her child in a maternity hospital, without prior consent of

her physician". However, although the plaintiff argued before the court that the provision was indirectly discriminatory on the ground of ethnicity (see Chapter 3.2.7 for more details), the court did not deal with the alleged indirect discrimination at all. Instead, its reasoning was based solely on interpreting the concept of "leaving a child" in connection with which it argued that the office of labour in question has not examined the facts of the case sufficiently (regarding whether the plaintiff had the intention to "leave the child" or not).

Name of the court: District Court in Prešov, Regional Court in Prešov
Date of decision: 15 June 2009 (district court), 13 May 2010 (regional court)
Name of the parties: not known officially
Reference number: 13Co/44/2009
Address of the webpage: The ruling is not available online.
Brief summary: At the beginning of 2008 eight Roma plaintiffs submitted a legal action against the Town of Sabinov and the Ministry of Construction and Regional Development. Relying on the provision on housing in the Anti-discrimination Act and the International Convention on the Elimination of All Forms of Racial Discrimition, they claimed discrimination in provision of housing, alleging segregation on the ground of ethnicity. The case concerned the removal by the Town of Sabinov of Roma families who had lived in the centre of the town of Sabinov in lucrative houses (mainly from the perspective of their location that made them attractive for business or housing purposes) to a new place that was located one kilometre from the town periphery (where only Roma people were moved to). The new place chosen by the municipality was totally isolated from the town and had a very poor infrastructure.

The plaintiffs urged the court to decide that the defendants breached the principle of equal treatment and to order the provision of better infrastructure in their new place of residence (this is further precised in the lawsuit as well as in the ruling and encompasses for example the demand that the defendants provide a bus link between the Sabinov town centre and the plaintiffs´ new place of residence or that the defendants provide a shop with basic goods in the plaintiffs´ new place of residence). They also asked the defendants to pay to each 3,319.39 € for the damage they suffered. The plaintiffs partially won their case before the District Court in Prešov on 15 June 2009, with the court ruling that the town of Sabinov as well as the Ministry of Construction and Regional Development breached the principle of equal treatment and ordering the defendants to pay each of the plaintiffs 1,000 €. In this ruling, the court emphasised the segregation component, the breach of the duty to adopt measures to prevent discrimination, a need for a strict scrutiny test in case of a "suspicious criterion" consisting in ethnicity (the court referred here to the EctHR´s *DH v Czech Republic* judgement), and noted that the concept of formal equality is "already obsolete". The defendants appealed the decision and on 13 May 2010, the appellate Regional Court in Prešov changed the district court ruling, fully dismissing the claims of the initial plaintiffs.

The Regional Court in Prešov based its decision on the argument that although the lower court has correctly established the facts of the case, it has not interpreted them correctly under the existing law. The court, referring to Section 9 of the Anti-

discrimination Act (enumerating the possible claims in cases of breaches of the principle of equal treatment in an open-ended list), held that no provision of the Slovak law enables a court to declare that the principle of equal treatment has been breached. It also ruled that given the fact that the Ministry of Construction and Regional Development (the second defendant) provided the funding for the compensatory apartments (namely the apartments in the segregated area where the defendants were moved by the Town of Sabinov) on basis of a proper request from the Town of Sabinov, it has not breached any national or international legal regulations. The court also said that given the fact that the plaintiffs had merely claimed a breach of the principle of equal treatment and had not initiated any legal action against the fact of being moved to the compensatory apartments (such as claiming the termination of tenancy invalid or to refuse to move into the compensatory apartments), the Town of Sabinov could not be held responsible for breaching the principle of equal treatment contained in the Anti-Discrimination Act. The court did not deal with the remaining claims, especially with the compensation of non-pecuniary damage of 1,000 € that was awarded to each of the plaintiffs by the lower court (Disctrict Court in Prešov). The legal representative of the Roma plaintiffs referred the case to the Supreme Court of the Slovak Republic.

Already from the brief description of the decision of the court, it is clear that the Regional Court in Prešov has not given any attention to the fact that the statutory list of possible judicial claims in cases of breaches of the principle of equal treatment contained in Section 9 of the Anti-Discrimination Act is open-ended, and hence court´s ruling that the principle of equal treatment has been breached is in principle possible.
Also, the court ignored the fact that pursuant to the Constitution of the Slovak Republic, legally binding acts of the EU take precedence over laws of the Slovak Republic (Article 7 para 2 of the Slovak Constitution), and also that EC directives have indirect effect pursuant to the principle of harmonious interpretation – meaning that the court should have interpreted the open-ended list of possible judicial claims in the light of EC law so to give it effect and in a way that would make the national legislation and sanctions in question effective, proportionate and dissuasive. The court´s argument that receiving a proper formal funding request from a town and releasing the funding on its basis exonerates the Ministry from its responsibility for discriminatory and segregation practices and, similarly, the argumentation that individuals´ lack of prior legal action against discriminatory practices exempts the Town of Sabinov from being held responsible, are also inconsistent. The fact that the court did not deal with the remaining claims, especially with the compensation of non-pecuniary damage of 1,000 € that each of the plaintiffs was awarded by the lower court, is a grave breach *per se*.

Name of the court: The District Court in Spišská Nová Ves, The Regional Court in Košice
Date of decision: 18 March 2010 (Regional Court in Košice; the district court's date of decision not known)
Reference number: 5C 226/05 (District Court in Spišská NOvá Ves), 1Co/334/2008-238 (Regional Court in Košice)

Name of the parties: Not available
Brief summary:
The case was initiated by a Romani man who was refused to enter into a contract with a mobile operator because he only had a fixed-term employment contract instead of a contract for an indefinite time period.Non-Roma activists from the NGO Poradňa pre občianske a ľudské práva (Centre for Civil and Human Rights) who later also tried to enter into a contract with the same mobile operator had no problem to enter into a contract with the mobile operator and no employment contract was required from them. Both the plaintiff and the Non-Roma activists were recording their communication with the mobile operator and introduced the sound recording as evidence in the judicial proceedings.

The plaintiff claimed discriminatory treatment on the ground of his ethnicity and requested that the court determines that the defendant breached the principle of equal treatment, that he is ordered to issue a written apology and to pay financial compensation in the amount of 100 000,- Sk (3 319, 40 euro) to the plaintiff.

The District Court dismissed the lawsuit and held that the situations of the plaintiff and of the NGO activists were not comparable (for example because – as the court argued – the plaintiff and the NGO activists were not asking the same questions and the information was not provided by the same members of the mobile operator staff) and there was no discrimination grounded in Roma ethnicity.

Based on an appeal submitted by the applicant to the Regional Court in Košice, the court of appeal abolished the decision and returned it back to the first instance court for a new decision. The court of appeal argued, *inter alia*, that given the fact that the recording was made in premises of the defendants accessible to the public and it did not concern privacy of any of the persons present, the use of the recording as a form of evidence is not conditional upon the defendant's consent. Neither the fact that the plaintiff prepared his evidence for proving discriminatory treatment qualifies this type of evidence as inadmissible. The appellate court also held that if a plaintiff also submits a transcription of a sound recording, a court should also compare it with the recording itself so that it is possible to verify its credibility. The regional court also reminded the lower court of the requirements of EU directives regarding the sanctions – i. e. that they have to be effective, proportionate and dissuasive. The court of appeal said that these requirements are met also when various form of remedies are combined.

The case was not decided by the district court yet.

Please describe trends and patterns in cases brought by Roma and Travellers, and provide figures – if available.

The type and number of cases brought by Roma depend on the existence and available resources of NGOs active in the relevant field; cases where Roma would access courts by themselves, without assistance of NGOs or the Slovak National Centre for Human Rights, are not known (which is very indicative of the access to justice of persons of Roma origin). There are no official figures available as far as cases brought before courts or other authorities are concerned. The organisation most active in providing legal aid to Roma, especially in the area of access to goods and services, but also in the area of social security, employment, education and in the area of reproductive rights of Roma women, is the Centre for Civil and Human Rights (Poradňa pre občianske a ľudské práva). The Centre has already filed successful anti-discrimination cases before the Slovak courts. The cases related mainly to denied access to restaurants, cafés or pubs or to denied services in Eastern Slovakia, and to discrimination in employment.

In majority of these cases, the courts declared discrimination but often failed to state clearly the ground on which discrimination occurred, or refused to grant financial compensation (or awarded it only in a symbolic amount[22]).

[22] According to Poradňa pre občianske a ľudské práva (Center for Civil and Human Rights) and Člověk v tísni, pobočka Slovensko (People in Need in Slovakia), "[t]he courts are extremely reluctant to award any financial remedies for victims: in cases litigated by Poradňa, the first instance courts awarded applicants, complaining of racial discrimination in access to public accommodation) with financial compensations in amounts from 83 EUR to 663 EUR. In some cases no financial compensation for racial discrimination has been awarded." See Center for Civil and Human Rights, People in Need Slovakia: *Written Comments concerning the third periodic report of the Slovak Republic under the International Covenant on Civil and Political Rights – For the considerations by the Human Rights Committee*. April 2010, p 12. Available online at http://www.poradna-prava.sk/dok/NGO%20Written%20comments%20HRC%20ICCPR.pdf?PHPSESSID=9f624ec9594d58c6f4e77789c01b5965 (last time accessed on 12 March 20111).

Still pending, also before the European Court of Human Rights[23], are most of the individual cases lodged by Roma women (with the assistance of Poradňa pre občianske a ľudské práva) who have been involuntarily sterilised prior to the adoption of the Anti-discrimination Act (thus these cases, although claiming multiple discrimination, are not based on the Anti-discrimination act). Poradňa has also filed two "actio popularis" – one on segregation in education and the other on childbirth benefits which are indirectly discriminatory for Roma women (see Chapter 3.2.7 for more details).

On 28 April 2009, the European Court of Human Rights held, in a case of eight women of Roma origin (*K. H. and others v. Slovakia*[24]) who were infertile due to suspected illegal sterilisations and wanted to obtain their medical records as potential evidence in future civil proceedings for damages, that the Slovak Republic violated their right to respect for private and family life (Article 8 of the European Convention) and their right of access to a court (Article 6 paragraph 1 of the Convention) by the failure of the domestic authorities to make photocopies of their medical records available to them.

The Centre for Civil and Human Rights has also been active in challenging indirectly discriminatory provisions of the Act No. 235/1998 Coll. On Childbirth Subsidy, and although some success has been achieved, the courts absolutely failed to take the claims of discrimination into consideration (see Chapter 3.2.7).

Another case concerning the Roma, also litigated with an assistance of NGOs (Citizien, Democracy and Accountability and the Milan Šimečka Foundation), concerned segregation in housing (see above). Similar features and trends as described above can be traced in this case, too (especially in the appellate court decision).

[23] Complaints No 5966/04 (case *I. G. v Slovak Republic*) and No 18968/07 (case *V. C. v Slovak Republic*).
[24] Application no. 32881/04.

~~0~~1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

a) Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?

The principle of equal treatment of all persons is guaranteed under Article 12 of the Constitution, which states in paragraph 1 that "people are free and equal in dignity and rights". Paragraph 2 of the same Article says that "fundamental rights and freedoms are guaranteed in the territory of the Slovak Republic to every person regardless of sex, race, skin colour, language, belief, religion, political affiliation or conviction, national or social origin, nationality or ethnic origin, property, lineage or any other status. No person shall be denied their legal rights, discriminated against or favoured on any of these grounds". Paragraph 3 of the Constitution guarantees free choice of nationality (ethnicity), and paragraph 4 states that "no person shall be prevented from exercising his or her fundamental rights and freedoms". This means that the choice of ethnicity is under the discretion of any person in any moment of his or her life, and that no-one can be persecuted due to this choice. The right to be treated equally is an accessory right. As the Constitutional Court of the Slovak republic stated in one of its decisions: "The provision stated in Article 12, paragraph 2 of the Constitution is of a general, declaratory nature instead of the nature of a fundamental right or freedom. It can be claimed only in connection with the protection of particular fundamental rights and freedoms listed in the Constitution." (Finding of the Constitutional Court of the Slovak Republic, No. I. ÚS 17/99 of September 22, 1999). In its finding PL. ÚS 17/08 from 20 May 2009 the Constitutional Court added that *"[t]he prohibition of discrimination provided by Article 12 of the constitution is a constitutional principle that, with regard to its basis and purpose, exceeds the limits of fundamental rights and freedoms and has also relevance for interpretation and exercise of those norms of the Constitution that do not refer to fundamental rights and freedoms."*

According to the Constitutional Court, Article 12 paragraph 2 of the Constitution represents, by its nature, only a general clause which presupposes the implementation of individual rights laid down in the Constitution.[25]

Thus, as far as the Constitution is concerned, the anti-discrimination clause is ground-specific (and the same level of protection is guaranteed regarding all these grounds). There are grounds mentioned in the Directives that are not explicitly listed in the Constitution (these grounds are sexual orientation, disability and age).

[25] See also decisions of the Constitutional Court US 19/98, I US 34/96, I US 14/98.

b) Are constitutional anti-discrimination provisions directly applicable?

As the Constitutional Court stated in its finding PL. ÚS 8/04-202 from 18 October 2005, *"the basic aim of Article 12 para 1 and 2 of the Constitution [para 1 of this Article states that people are free and equal in dignity and rights and para 2 enumerates the grounds upon which discrimination is prohibited] is protection of persons (both legal and natural) against discrimination from the side of public authorities. This article of the Constitution does not have direct horizontal effect, which means that it will not apply in relations between persons of private law."*[26]

c) In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?

As the Constitutional Court stated in its finding PL. ÚS 8/04-202 from 18 October 2005, *"the basic aim of Article 12 para 1 and 2 of the Constitution [para 1 of this Article states that people are free and equal in dignity and rights and para 2 enumerates the grounds upon which discrimination is prohibited] is protection of persons (both legal and natural) against discrimination from the side of public authorities. This article of the Constitution does not have direct horizontal effect, which means that it will not apply in relations between persons of private law."*[27]

Interpreting the above quoted finding of the Constitutional court and using approach of logical interpretation, the constitutional anti-discrimination provisions have vertical direct effect. Given the fact that courts are obliged to consider constitutional provisions and international regulations in all their decision-making[28], and using the above quoted finding of the Constitutional court as interpretative framework, it can be argued that constitutional anti-discrimination provisions may have indirect horizontal effect – i. e. that in disputes between private law entities courts should, as far as possible, interpret the national law in the light of the fundamental rights and freedoms (including the anti-discrimination provisions) contained in the Constitution.

In practice, the constitutional guarantee of equality is reflected in the Anti-discrimination Act (and further also in many other laws), so in case of legal relations covered by the material scope of the Anti-discrimination act (and other pieces of legislation that contain anti-discrimination clauses), it is also invokable as against private actors (as the duty to observe the principle of equal treatment is vested on "everyone"[29]).

[26] See para13 of the finding.
[27] See para13 of the finding.
[28] See, for example, the Finding of the Constitutional Court of the Slovak Republic PL. ÚS 17/08 from 20 May 2009 where the court said that *"a judge, when exercising [her or his] function, has constitutional duty to observe fundamental rights and freedoms conferred on parties of proceedings and other persons concerned by exercising the decision-making power of courts."*
[29] See section 3 para 1 of the Anti-discrimination Act.

~~1~~2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination

Which grounds of discrimination are explicitly prohibited in national law? All grounds covered by national law should be listed, including those not covered by the Directives.

The Constitution of the Slovak Republic explicitly lists the following grounds as prohibited grounds of discrimination: sex, race, skin colour, language, belief, religion, political affiliation or conviction, national or social origin, nationality or ethnic origin, property, lineage[30] or any other status.[31] The Constitutional Court has also confirmed that sexual orientation is a constitutionally prohibited ground of discrimination.[32] Given the fact that the list of constitutionally prohibited grounds of discrimination is open-ended ("any other status"), it can be argued that disability and age, as well as any other grounds covered by the legislation[33] or even not covered by the Slovak generally binding legal acts, are also constitutionally protected grounds[34].

The Anti-Discrimination Act, which is the basic and crosscutting law in the area of anti-discrimination that lays down the duty to observe the principle of equal treatment in the fields of "labour relations and related legal relations, social security, health care, provision of goods and services and in education"[35], prohibits discrimination on the following grounds: 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[36] or other status.[37] Thus, discrimination always has to take place on a particular ground.

Some other laws also lay down other prohibited grounds of discrimination, in addition to the ones listed in the Anti-Discrimination Act. For example, the Labour Code prohibits discrimination also on the ground of trade union activities[38] and unfavourable state of health[39].

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[30] The word „lineage" stands for the Slovak word *„rod"* which can be equally translated as „gender". The Constitutional Court has not yet given a closer interpretation of the meaning of the Slovak word *„rod"*, and neither has any other court.
[31] See Article 12 para 2 of the Constitution.
[32] See the Finding of the Constitutional Court of the Slovak Republic PL. ÚS 8/04-202 from 18 October 2005.
[33] Such as marital and family status that are covered e. g. by the Anti-discrimination act or by the Labour Code.
[34] The Constitutional Court has stated already that the fact that someone is an ecclesiastic of a certain church constitutes such "another status", and hence this person cannot be advantaged or disadvantaged on this ground (see the finding of the Constitutional Court No III. ÚS 64/00-65 from 31 January 2010).
[35] Section 3 para 1 of the Anti-discrimination Act.
[36] Lineage and gender both stand for the Slovak word *„rod"* which can be translated as either of these.
[37] Section 2 para 1 of the Anti-discrimination Act.
[38] Section 13 para 2 of the Labour Code (Act No 311/2001 Coll. Labour Code, as amended).
[39] See Article 1 of the Basic Principles of the Labour Code.

~~1.1.1~~2.1.1 Definition of the grounds of unlawful discrimination within the Directives

a) *How does national law on discrimination define the following terms: racial or ethnic origin, religion or belief, disability, age, sexual orientation?*
Is there a definition of disability at the national level and how does it compare with the concept adopted by the European Court of Justice in case C-13/05, Chacón Navas, Paragraph 43, according to which "the concept of 'disability' must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life"?

b) *Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law (e.g. the interpretation of what is a 'religion' for the purposes of freedom of religion, or what is a "disability" sometimes defined only in social security legislation)? Is recital 17 of Directive 2000/78/EC reflected in the national anti-discrimination legislation?*

Racial or ethnic origin

The Slovak law provides no definition of racial and ethnic origin. However, these terms are used in the provisions of many laws, especially in connection with anti-discrimination provisions or provisions prohibiting demonstration of racism and intolerance. The criminal law in particular approached the definition of race, where legal literature and commentaries on the Criminal Code state that race shall mean a group of people differing from others due to various typical features, especially those body-related (e.g. colour of skin), as well as temperament etc. regardless of the fact that the members of the race concerned live within a territory of a state. Nationality (ethnicity) shall mean, according to the commentaries, an individual's membership in a particular nation as a historically established community of people characterised, first of all, by a common historical development, specific culture, common language, relation to a particular territory etc.[40]

Moreover, the Slovak Republic ratified the International Convention on the Elimination of all Forms of Racial Discrimination[41], which provides an extensive definition of race in Article 1 defining "racial discrimination" as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

[40] See e.g., Stiffel, H., Kočica, J.: *Trestný zákon : Stručný komentár* (*Criminal Code : Brief Commentary*), 2001, Bratislava, pp 403 and 406.
[41] Oznámenie Federálneho Ministerstva zahraničných vecí. č. 95/1974 [Announcement of the Federal Ministry of Foreign Affairs No. 95/1974 Coll.]

In June 2001, the National Council of the Slovak Republic adopted the amendment to the Criminal Code[42] No. 253/2001 Coll., which added the expression "ethnic group" to the expression "race" in each provision containing the expressions "nationality" and "race". This addition was made upon the initiative of the Ministry of Justice as a number of problems occurred in judicial practice in the qualifying of racially motivated crimes, with the application of the expression "race" to the qualification of crimes based on anti-Roma hatred.

However, the expression „ethnic group" has no interpretation in Slovak law or related commentaries. An ethnic group is in general understood as a community of people with special features – common historical background, culture, language, but without a specific state territory (such as the Kurds, the Roma).

In the case of I.P (the accused), heard by the Regional Court in Banská Bystrica in 1998-2000, where the aggrieved party was a Roma student attacked because of his Roma ethnicity, the court of first instance used grammatical and very restrictive interpretation of the relevant text of law. The court ruled[43] that Roma people belonged to the same race as Slovaks and that they are not to be considered as a different national minority or race, but rather as a different ethnic group.

According to the court's reasoning, there was no reason to qualify the criminal act as falling under Section 221, paragraph 2, letter b) of the Criminal Code[44], since this provision does not contain the expression "ethnic group". However, the Court of Appeal did not agree with this interpretation and the Regional Court in Banská Bystrica finally recognized the racial motivation of the attack which was eventually included into the legal qualification of the offence.

The Court of Appeal in Banská Bystrica reversed the decision of the Regional Court stating in its reasoning that "the law makers purposely endeavoured neither to restrictively stipulate any general definition, nor to provide a list of nations, national groups, races or ethnic groups as they were probably fully aware of the fact that the specification of some of them may artificially exclude the others. Therefore, according to the opinion of the Regional Court, the evaluated issue really should not be reduced, but understood in a wider interpretation."[45]

Consequently, the existing Criminal Code as well as the Anti-discrimination Act explicitly list race, nationality and affiliation with an ethnic group as specific and prohibited grounds. The Anti-Discrimination Act also lists colour of skin and language as prohibited grounds of discrimination.

[42] Trestný zákon č. 140/1961 Z. z. v znení neskorších predpisov [Criminal Code No. 140/1961 Coll. As amended] As of 1 January 2006 a new Criminal Code No. 300/2005 Coll. came into effect. In defining racially motivated crimes the new code uses the same terms "race" and "ethnic group".
[43] Decision of the District Court in Banska Bystrica No. 3T 52/98 of July 1, 1999
[44] the Section 221, paragraphs 1,2, (b) stated that injury to one's health inflicted on account of political conviction, nationality, race, religious or other beliefs carries higher criminal charge
[45] Decision of the Regional Court in Banska Bystrica No. 6 To 594/99 of September 29, 1999

Religion or belief

The Slovak law provides no definition of the terms of religion and belief.

The Criminal Code uses rather the expression "profession/creed" which is in commentaries explained 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 church."[46]

The Act No. 308/1991 Coll. 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 some religion is considered a believer. The agreement about religious education[47] between the Slovak Republic and the registered churches and religious societies deals only with "religion" as it is defined by the doctrine of the church or religious society registered in the Slovak Republic. "Religion and religious education is taught according to the educational programmes and curricula approved by a registered church or religious society upon the statement of the Ministry of Education of the Slovak Republic."[48] The Slovak legal system makes no clear distinction between religion, profession/creed and belief. However, the fact that they are all contained in the legislation as prohibited grounds of discrimination implies, in terms of equal treatment, that there is no need to make a sharp distinction between them and that there is flexibility in subsuming religion-/belief-/creed-related unfavourable acts under the anti-discriminatory clauses provided by the legislation.

Both the Constitution and the Anti-discrimination Act state explicitly that discrimination of a person without a religion shall be deemed to be discrimination on the ground of religion or belief.

Act No. 308/1991 Coll. on freedom of religious belief and the status of churches and religious societies was amended as of May 2007. The amendment significantly changed the process for the registration of churches in Slovakia. Under the new rules a church can be registered only when it submits a statutory declaration of each of its 20 thousand adult members supporting the confirming his/her adherence to the church and having their permanent residency in Slovakia. The registration process is important since only the registered churches are legally acknowledged by the State[49]. The registered churches and religious societies are significantly advantaged (with regard to legal and economic environment in which they operate) in comparison with those not registered.

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

[47] Published in the Collection of Law under No. 395/2004 Coll.

[48] Article 2, paragraph 7 of the Agreement between the Slovak Republic and Registered Churches and Religious Societies regarding Religious Education.

[49] At the moment, there are 18 registered churches in Slovakia. These registered churches include the Roman Catholic Church, the Augsburg Evangelical Lutheran Church, the Greek Catholic Church, the Orthodox Church and the Reformed Christian Church.

Only registered churches can have a legitimate claim for State support (including paying of clergy or exemption from taxation), organise religious education in schools, establish their own schools (partly funded by the State), establish and run hospitals and social services facilities etc. Other small churches which cannot be registered do not exist legally. They can only be founded as civic associations.

Disability

Neither the Anti-discrimination Act nor other acts include the definition of disability to be used in the area of anti-discrimination. In the Slovak legal system disability is defined by social security and employment regulations for the purposes of the respective areas (for all of which the duty to apply the principle of equal treatment in relation to disability applies).

The Labour Act defines an "employee with a disability" as an employee who is officially acknowledged as disabled on the basis of the Social Insurance Act[50] and who submits to her or his employer a decision proving entitlement to a disability pension.[51] The Social Insurance Act[52] defines the following conditions as conditions for acquiring a disability pension:

- at least 40 per cent loss of the ability to work (when compared to a "healthy" person)
- acquiring sufficient amount of years of pension insurance
- long-term unfavourable state of health – i. e. state of health causing a loss of ability to perform gainful activities that is supposed, according to medical assessment, to last at least one year.[53]

The body authorised to decide on the level of reduction of the ability to work is the Social Insurance Company.

It is, however, also important to state in relation to the Labour Code that Article 1 of the Basic Principles of this code also prohibits discrimination on ground of unfavourable state of health.

A similar test for determining whether a person is a person with disability is used by the Act on Employment Services[54] (which regulates the system of institutions and measures to support and help the participants in the labour market).

[50] Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov [Act. No. 461/2003 Coll. on Social Insurance as amended]
[51] Section 40 para 8 of the Labour Act.
[52] Zákon č. 461/2003 Z. z. o sociálnom poistení, v znení neskorších predpisov [Act No 461/2003 Coll. on Social Insurance, as amended.]
[53] See sections 70-72 of the Act No 461/2003 Z. z. on Social Insurance, as amended.
[54] Zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov v znení neskorších predpisov [Act No 5/2004 Coll. on Employment Services, amending and supplementing certain laws, as amended.]

This act considers as a disabled person a citizen who is officially acknowledged disabled according to the Social Insurance Act (and who also proves her or his disability by a decision or a notification of the Social Insurance Company).[55]

The Act on Benefits for Compensation of Serious Disability[56] uses the expression "serious disability" and defines it as a "disability with a level of functional impairment at least 50 %"[57]. "Functional impairment" is defined as a lack of physical abilities, sensory abilities or mental abilities of a person exceeding, from the point of view of the disability prognosis, 12 months.[58]

It is possible that state authorities, as well as courts, will in some cases base their understanding of the concept of "disability" on the above listed legal definitions. This may become problematic especially in cases where the concept of disability being defined will fall outside the scope of employment (for which the definition generated in *Chacón Navas* will have to apply – also in the context of the prohibition of discrimination on ground of unfavourable state of health contained in Article 1 of the Basic Principles of the Labour Code). However, it needs to be borne in mind that the Anti-Discrimination Act also prohibits discrimination on the ground of previous disability, and also discrimination on the ground of presumed disability ("discrimination of a person in case of whom it could be, based on external signs, presumed that she or he is a person with disability").[59] 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 field of employment and social insurance.

Recital 17 of Directive 2000/78/EC is not specifically reflected in the national legislation.

As to age and sexual orientation, the Slovak laws provide no specific definition determining the understanding of age and sexual orientation.

c) Are there any restrictions related to the scope of 'age' as a protected ground (e.g. a minimum age below which the anti-discrimination law does not apply)?

The anti-discrimination Act, nor any other piece of Slovak legislation, determine no minimum age below which the anti-discrimination law would not apply.

[55] See Section 9 of the Act on Employment Services.
[56] 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. [Act No 447/2008 Coll. on Benefits for Compensation of Serious Disability, amending and Supplementing Certain Laws, as amended]
[57] Section 2 para 3 of the Act on Benefits for Compensation of Serious Disability
[58] Section 2 para 4 of the Act on Benefits for Compensation of Serious Disability
[59] Section 2a para 11d) of the Anti-discrimination Act.

d) *Please describe any legal rules (or plans for the adoption of rules) or case law (and its outcome) in the field of anti-discrimination which deal with situations of multiple discrimination. This includes the way the equality body (or bodies) are tackling cross-grounds or multiple grounds discrimination.*
Would national or European legislation dealing with multiple discrimination be necessary in order to facilitate the adjudication of such cases?

e) *How have multiple discrimination cases involving one of Art. 19 TFEU grounds and gender been adjudicated by the courts (regarding the burden of proof and the award of potential higher damages)? Have these cases been treated under one single ground or as multiple discrimination cases?*

There are no legal rules or case-law that would explicitly deal with situations of multiple discrimination.

It is still mainly NGOs and researchers who are raising this issue as highly relevant. The concept sometimes appears in policy documents but more on the rhetorical level than with regard to specific measures proposed and carried out.

Section 2 paragraph 1 of the Anti-discrimination Act, when listing the prohibited grounds of discrimination, does not contain any explicit prohibition of multiple discrimination. However, nor does it say that discrimination/other breaches of the duty to observe the principle of equal treatment have to take place on individual prohibited grounds of discrimination separately. Thus, it can be argued that the concept of prohibition of multiple discrimination is contained in the act implicitly (although it will be up to the courts to establish this interpretation more authoritatively; it is hard to assume how the courts will cope with issues of multiple discrimination and whether special legislative initiatives will be needed either on the side of the Slovak Republic or on the side of the EU, or both).

Also, the occurrence of multiple discrimination could be treated as an "aggravating circumstance" relevant in determining the amount of financial compensation for the person affected by discrimination. Section 9, paragraph 3 of the Anti-discrimination Act enables the plaintiff to seek non-pecuniary damages in cash where the violation of the principle of equal treatment has considerably impaired her or his dignity, social status and social functioning (which is undoubtedly also the case of multiple discrimination). The amount of non-pecuniary damages in cash shall be determined by the court, taking account of the extent of non-pecuniary damage and all underlying circumstances.

The only known cases where multiple discrimination has been invoked were cases of unlawful sterilisations of Roma women (with multiple grounds of discrimination being sex/gender and ethnicity). However, as these sterilisations took place before the adoption of the Anti-discrimination Act and hence the rights are not invokable pursuant to this act, the organisation providing legal assistance to the women affected (the Centre for Civil and Human Rights) uses other legal mechanisms. See also Chapter 0.3 for more details.

The Slovak National Centre for Human Rights – the national equality body – does not seem to be paying special attention to issues of multiple discrimination and to be having special strategies to overcome it.

~~1.1.2~~2.1.2 Assumed and associated discrimination

a) Does national law (including case law) prohibit discrimination based on perception or assumption of what a person is? (e.g. where a person is discriminated against because another person assumes that he/she is a Muslim or has a certain sexual orientation, even though that turns out to be an incorrect perception or assumption).

The Anti-discrimination Act prohibits discrimination based on assumed characteristics in general. Section 3, paragraph 3 of the Anti-discrimination Act contains a general clause stipulating that, by determination whether discrimination has occurred or not, no account shall be taken of whether the underlying reasons were based on facts or mistaken beliefs.

Assumed discrimination on the ground of disability is defined specifically. According to Section 2a, paragraph 11(d) of the Anti-discrimination Act discrimination on grounds of previous disability or discrimination against a person in case of whom it could be, based on external signs, presumed that she or he is a person with disability, shall be deemed to constitute discrimination based on disability.

There is no case-law that would be dealing with assumed discrimination.

b) Does national law (including case law) prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group or the primary carer of a disabled person)? If so, how? Is national law in line with the judgment in Case C-303/06 Coleman v Attridge Law and Steve Law?

Concerning associated discrimination the Anti-discrimination Act in Section 2a, paragraphs 11 (b) and (c) states that discrimination on grounds of one's relationship with a person of certain racial, national or ethnic origin shall also be deemed to constitute discrimination based on racial, national or ethnic origin and that discrimination on grounds of one's relationship with a person of certain religion or belief, or discrimination against a natural person without religion, shall be deemed to constitute discrimination based on religion or belief. The above mentioned general rule entrenched in Section 3, paragraph 3 on assumed discrimination is also applicable in cases of associated discrimination – i. e. when determining whether discrimination based on association has occurred, no account shall be take of whether the underlying reasons were based on facts or mistaken beliefs.

These rules are in principle in compliance with the judgement in *Coleman v Attridge Law and Steve Law* – although the Anti-discrimination act does not explicitly refer to association with a person with a disability (and neither to association with persons holding or presumed to be holding other characteristics covered by the other prohibited grounds of discrimination contained in the Anti-discrimination Act).

The application of these provisions in practice cannot yet be evaluated as there is no case law dealing with associated discrimination.

Similarly in the field of criminal law it is of no importance for finding somebody guilty of a racially motivated crime (e.g. murder or assault grounded on race, colour of skin, belonging to the ethnic group or nationality, blackmail, defamation of nation, ethnic group or race and belief[60]) whether or not the crime was committed upon mistaken beliefs or facts.

The amendment to the Criminal Code No. 253/2001 Coll. effective from August 1, 2001 removed from the definition of racially motivated crimes the wording that the person aggrieved must be attacked for "his or her" race, nationality or religion. Once this amendment came into force the concept of racially motivated attack was no longer limited to attacks against persons because of their own race, nationality or religion; this concept also covered attacks against a person attacked for the race, nationality or religion of some other person. However, adoption of the Criminal Code No. 300/2005 Coll. made a retrograde step in this regard. Some crimes related to the racially motivated attacks have been again defined through possessive pronoun "their race", "their belonging to nationality" etc.

Grammatically, the anti-discrimination provisions contained in the Constitution do not determine that the ground of discrimination has to be necessarily connected with a person who is discriminated against. However, the Constitutional court has not yet expressed its view on this issue.

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

a) How is direct discrimination defined in national law?

Direct discrimination is one of the forms of discrimination enumerated and prohibited by the Anti-discrimination Act. As any other form of discrimination enumerated by the Section 2a para 1 of the Anti-discrimination Act, it has to take place in connection with the prohibited ground/s (see also sections 0.1 and 2.1 of this report).

[60] § 145, §147, § 148, § 155, § 156, § 189, § 423 Trestného zákona č. 300/2005 Zb. v znení neskorších predpisov [Section 145, 147, 148, 155, 156, 189, 423 of the Criminal Code No. 300/2005 Coll. as amended]

Section 2a para 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."

The definition of direct discrimination contained in the Anti-discrimination act is in compliance with the definitions of direct discrimination contained in the directives.

b) Are discriminatory statements or discriminatory job vacancy announcements capable of constituting direct discrimination in national law? (as in Case C-54/07 Firma Feryn)

The duty to observe the principle of equal treatment in the field of employment and occupation also applies to the stage of access to a job. In particular, Section 6 para 2 (a) of the Anti-Discrimination Act states that the principle of equal treatment applies in the field of "access to a job, occupation, other gainful activity or function (…) including the requirements in case of admitting to a job and the conditions and the method of performing the selection for a job." The Labour Code also reiterates (in Section 41 para 8) that "an employer, when admitting a natural person to a job, shall not breach the principle of equal treatment, if access to job is concerned."

Although discriminatory job vacancy announcements are not explicitly stipulated as incapable of constituting direct discrimination, the concept of direct discrimination as defined by Section 2a para 2 of the Anti-discrimination Act (including also the concept of hypothetical comparator – see above) in combination with the quoted provisions should sufficiently cover discriminatory job vacancy announcements. The same could be said about discriminatory statements – as they can represent "action" that falls within the ambit of the definition of direct discrimination (see above Section 2.2 a) of this report) and at the same time be "less favourable" than a treatment with a real or hypothetical comparator.

The questions is, however, how the public authorities in general and courts in particular would deal with the so-called "generic masculine" – a language male form that is, theoretically, supposed to include women, too – but is exclusive in its nature (at least indirectly). The usage of the generic masculine is very much accepted by the society as well as by the official legal and language authorities.

Neither the law nor case-law deal with the issue whether an individual who feels affected by a discriminatory advertisement should actually apply for the job in question to claim protection.

c) Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination? (See also 4.7.1 below).

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

However, the prohibition of general justification of direct discrimination is not explicit and can only be derived from logical interpretation (a clause on admissibility of justification in cases of direct discrimination is missing in its definition) and systematic interpretation (when interpreted in conjunction with the definition of indirect discrimination where justification is explicitly permissible).

Partially, exceptions from the prohibition of direct discrimination are permitted – although these are not framed as possible justification of direct discrimination but as "permissible differential treatment"[61] that disqualifies the particular treatment from being discriminatory. The particular forms of the "permissible preferential treatment" are the following (sketched only briefly – most of them will be dealt with in sections 4 and 5 of this report):

- Genuine and determining occupational requirements (determined by the character of activities carried out in a particular job or by the circumstances under which the activities are carried out; the aim has to be legitimate and the requirement proportionate).[62]
- Differential treatment on the ground of religion or belief in case of employment or exercising activities for registered churches or religious associations or other legal persons whose activities are based on religion or belief.
  The religion or belief of the person must represent the basic reasonable and justified requirement of the occupation to be carried out in relation to the nature of the activities to be carried out or according to the context under which they are performed.[63]
- Differential treatment grounded in age in relation to access to employment and to vocational training, to working conditions (including remuneration and job termination) and to job-related benefits. Such differential treatment has to be justified by following a legitimate aim and has to be necessary and proportionate, and has to be provided by in a special legal act.[64]
- Differential treatment in the systems of occupational pensions grounded in age (provided that they are not discriminatory on the ground of sex at the same time).[65]
- Differential treatment grounded in specific health requirements in relation to access to job or performing certain activities in a particular job, provided that this is required by the nature of the job or of the job activity. The differential treatment has to be objectively justified.[66]
- Differential treatment grounded in age or disability in case of providing insurance services.

[61] See the title of Section 8 of the Anti-discrimination Act.
[62] Section 8 para 1 of the Anti-discrimination Act.
[63] Section 8 para 2 of the Anti-discrimination Act.
[64] Section 8 para 3 of the Anti-discrimination Act.
[65] Section 8 para 4 of the Anti-discrimination Act.
[66] Section 8 para 5 of the Anti-discrimination Act.

The differential treatment has to follow from a different level of risk verifiable by statistical or similar data and the terms of the insurance services have to be proportionate to this risk.[67]

- Differential treatment grounded in sex
  - in relation to determining pension age for men and women,
  - the aim of which is protection of pregnant women and mothers,
  - that lies in providing goods and services exclusively or preferably to representatives of one of the sexes. The aim has to be legitimate and the means have to be proportionate and necessary.[68]
- Differential treatment grounded in sex in the field of insurance services.[69]
- "Temporary equalising measures" (positive action measures) according to Section 8a of the Anti-discrimination Act (aimed at removing forms of social and economic disadvantage and disadvantage following from the ground of age and disability and to be adopted by bodies of state administration). They can only be adopted if there is demonstrable inequality, if the aim of the measures is reduction or removal of this inequality and if the measures are proportionate and necessary for achieving the aim.

d) In relation to age discrimination, if the definition is based on 'less favourable treatment' does the law specify how a comparison is to be made?

Concerning age discrimination there is no specification of who or what would be the relevant comparator in assessing whether discrimination occurred or not. As mentioned above, direct discrimination is when one person is treated less favourably than another is, has been or would be treated in a comparable situation (on the ground of age).

Because of the fluidity of the boundaries between different age groups, it seems that the role of comparator is simply to demonstrate causation, i.e. that the reason for the detrimental treatment was age.

Making a comparison and the interpretation of the age discrimination provision will be the task of the future Slovak case-law and jurisprudence which have not developed in this field yet.

~~1.1.3~~2.2.1 Situation Testing

a) Does national law clearly permit or prohibit the use of 'situation testing'? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court? For what discrimination grounds is situation testing permitted? If not all grounds are included, what are the reasons given for this limitation? If the law is silent please indicate.

[67] Section 8 para 6 of the Anti-discrimination Act.
[68] Section 8 para 7 of the Anti-discrimination Act.
[69] Section 8 para 8 of the Anti-discrimination Act.

The national law does not use the term "situational testing" or define it and no clear permission or prohibition of the method is contained in the Slovak legal order. However, the Civil Procedure Act[70] that applies to judicial proceedings in cases of breaches of the Anti-Discrimination Act provides that all means by which it is possible to discover the facts relevant to the case may serve as evidence – notably examination of witnesses, expert opinion, reports and statements of bodies, natural persons and legal entities, documents, inspections and examination of the parties. It follows from the above that the Code of Civil Procedure does not exclude any kind of potential evidence. Thus, although situation testing is not enumerated in the non-exhaustive list of examples of possible proofs in the Civil Procedure Act, the general definition of "proof" makes situational testing also eligible in principle (and the courts basically accept it).

One of the possible risks to using the concept fully is an argument potentially used by courts/defendants in judicial proceedings that the applicant may be exercising "fictive rights"/may not be exercising her or his rights "genuinely". This has not proven to be the case so far (although the area in which testing has been used was mainly access to goods and services), and this argumentation would be also inconsistent with the concept of rights as encompassing also the possibility to exercise rights.

The second aspect of situational testing is the admissibility of evidence used before the courts – audio recording. Although in principle admissible, the legal interpretation concerning admissibility of recording has one more context, in particular the arguments on protection of "personhood".

According to Sections 11 and 12 of the Civil Code, "natural persons have the right to the protection of personhood, in particular life and health, civil honour and human dignity, as well as privacy, reputation and manifestations of personal nature" (e.g. pictures, drawings, literary outputs etc.). Documents of a personal nature, portrayals, pictures and video and audio recordings related to a natural person or manifestation of their personal nature can be made or used only with consent of the person.

The counter-argument, however, is that using an audio recording exclusively in order to document an illegal action of the defendant before a court does not constitute an interference with the right of protection of personhood under Section 11 of the Civil Code.

Since the adoption of the new Criminal Code effective from 1 January 2006 the situation in terms of producing records as evidence has become even more complicated.

[70] Zákon č. 99/1963 Zb. Občiansky súdny poriadok, v znení neskorších predpisov [Act No 99/1963 Coll. Civil Procedure Act, as amended]

Under the Section 377, whoever breaches confidentiality of privately presented words or other manifestations of a personal nature by means of illegitimate recording and providing this recording to another person or using it in another way and causing by it serious detriment to the rights of a person shall be punished by imprisonment of up to two years. Although this does not again make situational testing illegal (as it does not primarily concern presentations of personal nature and usually does not cause serious detriment of the rights of person recorded but documents his/her illegal action) and courts generally accept it, the lack of explicit legal permission for using this legal concept is certainly discouraging, and so is the threat of potential criminal proceedings. It is also encouraging for defendants to contest the evidence of plaintiffs who allege to have been discriminated and who rely on evidence gained through sound recording.

b) Outline how situation testing is used in practice and by whom (e.g. NGOs, equality body, etc)

Situation testing is used mainly by NGOs, in monitoring practices of discrimination and proving them before courts.

The key player in using testing for judicial proceedings is an NGO Poradňa pre občianske a ľudské práva (Center for Civil and Human Rights) in Košice that has already successfully litigated a few cases of discrimination using the method of testing (see Section 2.2.1 d) below and Section 0.3 dealing with case-law). The use of the method of testing in cooperation with Poradňa, focusing mainly on proving discrimination in the field of access to goods and services, in the field of access to employment and in the field of access to education, comprises creating comparable situations on the spot and securing the evidence (testimonies, audio records, transcripts of the audio records).

Poradňa has, by using the method of testing, also contributed to identifying and sanctioning cases of breaches of the principle of equal treatment in access to goods and services by the Slovak Trade Inspection in 2008 and 2009 (see Section 2.2.1 d) below).

In 2006-2007 NGO Ľudia proti rasizmu (People against Racism) used the method of testing to monitor cases and practices of racial/ethnic discrimination in access to employment (the method comprised applying to the same job by two individuals with the same or similar characteristics except for their ethnicity). The monitoring did not result in litigation.

The Slovak National Centre for Human Rights – the national equality body – declared there have been a few instances when it used the method of testing (this method was used when carrying out independent probes concerning alleged discrimination in access to services, on request from persons of Roma origin who declared to have been discriminated on the ground of their ethnicity)[71].

[71] Response of the Centre from 31 March 2011 to a request for information from 18 February 2011.

In cases where the testing was used, the Centre did not find any discriminatory practices. From the documentation provided by the Centre, it is not clear what kind of testing methodology the Centre used.[72]

c) Is there any reluctance to use situation testing as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?

Testing is basically used in courts (mainly in relation to access to services and mainly in cooperation with NGOs), although not to a massive extent. Courts usually, with some minor exceptions[73], do not have a problem to accept evidence that had been gained as a result of testing (witness testimonies, audio records). However, the fact that the evidence had been gained through testing seems to be having impact on the amounts of non-pecuniary compensations awarded to plaintiffs relying on testing: the courts usually do not award this kind of compensation or award it on symbolic level only.

Case-law in other countries in this respect (although not having had any explicit influence yet) might influence the national interpretation if raised by the parties to the proceedings. In any case, guidance or even legislation from the side of the EU would undoubtedly be of enormous help in this field.

d) Outline <u>important</u> case law within the national legal system on this issue.

The first important case concerns three Roma activists who lodged a petition with the Michalovce District Court on 10 June 2005 against an owner of a bar. They claimed discriminatory treatment on the ground of their ethnicity and requested that the owner of the bar be ordered to issue a written apology and to pay financial compensation. The three Roma activists, together with activists from the NGO Poradňa pre občianske a ľudské práva (the Centre for Civil and Human Rights) who later followed them, decided to use the services of a local bar and to test it in its policies towards customers of Roma ethnic origin. They were refused access into the bar as they were not able to prove a "club membership" (i.e. they were not in possession of "club cards"). They made a sound recording of the encounter with the bar personnel.

The Non-Roma activists from Poradňa who followed them few minutes later had no problem entering the bar. On 31 August 2006, the court ordered the owner to issue a written apology but it did not grant any financial compensation which was claimed by the applicants (it argued, inter alia, that the direct discrimination did not take place in public and that the plaintiffs must have expected the discrimination, given the whole action was planned).

[72] *Ibid*.
[73] For example, a judge refused to play an audio record in a court hearing.

On the basis of an appeal submitted by the applicants the Regional Court in Košice abolished the decision on 25 October 2007 and returned it back to the first instance court for a new decision[74]. Upon receiving a binding legal opinion from the Regional Court in Košice, the Michalovce District Court decided on 29 January 2008[75] that there has been discrimination on the ground of ethnic origin and obliged the defendant to send the victims a written apology (although it refused again the applicants´ claim for financial compensation). It is, however, important to note that the District Court Michalovce accepted a transcribed sound recording that was produced by the Roma activists in front of the club and submitted as evidence in the proceedings. The District Court Michalovce stated that "no provision of the Civil Procedure Act nor any other piece of legislation prevents [a court – note of the author] from carrying out evidence - transcript of a sound recording which was made in the public and which in no way interferes with the privacy of the parties to the proceeding or of third parties."

After the applicants appealed again against the district court decision (specifically against the part of the judgement in which the court refused to grant the applicants pecuniary compensation), the Regional Court Košice as an appeal Court upheld the decision of the District Court Michalovce on 15 July 2010[76]. The injured Roma activists, together with activists from Poradňa, are considering what kind of further legal action to take on either the national or international level. For more detailed information about the case, see Chapter 0.3 of this report.

Another important case, so far decided by the District Court in Spišská Nová Ves[77] and by the Regional Court in Košice[78], was initiated by a Romani man who was refused to enter into a contract with a mobile operator because he only had a fixed-term employment contract instead of a contract for an indefinite time period. Non-Roma activists from Poradňa pre občianske a ľudské práva who later, in framework of testing, also tried to enter into a contract with the same mobile operator had no problem to enter into a contract with the mobile operator and no employment contract was required from them. Both the plaintiff and the Non-Roma activists were recording their communication with the mobile operator and proposed the sound recording as evidence in the judicial proceedings.

The plaintiff claimed discriminatory treatment on the ground of his ethnicity and requested that the court determines that the defendant breached the principle of equal treatment, that he is ordered to issue a written apology and to pay financial compensation in the amount of 100 000,- Sk (3 319, 40 euro) to the plaintiff.

[74] Reference No: 2Co/430/2006-148.
[75] Reference No: 12C/139/2005-158 .
[76] Reference No: 2Co/115/2008-192.
[77] Reference No: 5C 226/05. The district court´s date of decision is not known.
[78] Reference No: 1Co/334/2008-238. The decision of the regional court was taken on 18 March 2010.

The District Court dismissed the lawsuit and held that the situations of the plaintiff and of the NGO activists were not comparable (for example because – as the court argued – the plaintiff and the NGO activists were not asking the same questions and the information was not provided by the same members of the mobile operator staff) and there was no discrimination grounded in Roma ethnicity.

Based on an appeal submitted by the applicant to the Regional Court in Košice, the court of appeal rescinded the decision and returned it back to the first instance court for a new decision. The court of appeal argued, *inter alia*, that given the fact that the recording was made in premises of the defendants accessible to the public and it did not concern privacy of any of the persons present, the use of the recording as a form of evidence is not conditional upon the defendant's consent. Neither the fact that the plaintiff prepared his evidence for proving discriminatory treatment qualifies this type of evidence as inadmissible. The appellate court also held that if a plaintiff also submits a transcription of a sound recording, a court should also compare it with the recording itself so that it is possible to verify its credibility. With regard to testing, the court said explicitly that "with the purpose of acquiring comparative information, testing through which a comparator pretends a comparable situation that was at stake in case of the plaintiff is admissible as evidence." The court specified that "the situations of the plaintiff and of the comparator do not have to be absolutely identical – i. e. they do not have to ask absolutely the same questions but the questions (formulated also in other ways) have to be directed at getting information about the same thing (…). The testing does not have to be performed as against the same employee of the responsible entity [i. e. defendant in this case – note of the author] because it is not the responsibility of a particular employee that would be at stake but the responsibility of the entity in the name of which the employee communicates with the person interested in the services of this entity".

The case was not decided by the district court yet. See also Chapter 0.3 of this report.

In 2008 and 2009, the Slovak Trade Inspection, in cooperation with The Centre for Civil and Human Rights (Poradňa pre občianske a ľudské práva) situated in Eastern Slovakia, also used the method of testing when carrying out inspection on the observance of the principle of equal treatment in the field of providing services, and issued the first decisions imposing fines in this field.[79]

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

a) How is indirect discrimination defined in national law?

Indirect discrimination, according to Section 2a paragraph 3 of the Anti-discrimination Act, shall mean "an apparently neutral regulation, decision, instruction or practice that puts a person at a disadvantage as compared with another person,

[79] See the Annual Report 2008-2009 of Poradňa pre občianske a ľudské práva, availabe at www.poradna-prava.sk.

unless such regulation, decision, instruction or practice is objectively justified by following a legitimate aim and are appropriate and necessary to achieving that aim.

b) What test must be satisfied to justify indirect discrimination? What are the legitimate aims that can be accepted by courts? Do the legitimate aims as accepted by courts have the same value as the general principle of equality, from a human rights perspective as prescribed in domestic law? What is considered as an appropriate and necessary measure to pursue a legitimate aim?

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

No expert discussions or judicial interpretation exist as far as the nature of legitimate aim or the proportionality and necessity test are concerned. So far there is only the wording of the law.

c) Is this compatible with the Directives?

There are three differences between the definitions of indirect discrimination contained in the Directives and the definition contained in the Anti-discrimination Act.

The first difference is that whereas under the definition contained in the Directive it is sufficient that the provision, criterion or practice in question "would put" persons having a particular feature at a disadvantage, the definition in the Slovak Anti-discrimination Act seems not to accept any probability/conditionality in this regard ("puts at a disadvantage"). Thus, from this perspective it seems that the Slovak definition is stricter than the one contained in the Directives.

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". Although the concept of a "particular disadvantage" contained in the directives may still require judicial interpretation, it can be argued that with regard to the concept of disadvantage, the Slovak definition may be more flexible and favourable than the EU one.

The third difference is that the definition contained in the Anti-discrimination Act does not apply the "collective approach" ("persons") but goes for individual approach ("person"). This may lead to more favourable conditions for proving indirect discrimination (perhaps no need to go for very strict and significant statistical evidence) – although it is unclear yet how the individualised concept of indirect discrimination will be applied.

d) In relation to age discrimination, does the law specify how a comparison is to be made?

The existing law does not specify any rule on how to compare different situations relating to age discrimination. It seems that the role of a comparator is simply to demonstrate causation, i.e. that the reason for the detrimental treatment was age. Making a comparison and the interpretation of the age discrimination provision will be up to the courts and the jurisprudence.

e) Have differences in treatment based on language been perceived as potential indirect discrimination on the grounds of racial or ethnic origin?

So far no case arose in which differences in treatment on the ground of language would be interpreted as racial or ethnic discrimination (real or potential), and the issue is not arising in public discussion either (and the same can basically be said about academic discussion, too).

Apart from this, many laws (for instance in the area of employment and education) including the Anti-discrimination Act (since the amendment from February 2008) explicitly prohibit discrimination also on the ground of language. It is, however, true that some laws contain the requirement to have command of the state language.

For example, the Civil Service Act[80] lays down the requirement to have command of the state language as a precondition for employment in civil service[81].

Similarly, Section 4 of the Act on the State Language[82] stipulates that pedagogical employees at all schools and school facilities in Slovakia apart from pedagogues and lectors from abroad are obliged to have command of the state language and to be to use it both in spoken language and in writing[83].

From 1 September 2009 an amendment of the Act on State Language is in effect. The amendment brought quite many strict rules with regard to the duty to use the Slovak language in the public (such as in schools, when providing medical services or social services etc.[84]) that may also have indirect discrimination implications with regard to race, ethnicity, nationality etc. Although there was quite a high resistance to adoption of this law, mainly from the side of national minorities and human rights NGOs, the debates did not involve this indirect discrimination aspect. Many of its provisions are, however, very highly questionable in terms of their compliance with the Race Equality Directive due to this indirectly discriminatory potential contained for example in the requirement to draft all the legal acts in employment relationship

[80] Act No 400/2009 Coll.
[81] *Ibid*, Section 19 para 1 (e).
[82] Zákon č. 270/1995 Z. z. o štátnom jazyku Slovenskej republiky, v znení neskorších predpisov [Act No 270/1995 Coll. on the State Language of the Slovak Republic, as amended]
[83] *Ibid*, Section 4 paragraph 2.
[84] *Ibid*, Sections 4 and 8.

in the state language[85], or in the requirement for health professionals to predominantly use the state language in communication with patients (another language can only be used if a patient does not have command of the state language or is a member of a national minority)[86].

None of the legislative provisions referring to language requirements has ever been brought to courts for interpretation from the perspective of their compliance with the Race Equality Directives.

~~1.1.4~~2.3.1 Statistical Evidence

a) Does national law permit the use of statistical evidence to establish indirect discrimination? If so, what are the conditions for it to be admissible in court?

As has already been stated in Chapter 2.2.1 of this report, all legal means which can prove the fact(s) stated by parties to the proceeding can serve as evidence before a court.

The existing laws do not explicitly mention statistical evidence as a means of proving indirect discrimination. Nevertheless the general definition of evidence in court proceedings does not make this kind of evidence irrelevant or prohibit it.

b) Is the use of such evidence widespread? Is there any reluctance to use statistical data as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law?

c) Please illustrate the most important case law in this area.

The first of the very few known cases of indirect discrimination supported by statistical evidence (area: social security, ground: Roma ethnicity) were brought to courts in 2007.

The cases, with legal representation provided by an NGO the Center for Civil and Human Rights (see above), concerned anti-discriminatory claims connected to a refusal by an office of labour, social affairs and family to pay a child-birth subsidy to Roma women, pursuant to a law that was indirectly discriminatory (see the case-law above as well as Chapter 3.2.7 for more details). The Centre used its own statistical data gained through fact-finding and surveys (e.g. numbers about ethnicity of patients from hospitals in Eastern Slovakia, numbers of refusals by offices of labour, social affairs and family in regions with high representation of Roma population). Although the courts ruled in favour of the Roma women and ordered the offices of labour, social affairs and family to pay the child-birth subsidies and the Supreme Court confirmed the decisions, none of the deciding courts has dealt with the indirectly discriminatory nature of the claim and with the statistics submitted and

[85] *Ibid*, Section 8 para 2.
[86] *Ibid*, Section 8 para 4.

also ignored the proposal to initiate the proceeding on preliminary question before the European Court of Justice. Thus the Center for Civil and Human Rights submitted an actio popularis in 2010 on the same matter, using the same statistical data. The case is pending before the first instance court (with no court hearing having taken place yet).

The Center for Civil and Human Rights has also initiated an actio popularis on racial/ethnic segregation in education (claiming direct discrimination), using statistical evidence that was available on the internet and information on impacts of segregation gathered through fact-finding. The case was initiated in 2010 and is also pending.

The Slovak courts, when the concept of indirect discrimination will start being invoked, will very likely look for inspiration in other countries and/or before the Court of Justice of the EU and/or the ECtHR. It has to be borne in mind, however, that the concept of indirect discrimination is individualised under the Slovak legislation – as compared to group-approach adopted in most jurisdictions, which may lead to unjustifiably and illegitimately restrictive interpretation of the Slovak legislation in force (see Chapters 2.3 a) and 2.3 d)).

d) Are there national rules which permit data collection? Please answer in respect to all five grounds. The aim of this question is to find out whether or not data collection is allowed for the purposes of litigation and positive action measures. Specifically, are statistical data used to design positive action measures? How are these data collected/ generated?

A duty to collect data is not specifically contained in any piece of the Slovak legislation.
However, it could be argued that it is implicitly contained in the preventive component of the principle of equal treatment (the duty to adopt measures that prevent discrimination entrenched in Section 2 para 3 of the Anti-discrimination Act – see Chapter 0.1 of this report) as it is hard to imagine effective prevention of discrimination without collection of relevant data. This duty, as generally framed in the preventive component of the duty to adopt measures against discrimination, would apply equally to all prohibited grounds discrimination contained in the Anti-discrimination Act and hence also in the Directives.

Also, it has to be borne in mind that the Slovak Republic is a party to all crucial UN human rights conventions (such as the CERD, CESCR, CEDAW etc.) the committees of which require data collection and which, according to the Slovak constitution, take precedence over the national laws.

As is, however, a well-known fact, and as has also been confirmed by a survey of the Citizen, Democracy and Accountability civic association carried out in 2009[87], neither

[87] See Hodoňová, S.: *Analýza stavu najčastejších problémov v oblasti zberu dát týkajúcich sa zakázaných dôvodov diskriminácie [Analysis of the State of the Most Frequent Problems in the Field of Collection of*

public nor private institutions collect data that would relate to prohibited grounds of discrimination in general (and that also involve the grounds covered by the Directives). As has also been confirmed by the survey[88], the institutions concerned do not collect the data as they wrongfully deem it illegal in the context of the Act on Protection of Personal Data.[89]

According to Section 8 para 1 of the Act on Protection of Personal Data, "processing of personal data which reveal racial or ethnic origin, political opinion, religion or belief, membership of political parties or political movements, membership of trade unions and data related to health and sexual life is prohibited." It is, however, important to say that Section 3 of the Act on Protection of Personal Data defines personal data as "data concerning a specific or specifiable natural person that can be specified either directly or indirectly, mainly on the basis of a generally usable identifier or on the basis of one or more features or signs that compose her physical, physiological, psychological, mental, economic, cultural or social identity." Thus, it follows that if data are collected on an anonymous basis and using methodology that would prevent direct or indirect identification of the person(s) concerned, the Act on Protection of Personal Data is not breached (as the data thus collected do not represent "personal data" as defined by this act). In practice, this type of data collection would have to be on voluntary basis, and so implicitly presumes consent of the persons concerned.

2.4 Harassment (Article 2(3))

a) How is harassment defined in national law? Include reference to criminal offences of harassment insofar as these could be used to tackle discrimination falling within the scope of the Directives.

Under Section 2a paragraph 4 of the Anti-discrimination Act harassment shall mean "such conduct which results or can result in intimidating, unfriendly, shameful, humiliating, insulting, degrading or offensive environment and the purpose or effect of which is or can be violation of a freedom or human dignity".

It is important to note that the definition of harassment does not explicitly stipulate that the conduct shall be unwanted. This may lead to interpretations under which courts or defendants would require applications of "objectivity tests" with regard to the capacity of the environment in question to meet the required statutory features.

It is also worth noting that given the general provision on prohibition of discrimination on the enumerated grounds contained in Section 2 para 1 of the Anti-

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Data Relating to Prohibiteid Grounds of Discrimination]. Bratislava: Občan, demokracia a zodpovednosť, 2010, available at http://www.oad.sk/sites/default/files/downloads/Akcny_plan_Zber_dat_analyza.doc (last time accessed on 01 April 2010).

[88] *Ibid*

[89] Zákon č. 428/2002 Z. z. o ochrane osobných údajov v znení neskorších predpisov [Act No. 428/2002 Coll. on Protection of Personal Data as amended]

discrimination Act ("observing the principle of equal treatment shall lie in prohibition of discrimination on the ground of sex, religion or belief, race…") that 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 repeat that discrimination has to take place on the prohibited grounds but rather implicitly comprise the general definition contained in Section 2 para 1 that says that discrimination has to take place on the prohibited grounds), it can be argued that the definition of harassment contained in the Anti-discrimination Act is narrower than the definition of harassment contained in the Directives, as it has to take place "on [the prohibited] grounds", as compared to the directives where relation to any of the grounds is sufficient.

In certain forms "unwanted conduct" could be qualified as a crime or minor offence or invoked as a ground for filing a civil defamation suit (action for the protection of "personhood"). The essential fact is that the dignity of a person is protected under the Constitution and some particular laws. Article 19 of the Constitution states, "every person shall have the right to maintain and protect his or her dignity, honour, reputation, and good name. Everyone shall have the right to be free from unjustified interference with their privacy and family life. Anyone has the right to be protected against unwarranted collection, disclosure, and other misuse of personal information." Article 16 of the Constitution protects privacy in general. These general provisions and statements are also reflected in certain provisions of criminal law[90] (Section 189 - Blackmail, Section 190 – Serious Coercion, Section 360 – Dangerous Threat, 423 – Defamation of Nation, Race and Conviction and Section 424 – Incitement to Nation, Racial and Ethnic Hatred), administrative law (Section 49 of the Act on Minor Offences) and civil law (Sections 11, 12 and 13 of the Civil Code).
In addition to these provisions of criminal law referring to "unwanted conduct" which affects the dignity of a human being and could be, to some extent, considered as harassment within the meaning of both Directives, there are also racially motivated crimes against physical integrity.

In other words, in relation to certain crimes (assault, murder...), a conduct motivated by racial, national or ethnic hatred is considered to be a special motivation and therefore an aggravating circumstance which can carry higher criminal charge and harsher punishment.

"Unwanted conduct", taking the form of unlawful harassment within the meaning of the Directives, also corresponds to minor offences referred to in the Minor Offence Act.[91] Section 49 of the Act states that, "any person who defames another person by insulting or ridiculing him or her is liable to a pecuniary fine of up to 33 €."

As mentioned above, the dignity of a person (without expressly mentioning discrimination or racial discrimination) is also protected under civil law provisions.

[90] Zákon č. 300/2005 Z. z. Trestný zákon [Act No. 300/2005 Coll. Criminal Code]
[91] Zákon č. 372/1990 Zb. o priestupkoch v znení neskorších predpisov [Act No. 372/1990 Coll. on Minor Offences as amended]

Section 11 of the Civil Code[92] states that "natural persons have the right to protection of personhood, in particular life and health, civil honour and human dignity, as well as privacy, reputation and manifestations of personal nature" (e.g. pictures, drawings, literary outputs etc.). Section 13 of the Civil Code provides a remedy in case of breach of Section 11 and states that "natural persons have, in particular, the right to request that any unlawful interference with the right to the protection of their personhood be discontinued, that the consequences of such interference be eliminated, and they also have the right to adequate satisfaction." In serious cases, non-pecuniary damages can be sought also in the form of pecuniary satisfaction.

Summarising the above written, unwanted conduct related to racial, ethnic origin, religion or other status, which takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, unfriendly, shameful, humiliating, insulting, degrading or offensive environment, can be considered as unlawful acts not only according to the Anti-discrimination Act but under special circumstances also under criminal, misdemeanour and civil law. However, a problem is that public authorities sometimes refuse to recognise or they underestimate the racial or in general hateful motivation of such unwanted conduct. By examining a committed crime it happens that the investigators do not examine further the intention of potential perpetrators who often insist e.g. they did not know of the race or ethnic origin of the victims and that the attack was pursued for a different reason.

This leads to hesitation of the victims to report their cases and oftentimes to their further victimisation.[93]

b) Is harassment prohibited as a form of discrimination?

Harassment is explicitly prohibited under the Anti-discrimination Act as a form of discrimination.[94]

c) Are there any additional sources on the concept of harassment (e.g. an official Code of Practice)?

There is no Code of Practice or other sources providing an additional hard law or soft law concept of harassment in the country (apart from private bodies such as business companies whose codes of conduct are usually not public).

[92] Zákon č. 40/1964 Zb. Občiansky zákonník v znení neskorších predpisov [Act. No. 40/1964 Coll. Civil Code as amended]

[93] In one case decided by the Regional Court in Banská Bystrica (15 Co 421/04, decision of 19 January 2005) after several appeal proceeding, the appeal court, referring to Article 12 (equality) and Article 19 (protection of human dignity) of the Constitution, Sections 11 and 13 of the Civil Code (protection of dignity and the right to compensation or other remedy), and various international treaties, decided that victims of acts violating human rights (mother of a son who was killed because of being a Roma) are entitled to effective remedies and to non-pecuniary damages . The court decided to grant the mother of the son who was killed non-pecuniary damages of SKK 100,000 (3,319.39 EUR) and non-pecuniary damages for the deceased son of SKK 200,000 (6,638.78 EUR). The court proceeding took more than 5 years.

[94] Section 2a paragraph 1 of the Anti-discrimination Act

Neither the Slovak National Centre for Human rights (the equality body) nor the Public Defender of Rights (the "ombudsman"), the government in general or the individual ministries have codes of conduct that would focus on anti-discrimination in general or on harassment in particular (although this would be desirable due to the preventive duty to promote equality, as contained in Section 2 para 3 of the Anti-discrimination Act, and also due to the legitimately expectable duty of public bodies to serve as role models for the private sector).

2.5 Instructions to discriminate (Article 2(4))

Does national law (including case law) prohibit instructions to discriminate? If yes, does it contain any specific provisions regarding the liability of legal persons for such actions?

Instruction to discriminate is, according to Section 2a para 1 of the Anti-discrimination Act, considered as one of the forms of discrimination. The definition is given by Section 2a para 6 of the Anti-discrimination Act and shall mean a conduct consisting in abuse of subordinate position of a person for the purpose of discriminating against a third person.

Apart from this, the Anti-discrimination Act also distinguishes incitement to discriminate which shall mean persuading, affirming or inciting a person to discriminate against a third person.
The law does not contain any specific provisions regarding the liability of legal persons for either instruction or incitement to discriminate.

Giving publicly instructions that have the effect of discrimination on account of racial, ethnic origin (such as the prohibition of entry to a pub or restaurant for the Roma, which is quite common in some Slovak regions) could be, under certain circumstances, considered as a crime under Section 424 of the Criminal Code (incitement to racial and ethnic hatred).[95] If such instruction is issued by a public authority (representative of a state or self-governing body), this act could be considered as an offence - abuse of power of a public authority pursuant to Section 326 of the Criminal Code.

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

a) *How does national law implement the duty to provide reasonable accommodation for people with disabilities? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of 'reasonable'. For example, does national law define what would be a "disproportionate burden" for employers or is the availability of financial assistance from the State taken into account in assessing whether there is a disproportionate burden?*

[95] There are some villages and places in the region where Roma are not allowed to enter pubs or bars. However, in most cases this is an "informal" rule (there is no formal instruction or rule).

Please also specify if the definition of a disability for the purposes of claiming a reasonable accommodation is the same as for claiming protection from non-discrimination in general, i.e. is the personal scope of the national law different (more limited) in the context of reasonable accommodation than it is with regard to other elements of disability non-discrimination law.

Pursuant to 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. To determine whether the measures give rise to a disproportionate burden, account shall be taken of:

- the benefit that the adoption of the measure would mean for the person with a disability,
- 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.

The measure shall not be considered as giving rise to disproportionate burden if its adoption by the employer is mandatory under separate provisions.[96]
Employers' duties in this regard are prescribed also by the Labour Code. Sections 158 - 159 of the Labour Code state that "Employers shall be obliged to employ persons with disabilities in suitable positions, to enable them to receive training or to study with a view to acquiring necessary skills, and shall also be obliged to support the upgrading of these skills. Furthermore, employers shall be obliged to create conditions for employees to have the possibility of applying themselves in work, and shall improve workplace facilities in order to enable these employees to obtain, wherever possible, the same work results as other employees, and to facilitate their work as best as they can. As regards employees with disabilities who cannot be employed under usual working conditions, employers may set up for them sheltered workshops or sheltered workplaces." Moreover, "[e]mployers shall enable their employees with disabilities to receive theoretical or practical training (retraining) aimed at maintaining, upgrading, expanding or changing their qualifications, or adapting it to technological progress with a view to safeguarding their employment." In these activities, employers must cooperate with trade unions or representatives of employees.

The Anti-discrimination Act contains no definition of disability. The Labour Code does (in Section 40 para 8 – for the purposes of this code), and defines an “employee

[96]For example the obligation of the employer, as stipulated by the Act No. 5/2006 Coll. on Employment Services, to employ an employee for a specified period of time if the state contributed to the creation of the job or the establishment of a so-called protected workshop, the obligation to observe the requirements relating to the construction of buildings for people with reduced ability to move as stipulated by the Regulation No. 532/2002 Coll.

with a disability" as an employee who is officially acknowledged as disabled on the basis of the Social Insurance Act[97] and who submits to her or his employee a decision on a disability pension.[98] The Social Insurance Act[99] defines the following conditions as conditions for acquiring a disability pension:

- at least 40 per cent loss of the ability to work (when compared to a "healthy" person)
- acquiring sufficient amount of years of pension insurance
- long-term unfavourable state of health – i. e. state of health causing a loss of ability to perform gainful activities that is supposed, according to medical assessment, to last at least one year.[100]

Thus, the definition of disability designed for the purposes of the Labour Code is much more restrictive than the definition in *Chacón Navas.*
Nevertheless, this definition is not included in the Anti-Discrimination Act, so, formally at least, it does not determine who is regarded as disabled and therefore entitled to claim a reasonable accommodation.

It is not yet possible to answer an eventual question as to how the courts determine whether accommodation is "reasonable" or whether it imposes a "disproportionate burden" or to give an example of the application of the duty of reasonable accommodation by the court as there has been no case-law on the issue so far.

b) Does national law provide for a duty to provide a reasonable accommodation for people with disabilities in areas outside employment? Does the definition of "disproportionate burden" in this context, as contained in legislation and developed in case law, differ in any way from the definition used with regard to employment?

It has to be noted that the Anti-discrimination Act that generally applies to the fields of employment and occupation, social security, health care, 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. Thus, the duty to provide a reasonable accommodation for people with disabilities outside employment can be regarded to be implicitly contained in this generally framed legal duty to prevent discrimination, also on the ground of disability. It is not accompanied by any kind of justification test.

Some specific duties in some other pieces of legislation (the Regulation Determining Details on General Technical Requirements on Construction[101], the Act on Road

[97] Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov [Act. No. 461/2003 Coll. on Social Insurance as amended]
[98] Section 40 para 8 of the Labour Act.
[99] Zákon č. 461/2003 Z. z. o sociálnom poistení, v znení neskorších predpisov [Act No 461/2003 Coll. on Social Insurance, as amended.]
[100] See sections 70-72 of the Act No 461/2003 Z. z. on Social Insurance, as amended.
[101] Vyhláška Ministersta životného prostredia SR č. 532/2002 Z. z. ktorou sa ustanovujú podrobnosti o všeobecných technických požiadavkách na výstavfbu a všeobecných požiadavkách na stavby užívané

Transport[102], the Act on Railways[103]) could be also considered as stipulating the duty to provide reasonable accommodation. For more details, see sections f) and g) of this chapter.

c) Does failure to meet the duty of reasonable accommodation count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect discrimination?

The breach of the employer's duty to provide reasonable accommodation for a disabled person as well as refusal or omission to take certain measures is considered to be a breach of the principle of equal treatment.
It is regarded as a violation of the principle (which is broader than the prohibition of discrimination and 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, 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.

Case-law that would be dealing with application of the concept of reasonable accommodation does not exist yet. Nor have there been any particular measures taken or discussions started on what would be the appropriate ways to implement the reasonable accommodation duty.

d) Has national law (including case law) implemented the duty to provide reasonable accommodation in respect of any of the other grounds (e.g. religion)?

The Anti-discrimination Act sets out in its basic provisions the general characteristics of the principle of equal treatment. According to this provision (Section 2 paragraph 3 of the Anti-discrimination Act) compliance with this principle shall also (apart from prohibition of discrimination on the enumerated grounds) consist in adoption of measures to prevent discrimination.

From this principle it can be inferred that the duty to provide reasonable accommodation applies not only to the employers and to people with disabilities in the area of employment but to all other areas and grounds which are regulated by the existing laws prohibiting discrimination. However, it is definitely not the same quality of regulation as for the above quoted obligation of the employers.

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osobami s obmedzenou schopnosťou pohybu a orientácie. [Regulation of the Ministry of Environment of the Slovak Republic No. 532/2002 Coll. Determining Details on General Technical Requirements on Constructions a on General Technical Reuquirements on Buildings used by Persons with Restricted Ability to Movement and Orientation]

[102] Zákon č. 168/1996 Z. z. o cestnej doprave v znení neskorších prepdisov [Act No 168/1996 Coll. on Road Transport, as amended]

[103] Zákon č. 194/1996 Z. z. o dráhach [Act No. 194/1996 Coll. on Railways as amended]

There has so far only been one known case when the non-compliance with the duty to adopt measures to prevent discrimination has been successfully invoked before a court (the case concerned discrimination on the ground of ethnicity in housing – see Chapter 3.2.10 and Chapter 0.3 for more details). However, this decision was fully dismissed by a higher instance court.

e) Does national law clearly provide for the shift of the burden of proof, when claiming the right to reasonable accommodation?

There is no specific provision on the shift in the burden of proof in case of claiming the right to reasonable accommodation. However, the general provision on the burden of proof contained in Section 11 para 2 of the Anti-discrimination Act will apply to these situations. Section 11 para 2 of the Anti-discrimination Act states that if the plaintiff "submits to court the evidence which gives rise to a reasonable presumption that violation of the principle of equal treatment occurred, the defendant has the obligation to prove that there was no violation of the principle".

f) Does national law require services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way? If so, could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing Directive 2000/78?

Buildings (for example residential houses, non-residential buildings designed for usage by the public, buildings in which employment of persons with limited ability of motion and orientation is assumed) and infrastructure (for example pavements and roads for pedestrians, car parks, access to parks, access to post boxes and cash dispensers etc.) are to be designed and built in a disability-accessible way according the Regulation Determining Details on General Technical Requirements on Construction.[104] Buildings and infrastructure which do not meet the criteria set by the Regulation should not get the approval from the respective building office (the reality, however, shows that these rules are often being ignored or violated).

In case of a building not accessible for persons with disabilities even though it was built after 1 December 2002 (the date from which the Regulation is in force), it could be considered as a breach of the principle of equal treatment (although the link is only implicit and interpretative), basically in the context of the legal definition of the principle of equal treatment which also encompasses the duty to adopt measures to prevent discrimination. This interpretation is applicable basically to all areas that are covered by the Anti-discrimination Act (employment and occupation, social security, health care, provision of goods and services including housing and education).

g) *Does national law contain a general duty to provide accessibility for people with disabilities by anticipation? If so, how is accessibility defined, in what fields (employment, social protection, goods and services, transport, housing, education, etc.) and who is covered by this obligation? On what grounds can a failure to provide accessibility be justified?*

Basically yes – although this general duty is not explicit and is rather a result of interpretation of the existing legislative provisions.

In all the fields covered by the Anti-discrimination Act (employment and occupation, social security, health care, provision of goods and services including housing and education), account has to be taken of the general duty to adopt measures aimed at prevention of discrimination that is entrenched in Section 2 para 3 of the Anti-discrimination Act and that represents, besides the prohibition of discrimination, a legally enforceable component of the principle of equal treatment. It also serves as an interpretative framework for the partial legal duties mentioned below:

The provision of Section 7 of the Anti-discrimination Act stipulates that an employer is obliged to take measures to enable a person with a disability to have access to employment, to exercising certain activities at work, to promotion or other advancement or to training.

[104] Vyhláška Ministersta životného prostredia SR č. 532/2002 Z. z. ktorou sa ustanovujú podrobnosti o všeobecných technických požiadavkách na výstavfbu a všeobecných požiadavkách na stavby užívané osobami s obmedzenou schopnosťou pohybu a orientácie. [Regulation of the Ministry of Environment of the Slovak Republic No. 532/2002 Coll. Determining Details on General Technical Requirements on Constructions a on General Technical Reuquirements on Buildings used by Persons with Restricted Ability to Movement and Orientation]

This does not apply if the adoption of such measures would impose a disproportionate burden on the employer (further defined – see Chapter 2.6 a) of this report).

In the other fields covered by the directives (but also in the field of employment to a significant extent), the Regulation Determining Details on General Technical Requirements on Construction[105] applies that sets special technical requirements taking account of needs of people of disabilities for buildings (for example residential houses, non-residential buildings designed for usage by the public, buildings in which employment of persons with limited ability of motion and orientation is assumed) and infrastructure (for example pavements and roads for pedestrians, car parks, access to parks, access to post boxes and cash dispensers etc.). Everyone who has to deal with construction business (mainly planners, builders etc.) is bound by these requirements. The justification for non-compliance are "serious cultural, historical or technical/operational reasons; the justification must be contained in project documentation."[106]

In the field of transport, Section 8 paragraph 1 f) of the Act on Road Transport[107] stipulates that the "carrier is obliged to create conditions that enable transport of people with physical disability and with sight impairment and that increase comfort of transport for old people and for mothers with young children". The act also stipulates that conditions of transport of people with "physical disabilities and sight impairment" will be specified in transportation regulations of individual carriers.[108] There is no justification clause regarding the mentioned duties.

The Act on Railways[109] contains general rules for creating conditions for access of people with disabilities. Special regulations allowing reduced fare for public transport are adopted by the self-governing regions.

h) Please explain briefly the existing national legislation concerning people with disabilities (beyond the simple prohibition of discrimination). Does national law provide for special rights for people with disabilities?

Legislation regarding special rights of people with disabilities exists in the area of employment, social insurance, health care, education and access to building and certain public services.

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[105] Vyhláška Ministersta životného prostredia SR č. 532/2002 Z. z. ktorou sa ustanovujú podrobnosti o všeobecných technických požiadavkách na výstavfbu a všeobecných požiadavkách na stavby užívané osobami s obmedzenou schopnosťou pohybu a orientácie. [Regulation of the Ministry of Environment of the Slovak Republic No. 532/2002 Coll. Determining Details on General Technical Requirements on Constructions a on General Technical Reuquirements on Buildings used by Persons with Restricted Ability to Movement and Orientation]

[106] Section 2 paragraph 4 of the regulation.

[107] Zákon č. 168/1996 Z. z. o cestnej doprave v znení neskorších prepdisov [Act No 168/1996 Coll. on Road Transport, as amended]

[108] Section 5 paragraph 1 d) of the Act on Road Transport.

[109] Zákon č. 194/1996 Z. z. o dráhach [Act No. 194/1996 Coll. on Railways as amended]

There are several legal guarantees for the support of participation of people with disabilities in the labour market. According to Article 8 of the Basic Principles of the Labour Code, "employees with disabilities are ensured working conditions that enable them to apply and develop their working skills, taking account of their health condition". This principle is further embodied in the abovementioned provisions of Sections 158 - 159 of the Labour Code (See Chapter 2.6) and in the Act on Employment Services. The latter act guarantees the right to special working condition, advisory service, vocational training and guidance, existence of special sheltered workplaces eligible for state aid, financial support for creating a work place for people with disabilities, financial support for work assistants etc.[110] The quality of working place for people with disabilities is specifically regulated by a governmental regulation.[111] There is also legal regulation for state-funded financial allowance to the employers that employ applicants with disabilities.[112]

Following Section 59 of the Employment Service Act an office of labour, social affairs and family may provide an allowance to an employer who employs employee(s) with (a) disability or to a self-employed person with a disability for the work of their work assistant, representing the amount of up to 90 % of the price of work performed by the assistant (on a monthly basis). According to Section 87 paragraph 3 of the Labour Code, employers may only introduce irregular working hours for persons with disabilities subject to their agreement. Persons with disabilities enjoy special protection against dismissal – a person with a disability can only be given notice after prior endorsement by an office of labour, social affairs and family.[113]

The Act on Social Services[114] stipulated different kinds of social services (such as care, transport and translation services, personal assistance, etc.) for, *inter alia*, persons with a "serious disability" and "unfavourable state of health". The Act on Benefits for Compensation of Serious Disability[115] regulates legal relationships related to providing financial contributions aimed at compensating social consequences of "serious disabilities".

[110] Sections 50, 55-61 of the Act on Employment Services No. 5/2004 Coll. State bodies responsible for providing this type of support are offices of labour, social affairs and family.
[111] Regulation No. 391/2006 Coll. on Minimum Security and Health Requirement for Working Place.
[112] Section 50 of the Act on Employment Services No. 5/2004 Coll.
[113] Section 66 of the Labour Code
[114] 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 prepdisov [Act No 448/2008 Coll. on Social Services and on amending and supplementing Act No 455/1991 Coll. on Licensed Trades (Small Business Act), as amended]
[115] 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. [Act No 447/2008 Coll. on Benefits for Compensation of Serious Disability, amending and Supplementing Certain Laws, as amended]

The School Act contains special provisions designed for accommodating needs of children and pupils with disabilities in kindergartens, primary and secondary schools and in school facilities.[116]

Special provision includes also the Act on Higher Education[117] guaranteeing reasonable accommodation for students with disabilities, including financial support under certain circumstances.

The Act on Road Transport and the Act on Railways also contain some special provisions that relate to creating conditions for access for persons with disabilities (see section g) of this chapter).

2.7 Sheltered or semi-sheltered accommodation/employment

a) To what extent does national law make provision for sheltered or semi-sheltered accommodation/employment for workers with disabilities?

The Act on Employment Services No. 5/2004 Coll. defines in Section 55 "sheltered workshop" and "sheltered workplace".

These are workplaces established by a legal entity or a natural person where at least 50 % of the employees have a disability and are not able to find employment in the open labour market. Working in a sheltered workshop or sheltered workplace is considered to be employment under the Anti-discrimination Act. "Sheltered workshops" or "sheltered workplaces" are also considered to be those places where persons with disabilities are schooled and where working conditions and working requirements are accommodated to their abilities. "Sheltered workplace" also means each individual workplace established or accommodated for an individual with a disability. Such workplace can also be established in the household of a person with a disability. Those who learn special skills and those employees who, because of health problems, are temporarily not able to carry out their original work and their employer has no other suitable work for them may also work in a sheltered workshop or at a sheltered workplace. The Act on Employment Services established several kinds of State support for sheltered workshops and workplaces. There is a subsidy for establishing a sheltered workshop or workplace, subsidy for supplementary expenses (such as equipment for workshops with special tools or machines and their installation) and a subsidy for operational costs and transport of employees. The actual amount of the subsidy for establishing one workplace in a workshop and for supplementary expenses can be up to 65 % of the 16-multiple of the overall cost of labour calculated from average wage of an employee in the national economy. The requirement for the provision of a subsidy is that a sheltered workshop operates for at least two years (in case of small and medium enterprises) or three years (in case of other businesses).

[116] Zákon č. 245/2008 Z. z. o výchove a vzdelávaní (Školský zákon) a o zmene a doplnení niektorých zákonov [Act No 245/2008 Coll. on Education (School Act), as amended]
[117] Section 16a, 57, 96 and 100 of the Act No 131/2002 Coll.

The subsidy for operational costs and transport for one person with a disability is a maximum of seven times the minimal monthly cost of labour. State bodies responsible for providing this type of support are offices of labour, social affairs and family.

b) Would such activities be considered to constitute employment under national law- including for the purposes of application of the anti-discrimination law ?

Yes, working in a sheltered workshop or sheltered workplace is considered to be employment under the Anti-discrimination Act.

~~2~~3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

~~2.1.1~~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)

Are there residence or citizenship/nationality requirements for protection under the relevant national laws transposing the Directives?

Protection against discrimination in the national legal system is not conditioned by somebody's citizenship or nationality. The Anti-discrimination Act has no specific requirements in this regard. However, Section 4, paragraph 1(a) of the Anti-discrimination Act explicitly lays down that the provisions of the Anti-discrimination Act shall not apply to differences of treatment resulting from the requirements for entry and stay of aliens in the territory of the Slovak Republic, including the treatment of these aliens provided for under separate provisions[118], except for citizens of the Member States of the European Union, a state that is a party to the European Economic Area Agreement, citizens of the Swiss Confederation and stateless persons and their family members.

According to the Act on Stay of Aliens[119] an alien is everybody who is not a citizen of the Slovak republic.

Apart from this, separate acts require for specific professions or employment to be a citizen of the Slovak Republic.[120]

Art. 35 of the Constitution guarantees the right to choose his or her profession and appropriate training freely, the right to conduct entrepreneurial or other gainful activity, as well as the right to material welfare of those who cannot enjoy this right without their own fault. Paragraph 4 of the same Article states that the law may provide a different regulation of these rights for aliens (e. g. the Act No. 48/2002 Coll. on the Stay of Aliens and on amending and supplementing certain other laws as amended, Act No. 480/2002 Coll. on Asylum and on amending and supplementing certain other laws.).

[118] e.g. Zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov, Zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov v znení neskorších predpisov [Act. No. 48/2002 Coll. on the Stay of Aliens and on amending and supplementing certain other laws as amended, Act. No. 480/2002 Coll. on Asylum and on amending and supplementing certain other laws as amended].
[119] Zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov [Act. No. 48/2002 Coll. on the Stay of Aliens and on amending and supplementing certain other laws as amended].
[120] High state officials, prosecutors, constitutional judges, judges, police officers, customs officers, Fire and Rescue Service members, Mountain Rescue Service members, professional soldiers.

~~2.1.2~~3.1.2 Natural persons and legal persons (Recital 16 Directive 2000/43)

Does national law distinguish between natural persons and legal persons, either for purposes of protection against discrimination or liability for discrimination?

The Slovak Anti-discrimination Act introduced a general provision according to which the principle of equal treatment shall be binding upon "everyone". This means that in terms of liability for discrimination, the Anti-discrimination Act does not distinguish between natural and legal persons.

In terms of protection against discrimination, the Anti-discrimination Act contains a specific definition of what constitutes discrimination of legal persons. Pursuant to Section 2a paragraph 9, discrimination against a legal entity is "a failure to comply with the principle of equal treatment in relation to this person on the grounds of discrimination listed in Section 2 paragraph 1 of the Anti-discrimination act[121] with respect to its members, associates, shareholders, members of its bodies, employees, persons acting on its behalf or persons on behalf of which such legal entity is acting".

~~2.1.3~~3.1.3 Scope of liability

What is the scope of liability for discrimination (including harassment and instruction to discriminate)? Specifically, can employers or (in the case of racial or ethnic origin) service providers (e.g. landlords, schools, hospitals) be held liable for the actions of employees? Can they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?

The Anti-discrimination Act doesn't 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."[122] Section 11, paragraph 1 of the Anti-discrimination Act further states that "the plaintiff is obliged to identify the person that has allegedly violated the principle of equal treatment."

The basic interpretative frameworks to answer the above question are provided by two specific provisions of the Anti-discrimination Act. First, pursuant to Section 3 paragraph 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".

[121] 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
[122] Section 9, par. 2 of the Anti-discrimination Act

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 a 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 be parallel to lie with individuals who breach the principle of equal treatment with their direct personal actions/omissions (such as (co-)employees, schoolmates etc.) and at the same time with persons having overall responsibility – such as employers, providers of services, providers of housing etc. 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 stipulated by special laws (Section 3 paragraph 2 of the Anti-discrimination Act), and it is therefore hard to establish what are the rights to which e. g. employee of a service provider is entitled as against a customer of this service provider, or the rights to which a teacher is entitled as against a pupil or a student.

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

What is also relevant in terms of answering the above question is the content of Section 5 paragraph 2 of the Anti-discrimination Act that stipulates that the principle of equal treatment shall be applied in the fields of "access and provision of" social security, health care, 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 enumerated items are entitled to the 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). What is, however, confusing in framework of this interpretation is the wording of Section 6 paragraph 1 of the Anti-discrimination Act that says that discrimination shall be prohibited in "employment relationships, similar legal relationships, and in related legal relationships". 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[123], it is hard to state unambiguously whether there is individual liability for discrimination between co-workers – especially given that the Labour Code does not enumerate the duty to observe the principle of equal treatment/prohibition of discrimination among the explicit responsibilities of an employee[124].

[123] See for example Barancová, H., Schronk, R.: *Pracovné právo*. Bratislava: Sprint, 2007, pp 197-208.
[124] See Sections 81 and 82 of the Labour Code respectively.

No court has so far been dealing with any of the above mentioned issues explicitly.

Here is a brief description of some additional statutory provisions that also apply to liability for discrimination/other breaches of the principle of equal treatment:

According to general provisions of the Civil Code[125] regarding liability for damages, the damage is caused by a legal entity or a natural person provided it was caused during their business and by the people engaged to perform the business. It is of no importance whether the engaged person performs an activity in the frame of an employment relationship, self-employment, or on the ground 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 towards the employee for the damage occurred to the employee due to the breach of legal regulations or due to intentional behaviour in breach of good morals during the work performance or in a direct connection with such behaviour. The employer is liable towards the employee for damages occurred due to the breach of legal obligations by the personnel performing the tasks of the employer on behalf of the employer.

The above mentioned shows that in case an individual acts on behalf of a legal entity or a natural person, considering the fact that such acts are not always necessarily based on a labour relationship, the responsibility falls upon the person on behalf of whom the person acted (although it does not necessarily, in the context of the fact that the duty to observe the principle of equal treatment lies with "everyone", deprive the person acting of her or his own legal liability).

The person or entity responsible for the infringement of the principle of equal treatment may enforce, according to respective labour regulations[126] or according to general damage regulations[127], the reimbursement of the claim against the person who caused the damage due to the breach of his or her duties.

3.2 Material Scope

~~2.1.4~~3.2.1 Employment, self-employment and occupation

Does national legislation apply to all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office?

[125] Section 420, par. 2 of the Civil Code No. 40/1964 Coll., as amended.
[126]The employee is responsible towards the employer for the damage occurred due to the intentional breach of his or her duties within the performance of his or her assignment or directly related to such breach (Section 179 of the Labour Code). Similarly, any civil servant liable for damage is obliged to indemnify the authority that he or she serves in the real amount of damage in cash, unless he or she did so via the restoration (Section 115, par. 1of the Act. No. 312/2001 Coll. on Civil Service).
[127] Under Section 420, par. 1 of the Civil Code, anybody is responsible for the damage occurred due to breach of his or her legal obligation.

In paragraphs 3.2.2 - 3.2.5, you should specify if each of the following areas is fully and expressly covered by national law for each of the grounds covered by the Directives.

Section 13 of the Labour Code directly obliges the employer to treat employees equally in compliance with the principle of equal treatment laid down by the Anti-discrimination Act for the area of employment and other similar legal relationships. Paragraph 2 of the same Section states that in addition to the grounds laid down by the Antidiscrimination Act (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[128] or other status.[129]) discrimination is also prohibited on the grounds of marital and family status, colour of skin, language, political or other opinion, trade union activity, national or social origin, property, lineage/gender[130] or other status (note the overlap between most of the grounds enumerated in the Labour Code and in the Anti-Discrimination Act – apart from trade union activity which is additional in case of the Labour Code). A potentially discriminated person can thus invoke the grounds both through the Anti-discrimination Act´s provision as well as through the Labour Code´s provision.

The same applies to the legal relationships resulting from the Civil Service Act No. 400/2009 Coll. and the special acts on civil service in bodies with special tasks in the public sphere – customs officers, soldiers while performing military service, police officers, members of the Slovak Intelligence Service, Corps of Prison and Court Guard and Railroad police officers, members of Fire and Rescue Service while performing civil service.

Similarly as in the case of the Labour Code, there is an overlap between the grounds of discrimination prohibited in these acts and in the Anti-discrimination Act, and in some cases these acts also extend the grounds (for example the Civil Service Act also contains prohibition of discrimination on the ground of unfavourable state of health, duties towards family, membership or activities in a political party or in a trade union or another association (See Chapter 2.1)

Act. No. 455/1991 Coll. on licensed trades (Small Business Act) which regulates the conditions for performing licensed trade by self-employed persons states in Section 5a that the rights provided for under this Act shall be guaranteed equally to all persons in conformity with the principle of equal treatment in labour relations and similar legal relations provided for under separate provisions of the Anti-discrimination Act.

[128] Lineage and gender both stand for the Slovak word *„rod"* which can be translated as either of these.
[129] Section 2 para 1 of the Anti-discrimination Act.
[130] See footnote No 128.

However, regarding the material scope of anti-discrimination law, the most important is the Anti-discrimination Act, which provides details on the scope of employment relationships and other work-related relationships for the purpose of protection against discrimination and the framework standard of protection in these relationships. Under Section 6 of the Anti-discrimination Act the principle of equal treatment shall be applied in employment relationships, similar legal relationships and related legal relationships. The principle of equal treatment shall be applied only in connection with rights of persons provided for under special laws regulating employment, occupation and other gainful activities or functions (See Chapter 2.1). Accordingly, employment for the purpose of the Anti-discrimination Act means a complex of legal relations resulting from labour, service, contractual and other relations relating to gainful activities.

The Anti-discrimination Act in Section 3, paragraph 1 says that the obligation to observe the principle of equal treatment applies to "everybody" in the field of (*inter alia*) employment relationships and related legal relationships. Thus it covers the entire sphere of employment, self-employment and occupational relationships in the public and private spheres.

~~2.1.5~~3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a)) Is the public sector dealt with differently to the private sector?

Pursuant to Section 6, paragraph 1 and 2 (a)(b) of the Anti-discrimination Act the principle of equal treatment is applicable (on all the grounds prohibited by the Anti-discrimination Act – see Chapter 2.1) to the rights of persons under the provisions of acts regulating access to employment, occupation, other gainful activities or functions, including job requirements, selection criteria and methods of exercising the job selection, and promotion. In other words, the Anti-discrimination Act refers to the existing laws in the area of employment, self-employment and occupation without making any distinction between legal relationships in the private and the public sector. At the same time, all laws regulating the public and the private sector are based on or supplement the rules set by the Anti-discrimination Act.

A general prohibition of discrimination in pre-employment relationships is laid down in Section 41 paragraph 8 of the Labour Code. This provision states that "[w]hen recruiting a natural person, an employer must not violate the principle of equal treatment concerning access to employment."

The Labour Code, Section 41, paragraph 6 sets the following rules to be applied to avoid discrimination in the field of access to employment: the employer must not request the natural person applying for job for information regarding pregnancy, his or her family background, his or her integrity, except for a job in which a clean criminal record is required under special regulation or if the integrity requirement derives from the nature of the job which the natural person is to perform, or his or her political, trade union or religious affiliation. From a natural person who applies for her or his first job, an employer may only require information related to the job to be performed[131].

Act. No. 5/2004 Coll. on Employment Services which introduces a system of institutions and instruments providing the participants in the labour market with support and assistance in their search for employment, changing employment, filling job vacancies and implementation of active measures within the labour market, stipulates the following in Section 14, paragraph 1: "Citizen[132] shall have the right to access to employment without any restrictions in conformity with the principle of equal treatment in employment relationships and similar legal relationships provided for under the Anti-discrimination Act. In conformity with the principle of equal treatment, except for the grounds laid down by the Anti-discrimination Act, any discrimination is prohibited also on the grounds of marital and family status, colour, language, political and other opinion, trade union involvement, ethnic or social origin, property, lineage or other status (note the overlap between the grounds in this act and the grounds listed in the Anti-discrimination Act). Pursuant to paragraph 3 of this section, exercising rights and obligations resulting from this act must be in compliance with good morals. No person may abuse such rights and obligations to the detriment of another citizen. According to Section 62, paragraph 1 of the Act on Employment Services an employer can recruit staff in the required number and structure using his or her own recruitment capacity or using the assistance of the respective labour offices allocated all over the Slovak Republic. Simultaneously, employers are prohibited from "publishing job advertisements that impose any restriction or discrimination on the grounds of race, colour, sex, age, language, religion or belief, disability, political or other opinion, trade union activities, national or social origin, belonging to a national minority or ethnic group, property, lineage/gender[133], marital or family status."[134]

[131] Section 41 para 6 of the Labour Code. This provision is probably intended to emphasise that employers are obliged to avoid asking personal questions related to age, family status etc. and other questions not connected to the job to be performed that could have discriminatory basis. The provision has never been invoked yet in courts and it is likely to be in compliance with the Framework Directive.

[132] A legal position equal to the one guaranteed to the citizens of the Slovak Republic is guaranteed also to a foreigner who has been granted a labour permit and temporary residence permit for employment purposes. (Section 21, par. 1 of the Act. No. 5/2004 Coll. as amended). A citizen of the EU member state and his or her relative are guaranteed the same legal position as the citizen of the Slovak Republic (Section 2, par. 2 of the Act No. 5/2004 Coll. on employment services as amended).

[133] See footnote No 128.

[134] Section 62 para 2 of the Act No 5/2004 on Employment Services.

Although the ground "sexual orientation" and "other status" are not mentioned in this provision, there is no doubt that given the fact that these two grounds are contained in the Anti-discrimination act that stipulates the duty to observe the principle of equal treatment also in the field of access to employment, the prohibition of publishing discriminatory job advertisements applies also to these grounds.

Further on, based on paragraph 3 of this section, an employer within the recruitment procedure must not demand information related to nationality, racial or ethnic origin, political opinion, trade-union membership, religion, sexual orientation, information which are not in conformity with good morals and personal data which are not necessary for performing the duties of the employer provided for by a separate law. The employer is obliged to prove upon the citizen's demand that it is necessary to provide the specific information requested.[135] The staff recruitment criteria must ensure equal opportunities for each person."[136]

Other laws regulating different areas of employment or civil service also contain provisions concerning equal treatment in access to employment and selection procedures. (See footnotes No. **Error! Bookmark not defined.**-**Error! Bookmark not defined.**).

Selection procedure for the position of a judge, under Section 28 paragraph 3 of the Act. No. 385/2000 Coll. on Judges and Lay Judges, shall be carried out without regard to sex, race, belief, religion, political or other opinion of the applicants, their national or social origin, or belonging to a nationality or an ethnic group. The Act on Judges and Lay Judges is an example of the imperfect and non-complex anti-discrimination law in Slovakia as it does not refer to age, disability and sexual orientation (apart from other grounds that are not contained in the Directives but are contained in the Anti-discrimination Act). However, given the legal principle *Lex posterior derogat legi priori*, in connection with the fact that the adoption of the Anti-discrimination Act followed after the adoption of the Act on Judges and Lay Judges, all the grounds mentioned in the Anti-discrimination Act that are not mentioned in the act on judges should also apply to the selection procedure of judges.

~~2.1.6~~3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))

In respect of occupational pensions, how does national law ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78 EC? NB: Case C-267/06 Maruko confirmed that occupational pensions constitute part of an employee's pay under Directive 2000/78 EC.

[135] Although there is a quite clear legal regulation concerning recruitment these rules are very often breached by employers, especially during job interviews when asking personal questions not relating to the work offered.
[136] Section 62, par. 2 and 3 of the Act. No. 5/2004 Coll. on Employment Services as amended

Note that this can include contractual conditions of employment as well as the conditions in which work is, or is expected to be, carried out.
The right to satisfactory working conditions, remuneration, and protection against arbitrary dismissal including discrimination at work is basically guaranteed by the Article 36 of the Constitution (See Chapter 1).

The Anti-discrimination Act expressly covers (in Section 6, paragraph 2(b)), 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 Chapter 2.1), "the performance of employment[137] and condition of work, including remuneration, promotion and dismissal."

According to Article 6 of the Basic Principles of the Labour Code, women and men shall have the right to equal treatment as far as access to employment, pay and promotion, vocational training and working conditions are concerned. Women shall be secured working conditions that enable them to participate on work taking into account their physiological capacities and the social function of motherhood, and also women and men with regard to their family obligations in the upbringing of and care for children". Also, the employer shall 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, according to Article 8 of the Basic Principles and Section 158 of the Labour Code (See Chapter 2.6).

As far as equal pay is concerned, Section 119a of the Labour Code provides that "wage conditions must be agreed without any form of sex discrimination"[138]. This applies to "all remuneration for work and benefits that are paid or will be paid in relation to employment according to the other provisions of this act or special regulations".[139] Pursuant to Section 119a paragraph 2, "women and men have the right to equal wage for equal work or for work of equal value. Equal work or work of equal value is considered to be work of the same or comparable complexity, responsibility and urgency, which is carried out in the same or similar working conditions producing the same or comparable productivity and results of work for the same employer." These provisions shall also apply to employees of the same sex if they carry out equal work or work of equal value.[140]

According to Section 118 paragraph 2 of the Labour Code, a wage shall be "financial settlement or settlement of a financial value (wages in kind), provided by an employer to an employee for work. Settlement provided in relation to employment pursuant to other provisions of this Act, or special regulations, in particular wage compensation, severance allowance, discharge benefit, travel reimbursements, contributions from the social fund, revenues from capital stocks (shares) or bonds, tax bonuses, wage compensation for the employee's temporary incapacity for work, and compensation for work standby, shall not be considered as wages. Other

[137] The term "employment" includes occupation, other gainful activity or function.
[138] Paragraph 1.
[139] *Ibid*.
[140] See paragraph 4 of Section 119a of the Labour Code.

settlements provided to an employee by an employer paid of net profit shall likewise not be considered as wages.
In respect of occupational pension schemes, it has to be mentioned that regular entitlements to retirement or invalidity benefits basically do not fall under the system of occupational pension schemes in Slovakia. Both types of these benefits fall under the system of the state social security scheme. Only the "accessory pension insurance" could be identified as a legally regulated occupational pension. The purpose of the accessory pension saving is to enable a participant of this pension scheme to acquire a supplementary retirement income in old age and a supplementary retirement income after termination of a risky occupation (according to the legal classifications) or after termination of work of a dance artist or of a musician on wind instrument.[141] In framework of an accessory pension insurance an employer pays, on the ground of a contract, a regular contribution for employees to an accessory pension company.

Given the above mentioned definition of what constitutes "pay", it can be argued that employers´ contributions to the accessory pension insurance system do not constitute "pay" as understood by the Slovak legislation. However, pursuant to Section 7 of the Act on Accessory Pension Saving, discrimination in performance of accessory pension saving is prohibited in compliance with the Anti-discrimination Act. The Anti-discrimination Act, in Section 5 paragraph 2(a), explicitly prohibits discrimination on all the grounds covered by the Anti-discrimination act in the area of accessory pension insurance.

~~2.1.7~~3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))

Note that there is an overlap between 'vocational training' and 'education'. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category. Does the national anti-discrimination law apply to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult life long learning courses?

In Section 6 paragraph 2c), the Anti-discrimination Act stipulates the duty to observe the principle of equal treatment on all the grounds prohibited in the Anti-discrimination Act (see Chapter 2.1) and in connection with rights of persons provided for under 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.

[141] § 2 ods. 2 zákona č. 650/2004 Z. z. o doplnkovom dôchodkovom sporení a o zmene a doplnení niektorých zákonov [Section 2, paragraph 2 of Act No. 650/2004 Coll. on Accessory Pension Saving and on Amending and Supplementing Certain Other Laws]

Act on Lifelong Learning[142], by defining "further education" in Section 2 paragraph 3, indirectly defines what is to be understood under the term "vocational training". Further education is defined as "education in educational institutions of further education that follows after school education and that enables acquisition of partial qualification or full qualification or to complete, renew, expand or deepen the qualification acquired in school education or to satisfy interests and acquire the capability to participate on the life of civic society. By successful completion of further education, it is not possible to acquire an educational degree." The Act on Lifelong Learning, although abolishing and building on the Act No 386/1997 Coll. on Further Education that had contained a direct and explicit reference to the Anti-Discrimination Act, does not contain any equality/anti-discrimination clause nor a reference to the Anti-discrimination Act. In this respect, the adoption of this act is a step back.

Article 6 of the Basic Principles of the Labour Code stipulates equal access to vocational training for both men and women. Article 7 declares the right of juveniles to be trained and to have working conditions that enable them to advance their physical and intellectual skills.

Sections 158 and 159 of the Labour Code contain provisions regarding vocational training and raising professional qualification of persons with disabilities (See Chapter 2.6).

The question of overlaps between "vocational training" and "education" does not play an important practical role in the Slovak anti-discrimination law since according to the Anti-discrimination Act as well as according to the majority of the relevant special laws discrimination is prohibited in both areas - education and vocational training (including vocational training in employment relationships) - on all the grounds contained in the anti-discrimination Act (and in case of some of the laws also on the ground of trade union activities).

~~2.1.8~~3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

In relation to paragraphs 3.2.6 – 3.2.10 you should focus on how discrimination based on racial or ethnic origin is covered by national law, but you should also mention if the law extends to other grounds.

Apart from the general constitutional prohibition of discrimination, the Constitution specifically forbids (Article 37, paragraph 2) restricting the number of trade unions as well as privileging some of them in a company or industry.

[142] Zákon č. 568/2009 Z. z. o celoživotnom vzdelávaní a o zmene a doplnení niektorých zákonov, v znení neskorších predpisov [Act No 568/2009 Coll. on Lifelong Learning and on Amending and Supplementing Certain Law, as amended]

Section 6, paragraph 1 and 2(d) of the Anti-discrimination Act prohibits discrimination on all the grounds covered by the Anti-discrimination Act (see Chapter 2.1) in connection with rights provided for by separate acts in the spheres of membership and activity in employees´ organisations, employers´ organisations and organisations associating persons of certain occupations, including the benefits that these organisations provide to their members.

~~2.1.9~~3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)

In relation to religion or belief, age, disability and sexual orientation, does national law seek to rely on the exception in Article 3(3), Directive 2000/78?

The Anti-discrimination Act in Section 5, paragraphs 1 and 2 (a)(b) prohibits discrimination on all the grounds contained in the Anti-discrimination Act (see Chapter 2.1) in conjunction with special laws existing in the area of access and provision of social assistance (now redefined to social services under the respective legislation[143]), social insurance, old-age pension insurance, accessory pension insurance, state social support, social advantages, and healthcare. The schemes of social insurance, old-age pensions insurance and state social support represent schemes guaranteed/administered by the state. The providers of social services are to a large extent public bodies (municipalities, regional self-governing regions or legal persons established by them). It means that the national law does not rely on the exception in Article 3(3) of Directive 2000/78 and the principle of equal treatment is guaranteed also in the state social security and social protection schemes.

As there is a high overlap between social advantages as defined by the Court of Justice and some benefits as provided by the legislation of the "state social support", the state will also be a frequent provider of benefits that, although legislatively defined as "state social support", *de facto* represent "social advantages" as specified by the Court of Justice (see also Chapter 3.2.7).

The basic law in the area of state social security scheme is the Act on Social Insurance.[144] An integral part of the state social security scheme is also the old age pension scheme. The Social Insurance act states that policyholders shall have rights in the exercise of social insurance in compliance with the principle of equal treatment in social security provided for under the Anti-discrimination Act.

[143] 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 prepdisov [Act No 448/2008 Coll. on Social Services and on amending and supplementing Act No 455/1991 Coll. on Licensed Trades (Small Business Act), as amended]

[144] Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov [Act No. 461/2003 Coll. On Social Insurance as amended]

The same applies to police officers, professional soldiers and soldiers in preparatory service under the Act on social security of police officers and soldiers.[145]

The Act on Social Services[146] regulates legal relations relating to the provision of social services. A social service is defined as "expert activity, service activity or other activity or set of these activities that are aimed at a) prevention of formation of unfavourable social situation, solution of unfavourable social situation or mitigation of unfavourable social situation of a natural person, family or a community b) sustaining, renewing or development of capabilities of a natural person to conduct an independent life and for supporting her or his integration into society, c) maintaining inevitable conditions for satisfying basic living needs of a natural person, d) solution of a critical social situation of a natural person and a family, e) prevention of social exclusion of a natural person and a family."[147] The Act on Social Services contains a principle of equal treatment clause and refers to the Anti-Discrimination Act. So does the Act on Benefits for Compensation of Serious Disability[148] that regulates legal relationships related to providing financial contributions aimed at compensating social consequences of "serious disabilities".

The Act on Old Age Pension Saving[149] contains separate definitions of direct and indirect discrimination including unwanted conduct which are not completely identical with the definitions contained in the Anti-discrimination Act and create confusions.

According to Section 7 of the Act on Accessory Pension Saving No. 650/2004 Coll. discrimination in performance of accessory pension saving is prohibited in compliance with the Anti-discrimination Act. The purpose of the accessory pension saving is to enable a participant on this pension scheme to acquire a supplementary retirement income in old age and a supplementary retirement income after termination of a risky occupation (according to the legal classifications) or after termination of work of a dance artist or of a musician on wind instrument.[150]

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[145] Zákon č. 328/2002 Z. z. o sociálnom zabezpečení policajtov a vojakov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov [Act No. 328/2002 Coll on Social Security of Police Officers and Soldiers and on amending and supplementing certain other acts as amended]

[146] 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 prepdisov [Act No 448/2008 Coll. on Social Services and on amending and supplementing Act No 455/1991 Coll. on Licensed Trades (Small Business Act), as amended]

[147] Section 2 para 1 of the act.

[148] 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. [Act No 447/2008 Coll. on Benefits for Compensation of Serious Disability, amending and Supplementing Certain Laws, as amended]

[149] § 9 Zákona č. 43/2004 Z .z. o starobnom dôchodkovom sporení a o zmene a doplnení niektorých zákonov v znení neskorších predpisov [Section 9 of Act No. 43/2004 Coll. on Old Age Pension Saving and on Amending and Supplementing Certain Other Act as amended]

[150] § 2 ods. 2 zákona č. 650/2004 Z. z. o doplnkovom dôchodkovom sporení a o zmene a doplnení niektorých zákonov [Section 2, paragraph 2 of Act No. 650/2004 Coll. on Accessory Pension Saving and on Amending and Supplementing Certain Other Laws]

The right to health care guaranteed under the Act on Health Care goes, similarly as the right to social security, also 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 Chapter 2.1).[151]

Policyholders (in the field of health insurance) shall have rights in the exercise of public health insurance in conformity with the principle of equal treatment in health care regulated in the Anti-discrimination Act.[152]

~~2.1.10~~3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)

This covers a broad category of benefits that may be provided by either public or private actors to people because of their employment or residence status, for example reduced rate train travel for large families, child birth grants, funeral grants and discounts on access to municipal leisure facilities. It may be difficult to give an exhaustive analysis of whether this category is fully covered in national law, but you should indicate whether national law explicitly addresses the category of 'social advantages' or if discrimination in this area is likely to be unlawful.

The Anti-discrimination Act in Section 5, paragraph (a) (to be read in conjunction with paragraph 1) prohibits discrimination on all the grounds contained in the Anti-discrimination Act (see Chapter 2.1) in the area of access and provision of social services. 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 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. A restrictive definition of social advantage that was contained in the Anti-discrimination Act upon its adoption[153] was abolished by the last amendment of the act effective since September 2007.

Some of the categories falling under the concept of social advantages as defined by the Court of Justice of the EU are defined and regulated under the statutory system of the state social security scheme (constituting "state social support") for which the principle of equal treatment as defined by the Anti-discrimination also applies (see Chapter 3.2.6). This is for example the case of child birth grants and funeral grants.

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[151] § 11 ods. 1-9 Zákona č. 576/2004 Z. z. o zdravotnej starostlivosti, službách súvisiacich s poskytovaním zdravotnej staroslivosti a o zmene a doplnení niektorých zákonov [Section 11, paragraphs 1-9 of Act No. 576/2004 Coll. on Health Care, Services Related to the Provision of Health Care and on Amending and Supplementing Certain Other Acts]

[152] § 29 Zákona 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 of Act No. 580/2004 Coll. on Health Insurance and on amendment and supplementation of Act No. 95/2002 Coll. on Insurance and on amendment and supplementation Certain Other Acts as amended]

[153] „a discount, exemption from a fee, benefits in cash or in kind provided directly or indirectly and independently of social security benefits to a certain group of natural persons who, usually, have a lower income or higher living costs than other natural persons."

Within the context of state social support as defined by the Slovak legislation and at the same time within the context of social advantages as defined by the Court of Justice, the Act No. 235/1998 Coll. On Childbirth Subsidy, on Subsidy to Parents of Concurrently Born Three or More Children or to Parents of within Two Years Repeatedly Born Twins appears to be very problematic as it is in breach of the 2000/43 Directive. In particular, it contains provisions on providing a child birth subsidy and on providing a supplement to this subsidy which have discriminatory effects on Roma women. In Section 3 para. 5 of the act a woman who after birth left her child in a maternity hospital, without prior consent of her physician, has no right to the childbirth subsidy and to the supplement to this subsidy which is paid on the first three born children (Section 3a, paragraph 1a). It is proved by fact-findings carried out through surveys in several hospitals of Eastern Slovakia, through interviews with Roma women and people working with Roma communities and through identification of localities where payments of the birth subsidies were refused that 100 % of women leaving the hospital after birth are of Roma origin.[154] In many cases case the Roma women (who usually come from segregated communities) leave the hospital because of caring responsibilities towards other children and discrimination and hostility in the hospital, and in most cases come back to pick up their child. Although the stated objective of the legislation - motivation of the mother to remain in the hospital for a medically necessary period – may be relatively legitimate –, the means are – especially in the context of the legislatively declared aim of the provision – covering costs connected to maintaining necessary needs of a newborn child – disproportionate and unnecessary. This has also been confirmed by an expert opinion of the Slovak National Centre for Human Rights from 15 August 2007.[155] Although some of the Roma women affected by this measure have filed judicial suits and received their childbirth subsidies, the courts deciding the cases – including the Supreme Court of the Slovak Republic – did not deal with the plaintiffs´ argumentation concerning indirect discrimination (see Chapter 0.3).

Other provisions of the same act can also be held indirectly discriminatory towards Roma women. For example, section 3a para 4 on the supplement to the birth subsidy (to be paid to compensate increased costs of the first three children born to one mother) states that the supplement entitlement can only come into existence if the respective woman has visited gynaecologist once a month from the fourth month of pregnancy till giving birth. Due to the reasons outlined above (discrimination of Roma women in health-care facilities, caring responsibilities etc.), the provision is equally discriminatory and should be abolished. Similarly, the act contains a provision enabling the payment of the supplement to the childbirth subsidy only in case the newborn child has lived to the age of at least 28 days.[156]

[154] The surveys were carried out by Poradna pre občianske a ľudské práva and can be found at www.poradna-prava.sk/go.php?p=502. A survey in the hospital was also carried out by the Slovak National Centre for Human Rights and summarised in their expert opinion on the issue.
[155] Available on request from the Slovak National Centre for Human RIghts.
[156] See Section 1 para 3 of the Act No 235/1998 Coll. On Childbirth Subsidy, on Subsidy to Parents of Concurrently Born Three or More Children or to Parents of within Two Years Repeatedly Born Twins.

Although neutral on its face, the provision is also indirectly discriminatory as unofficial data reveal that the infant death-rate of Roma children is several times higher than the death-rate of Non-Roma ones.[157] None of the indirectly discriminatory provisions on the supplement to the childbirth subsidy has so far been challenged judicially.

Another problem related to social advantages is the statutory linkage between the right to equal treatment and another substantive right contained in a respective law only upon existence of which can the right to equal treatment be invoked. Given the fact that many of the benefits that can fall under the scope of social advantages would be provided by other generally binding legal enactments than laws (for example governmental decrees, ministerial ordinances, generally binding ordinances of self-governing bodies or municipalities etc.), this legislative solution casts 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 which 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 before courts; see also Chapter 0.1).

~~2.1.11~~3.2.8 Education (Article 3(1)(g) Directive 2000/43)

This covers all aspects of education, including all types of schools. Please also consider cases and/ or patterns of segregation and discrimination in schools, affecting notably the Roma community and people with disabilities. If these cases and/ or patterns exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.
Please briefly describe the general approach to education for children with disabilities in your country, and the extent to which mainstream education and segregated "special" education are favoured and supported.

In its section 5 paragraphs 1 and 2 (c) the Anti-discrimination Act stipulates the duty to observe the principle of equal treatment and prohibits discrimination on all the grounds contained in the Anti-discrimination Act also in the area of education, and refers (in its footnotes) to other acts that regulate legal relations in education.[158]

[157] For more details on the indirectly discriminatory nature of the Act on childbirth subsidy, see also Debrecéniová, J.: Štátne sociálne dávky "na podporu rodiny" : Analýza vybraných zákonov prijatých v čase krízy. In: *Rodové dôsledky krízy: Aspekty vybraných prípadov*. ASPEKT: Bratislava 2010, pp 82-85. Also available online at http://www.aspekt.sk/kniha_det.php?IDkniha=131&kat=nov (last time accessed on 14 March 2011).
[158] Footnote 6 of the Anti-discrimination Act refers to Act No 131/2002 Coll. on Higher Education as amended, Act No. 386/1997 Coll. on Further Education (abolished by Act No 568/2009 Coll. on Lifelong Learning that does not contain any anti-discrimination clause), as amended, (current) Act No 5/2004 on Employment services, as amended. The enumeration of these acts is not exhaustive.

What can be inferred from the non-exhaustive enumeration of laws referred to through this provision[159], and also from the very general and wide notion of the word "education" contained in the respective provision (though not defined in the Anti-discrimination Act), is that the duty to observe the principle of equal treatment applies to both formal and informal education (and in case of the formal it includes all levels) and vocational training. In this context it is, however, important to say that although most of the acts that regulate the field of education in Slovakia contain anti-discrimination clauses (such as the School Act, the Act on Higher Education), the recently adopted Act No 568/2009 Coll. on Lifelong Learning that also abolished the previously-existing Act on further Education (containing an anti-discrimination clause) does not contain any equality clause.

The new School Act[160], adopted in 2008, sets "equal access to education, with taking into account the special educational needs of an individual and her/his responsibility for her/his education", as well as the "prohibition of all forms of discrimination, and especially segregation", as two of the principles on which education shall be based.

The act also defines "school integration" as "education of children and pupils with special educational needs in classes of school and school facilities designed for children or pupils without special educational needs"[161].

In spite of this, the school legislation adopted in 2008 (the School Act and the Regulation of the Ministry of Education No 320/2008 Coll. on Primary School) casts serious doubts on whether the principles listed above are going to be fulfilled.

Sections 94-102 of the School Act contain provisions on children and pupils with disabilities. Section 94 says that education of children and pupils with disabilities shall take place in schools for children with disabilities (these schools are, pursuant to this provision, called "special schools") or in other schools pursuant to this act (kindergarten, primary school, secondary schools, practical schools, training institutions), either in special classes or in classes or educational groups together with other children/pupils of the school (in which case the child/pupil can have an individual educational programme). The act itself does not state on what criteria shall the choice between these three forms of schooling for children/pupils with disabilities be made. Given also the fact that many schools – in terms of premises, facilities and staff – are not adjusted to the needs of children with disabilities, it is likely that many children are unnecessarily – and in breach of the principle of integration and non-segregation – put in special schools (although the allegation cannot be substantiated with complex and reliable research but rather by anecdotal/empirical evidence only). Another matter of serious concern is the diagnostics.

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[159] *Ibid*

[160] Zákon č. 245/2008 Z. z. o výchove a vzdelávaní (školský zákon) a o zmene a doplnení niektorých zákonov, v znení neskorších predpisov [Act No 245/2008 Coll. on Education (School Act) and on amending and supplementing certain laws, as amended]

[161] Section 2 (s) of the School Act. The act, however, does not define in more detail what this integration shall mean.

One type of the institutions that are authorised to carry out the diagnostics are the Centres for Special Pedagogical Counselling that are often attached to special schools or are represented by employees of these special schools. This raises serious concerns about the possibility of conflict of interests.[162]

Another problem of the school legislation adopted in 2008 is a problem related to education of pupils with "special educational needs". Section 13 of the Ordinance of Ministry of Education No 320/2008 Coll. on Primary School contains provisions on placing children into "specialised classes". Paragraph 5 of this section provides that it is also pupils coming from "socially disadvantaged environment" who are to be educated in these classes and defines them as pupils who "(1) are not likely, after completing the 0th year of school, to successfully manage the content of education in the first year of school, (2) are not managing the educational content of the first year of school or in case of whom it is, based on psychological examination, ascertained that they are not likely to successfully manage the content of education in the first year of school, (3) have been educated in primary schools for pupils with disabilities but disability has not been proved in their case".

There is no doubt that these provisions create a very wide room for legalising biased assessment of abilities, skills and potential of children from Roma communities and for perpetuating their social disadvantage and that they have a strong potential to further the existing discrimination and segregation of Roma children. Although the concept of specialised classes has so far not been existent for a long time (the ministry's ordinance has been in effect from 1 September 2008), the empirical and anecdotal evidence shows that it is exclusively or almost exclusively Roma children who are allocated to these classes or for whom these specialised classes are deliberately designed to separate them from pupils representing the majority population. Although the curriculum is officially the same as curriculum at regular schools, schools often opt to reduce it for the highest percentage allowed (i. e. 30 % of the statutory curriculum) to the lowest possible limit. What also reinforces the segregation potential of the legislative concept of "specialised schools" is the possibility to mix up pupils from different years[163], which makes it possible for schools to put Roma children from different years into one class.

Segregation of Roma children in education is a very widespread problem.

[162] See Kubánová, M., Košťál, C., Beblavý, M.: Základné a stredné školstvo. In: Kollár, M., Mesežnikov, G., Bútora, M. (eds.): Slovensko 2008 : *Súhrnná správa o stave spoločnosti*. Bratislava: Inštitút pre verejné otázky, 2009, p 539.
[163] Section 13 paragraph 3 of the Ordinance of Ministry of Education No 3202008 Coll. on Primary School.

Children from Roma families are also often sent to special classes/special schools (with reduced curricula and very limited chances for subsequent education) for children with intellectual disabilities[164], one of the reasons being bad diagnostics (resulting for example from their relative inability to speak the official language or from their social skills not adjusted to the majority requirements, from the general cultural bias of the diagnostic tests, from the lack of time a person doing the diagnostics has for one child[165] etc.)[166]. Due to various factors (fear from discrimination and stigmatisation, and hence bad performance, distance from the mainstream school, etc.), it is sometimes also parents who support education of their children in special schools. Now, given the legislative possibility to place children from "socially disadvantaged environments" into "specialised classes" (see above), the segregation of Roma children will probably even deepen.

However, school segregation is caused not only by biased diagnostic or racial hatred. Another factor leading to segregation is also the system of subsidies for children in special schools or special classes which are higher than the subsidies for children in regular schools.[167]

School segregation exists not only by placing Roma children into special schools or specialised classes. It happens very often within standard schools (segregated classes, segregation within the classes, segregated dining, etc. – usually also of lower quality when compared to education and education-related benefits provided to Non-Roma children). This type of segregation also happens because school authorities are, due to racial bias/hatred omnipresent in the society, afraid of losing Non-Roma children and thus the subsidies from the state that derive from the number of children at schools. It is also not completely exceptional to find purely Roma schools.[168]

[164] The lowest estimations for the percentages of Roma children in special schools and special classes are 59.4 % for special primary schools and 85.8 % for special classes at standard schools. See Friedman, E., Gallová Kriglerová, E., Kubánová, M., Slosiarik, M.: Škola ako geto : Systematické nadmerné zastúpenie Rómov v špeciálnom vzdelávaní na Slovensku. *[School as Ghetto : A Systemic Overrepresentation of Roma in Special Education in Slovakia.]* Roma Education Fund, 2009, p 22.
[165] Anecdotal evidence shows a person doing the diagnostics sometimes examines as many as 30 children per day.
[166] And the law does not stipulate any clear rules for re-diagnostics.
[167] Whereas the subsidies per year and a child at a regular primary school range from 1,069,24 € to 113,92 €, the subsidies per a year and a child at a special primary school range from 1612,75 € to 1657,43 € (see http://www.minedu.sk/data/USERDATA/RegionalneSkolstvo/FinRS/NFIN/Normativy_2010.pdf, last time accessed on 22 May 2010). Subsidies are always paid to schools.
[168] For more information on segregation of Roma children in education, see also Center for Civil and Human Rights, People in Need Slovakia: *Written Comments concerning the third periodic report of the Slovak Republic under the International Covenant on Civil and Political Rights – For the considerations by the Human Rights Committee.* April 2010, p 4-7. Available online at http://www.poradna-prava.sk/dok/NGO%20Written%20comments%20HRC%20ICCPR.pdf?PHPSESSID=9f624ec9594d58c6f4e77789c01b5965 (last time accessed on 12 March 20111).

It has to be said that the issue of school segregation has so far not been a subject of any public political or legal discussion or media attention that would have some kind of qualitative or quantitative significance. In December 2007 the Amnesty International criticised Slovakia for not paying enough attention to the problem of Roma segregation in schools and placing of Roma pupils into special schools or classes. The judgement of the European Court of Human Rights D.H. v. Czech Republic would be fully applicable on the Slovak educational system concerning placing Roma children into special schools. Despite all these facts and the existence of anti-discrimination and anti-segregation provisions (albeit contested by the currently existing provisions and practice that amount to *de facto* discrimination including segregation), the numbers of Roma children in special schools/special classes are not decreasing and may even increase in the near future. The problem of segregation was not yet politically acknowledged and solved. No specific projects or activities were announced in this field. Instead, the highest political representatives of the previous government (in power till 8 July 2010) including the Prime Minister and the Deputy Prime Minister for Knowledge Society, European Affairs, Human Rights and Minorities were talking about the need to place Roma children in "residential schools". It remains to be seen what steps, if any, will be taken by the current government (in power since 9 July 2010) to reduce the segregation of Roma children (and children with disabilities) in education.

There is no case-law in Slovakia that would deal with segregation/other forms of discrimination in education. An NGO Centre for Civil and Human Rights (Poradňa pre občianske a ľudské práva) lodged an actio popularis in 2010 on segregation of Roma children in education. The case is pending before the first instance court.

~~2.1.12~~3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43)

a) Does the law distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association)? If so, explain the content of this distinction.

The Anti-discrimination Act in Section 5, paragraph 1 and 2(d) prohibits discrimination on all the grounds contained in the Anti-discrimination Act (see Chapter 2.1) in conjunction with special laws existing in the area of access and provision of "goods and services including housing that are provided to the public by legal entities and natural persons – entrepreneurs".

The wording of the Act 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 to the public. The provisions of the Anti-discrimination Act do not apply to goods and services offered or provided on the private basis (e.g. providing or offering goods to the members of a private association, family etc).

b) Does the law allow for differences in treatment on the grounds of age and disability in the provision of financial services? If so, does the law impose any limitations on how age or disability should be used in this context, e.g. does the assessment of risk have to be based on relevant and accurate actuarial or statistical data?

Yes, in both cases exceptions are made by the Anti-discrimination Act and are contained in the section of the law on "admissible differential treatment". Section 8 paragraph 6 of the Anti-discrimination Act states that "discrimination is not a differential treatment on the ground of age or disability in providing insurance services if this differential treatment is resulting from a different level of risk verifiable by statistical or similar data and the conditions of these insurance services are proportionate to this risk". Despite the need for the proportionality test, media informed in 2009 that some insurance companies completely refuse to insure people of higher age (above 70 respectively) travelling abroad and seeking health insurance. It is difficult to assess what kind of statistical or other similar data they were relying on (if any) as the insurance conditions are not publicly available.

~~2.1.13~~3.2.10 Housing (Article 3(1)(h) Directive 2000/43)

To which aspects of housing does the law apply? Are there any exceptions? Please also consider cases and patterns of housing segregation and discrimination against the Roma and other minorities or groups, and the extent to which the law requires or promotes the availability of housing which is accessible to people with disabilities and older people.

As stated above, the Anti-discrimination Act stipulates the duty to observe the principle of equal treatment on all the grounds contained by the Anti-discrimination act (see Chapter 2.1) also in the area housing.

The Act does not provide any definition of "housing" and housing is systematically subsumed under "goods and services including housing that are provided to the public by legal entities and natural persons – enterpreneurs". What is also problematic is the link to "special laws" in which the right to housing/connected rights have to be contained in order to be invokable in cases of breaches of the equal treatment principles (in connection to housing). This may hinder invoking the rights stemming from the directives in cases when the right to housing and related rights would be regulated under other types of generally binding legal acts than laws (such as governmental decrees, ministerial ordinances, generally binding ordinances of self-governing bodies or municipalities etc.; see also chapters 0.1 and 3.2.7).

The problem of Roma housing segregation has been increasing in its volume and severity over the last years and comprises various problems.

The problem, however, is not properly documented (and no attempt has been made by the government to research this issue adequately). In 2007, the Centre for Housing Rights and Evictions (an international organisation) has identified the Slovak Republic as one of the three biggest transgressors of the right to housing.

Between 2005-2007, there were at least 13 cases of massive forced evictions of Roma (with more than 1400 people losing their housing) in which municipalities were resolving cases with tenants not paying for their rents, but often also resolving various non-transparent economic interests in cases of displacing Roma from houses in hearts of towns and cities. For example, municipalities used to sell lucrative municipal houses from centres of towns/cities in which the Roma used to live as tenants to entrepreneurs who either increased the rents of Romani tenants heavily or displaced them straight away. In many cases the Roma were moved (often without their agreement) to low-priced housing in the neighbouring village and/or segregated areas.

Although various sources indicate that the trend of forced evictions got mitigated in 2008 and 2009[169] (probably due to pressures exerted by NGOs and interest of media), there were still numerous instances of this practice that took place in Slovakia during this period (for example evicting six families from Čierna nad Tisou in April 2008 or evicting three families from Dubnica nad Váhom in September 2008)[170].

There are no official figures available with regard to legal action taken against discriminatory steps of the municipalities in the area of housing. The existing cases related mostly to illegality of evictions without dealing specifically with the problem of discrimination.

Even though the government carried out a programme on housing development though which it distributed funding for low-cost municipal rental apartments and technical infrastructure to more than 20 localities settled by Roma and the project proved to have some positive results (increased quality of life, increased school attendance), the project contributed to deepening segregation of Roma communities – because the new apartments were not built inside of municipalities but in distant localities, often with very poor infrastructure. Often the construction quality of the newly-built housing was also very poor.

Another problem is that municipalities and towns often do their local planning policies in ethnically segregational manners.

In March 2005, The Committee on the Elimination of Racial Discrimination issued its opinion[171] following a case brought by 26 Roma people living in Dobšiná. They claimed discrimination in the field of housing when that resulted from the municipal assembly cancelling its resolution on approving a programme of building low-cost houses for Roma inhabitants of the town.

[169] See for example HOJSÍK, M.: Rómovia. In: KOLLÁR, M. – MESEŽNIKOV, G. – BÚTORA, M.: *Slovensko 2008 : Súhrnná správa o stave spoločnosti*. Bratislava: Inštitút pre verejné otázky, 2009, p 228.
[170] *Ibid,* and see also SLOVENSKÉ NÁRODNÉ STREDISKO PRE ĽUDSKÉ PRÁVA*: Správa o dodržiavaní ľudských práv vrátane zásady rovnakého zaobchádzania*. Bratislava: Slovenské národné stredisko pre ľudské práva, 2010, p 61-65.
[171] Communication No. 31/2003 : Slovakia. 10/03/2005, CERD/C/66/D/31/2003.

The municipality's resolution referred directly to a petition signed by 2700 petitioners who expressed their disagreement with the plan because of "an influx of inadaptable citizens of Gypsy origin from the surrounding villages, even from other districts and regions." Despite the opinion of the Committee and its statement that "the petitioners be placed in the same position that they were in upon adoption of the first resolution", no effective steps by the government or municipality were taken. In its written opinion on the case, the Slovak National Center for Human Rights stated that the Anti-discrimination act was not applicable because housing applied only to providing services by hotels or provision of accommodation as a part of business activities.

One case of precedential importance is now subject to judicial proceedings (the plaintiffs have applied for extraordinary remedies after exhausting the possibility of an appeal to the second instance court).[172] The case concerns moving Roma families who had lived in the centre of the town of Sabinov (Eastern Slovakia) in lucrative houses (mainly from the perspective of their location) to a new place that was located one kilometre from the town periphery. The new place chosen by the municipality was totally isolated from the town and had a very poor infrastructure. At the beginning of year 2008 the representative of the plaintiffs submitted a legal action claiming discrimination in provision of housing based on intentional segregation of a group of people of Roma origin, making reference to the prohibition of discrimination in the provision of housing in the Anti-discrimination Act and to the International Convention on the Elimination of All Forms of Racial Discrimination.

The plaintiffs partially won their cases before the District Court in Prešov (with the court ruling that the town of Sabinov as well as the Ministry of Construction and Regional Development breached the principle of equal treatment, emphasising the segregation component, a breach of the duty to adopt measures to prevent discrimination, a need for a strict scrutiny test in case of a "suspicious criterion" consisting in ethnicity, and the outdated concept of formal equality)[173]. On appeal from the side of the defendants, the case was, however, fully dismissed by the Regional Court in Prešov[174]. The legal representative of the Roma plaintiffs referred the case to the Supreme Court of the Slovak Republic. For more information about the case, see Chapter 0.3 of this report.

With regard to housing available for people with disabilities and for older people, the Act No 448/2008 Coll. on Social Services is of relevance. It provides various types of social services that include housing of which people with disabilities and people of older age may be beneficiaries (although disability as such is, in most cases, not mentioned explicitly as a criterion that constitutes entitlement to these services but is rather contained in the eligibility conditions implicitly – mainly through enumeration of criteria that reflect a need for assistance of other persons of various levels).

[172] The legal assistance for the Roma families living in Sabinov acting as plaintiffs was arranged by two NGOs – The Milan Šimečka Foundation and the Citizen, Democracy and Accountability Association.
[173] Ruling from 15 June 2009, reference No 13Co/44/2009.
[174] Ruling from 13 May 2010.

Thus, Section 34 provides for "facilities of supported housing" to which natural persons who are reliant on assistance of other persons according to criteria set in a supplement to this act are entitled – provided that these natural persons are reliant on supervision under which they are able to live independent life. Section 35 provides for "facilities for senior citizens" which include housing and for which natural persons who have reached the pensionable age who are reliant on assistance of other persons according to criteria set in a supplement to this act or who need social services provided in these facilities for other serious grounds are entitled. A "social services home", defined in Section 38, shall provide social services to a natural person with special degrees (the most serious ones) of reliance on other persons´ assistance or to a natural person who cannot see or practically cannot see (and who has also certain level of reliance on other persons). A "specialised facility", defined in Section 39, provides *inter alia* housing to a natural person with a very serious degree of reliance on other persons´ assistance according to the supplement to the law and who has specific types of disability (e. g. Parkinson´s disease, Alzheimer´s disease, AIDS, schizophrenia, multiple sclerosis). Apart from housing, services provided in these facilities also include social counselling, assistance with exercising rights and legitimate interests, nursing services, catering and others).

~~3~~4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

Does national law provide an exception for genuine and determining occupational requirements? If so, does this comply with Article 4 of Directive 2000/43 and Article 4(1) of Directive 2000/78?

The original wording of the exception in the Anti-discrimination Act as adopted in 2004 was changed as of September 2007 to a more precise definition identical with the wording of the two Directives.

The Anti-discrimination Act defines "genuine and determining occupational requirements" in Section 8, para 1. The respective provision provides 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, although it can be assumed that all the grounds that are mentioned in the Anti-discrimination Act (see Chapter 2.1) will be the grounds to which this provision will apply. Nevertheless, there has not been any case-law yet on this matter and it will be interesting to watch whether the courts will go for a strict interpretation of the ´grounds´ context that would follow from the wording of the Slovak Anti-discrimination Act ("on the ground of") or will apply the wording of the respective provisions of the Directives ("related to any of the grounds…").

4.2 Employers with an ethos based on religion or belief (Art. 4(2) Directive 2000/78)

a) Does national law provide an exception for employers with an ethos based on religion or belief? If so, does this comply with Article 4(2) of Directive 2000/78?

In the Anti-discrimination Act, which is a generally binding act, the Slovak Republic provides an exception for churches, religious societies and other organisations whose activities are based on religion or belief. The exception was reformulated by amendment No. 326/2007 Coll., effective from September 2007. The old wording of the exception was breaching the framework given by both Directives in terms of grounds for the allowed differential treatment and missing rules for objective justification of differences of treatment.

The newly adopted Section 8, paragraph 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, a difference of treatment based on religion or belief shall not constitute discrimination where they are related to employment 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 persons´ religion or belief constitute a fundamental legitimate[175] 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.

b) Are there any specific provisions or case law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination? (e.g. organisations with an ethos based on religion v. sexual orientation or other ground.)

As regards organisations with a special ethos connected with their religion or belief, relevant legislation states that there shall be no right to interfere with the internal matters of the church.[176] However, internal orders of churches cannot violate generally binding legal acts, and the activity of churches cannot contravene the Constitution, cannot endanger the safety of citizens, public order, health, morality or rights and freedoms of others. In practice it means e.g. that although schools managed by religious organisations can have their own rules, these rules and the "external" relationships of such schools must comply with the generally binding rules.

There is no publicly known case-law explicitly relating to the conflict between the rights of churches, religious or similar organisations and other rights to non-discrimination. Nevertheless, a similar problem was dealt with by the Constitutional Court in 2001[177] when it decided that the plaintiff – a priest of Roman Catholic Church – was discriminated against in his right to claim his rights before an independent court. The cleric started a legal dispute with the Catholic Church about the legality of his dismissal. The court declined to examine his claim under employment legislation because of respecting internal rules of the church.

[175] A comma is missing between the words „fundamental“ and „legitimate“ in the act.
[176] Act No. 308/1991 Coll. on Freedom of Religious Belief and Status of Churches or Religious Societies, Section 5 paragraph 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".
[177] Decision of the Constitutional Court of the Slovak Republic of 31 January 2001, No. III. ÚS 64/00-65

The Constitutional Court in its decision of 31 January, 2001 III. ÚS 64/00 stated that "...[i]f a spiritual activity is carried out in the framework of a legal relationship, this kind of employment relationship, similar or civil relationship is ruled by the respective laws of the legal order of the Slovak republic and the internal rules of churches and religious societies can be applied only within its framework."

Anecdotal and empirical evidence (although there is no set of comprehensive data that would be collected e. g. by the State) also shows that religious schools (which are financed by the state and which are, also in the context of the above quoted decision, obliged to observe the Anti-discrimination Act and the principle of equal treatment) often advantage children of certain confessions (corresponding to the confessions of the respective schools) by allocating extra points at entrance exams solely for the confession.

c) *Are there cases where religious institutions are permitted to select people (on the basis of their religion) to hire or to dismiss from a job when that job is in a state entity, or in an entity financed by the State (e.g. the Catholic church in Italy or Spain can select religious teachers in state schools)? What are the conditions for such selection? Is this possibility provided for by national law only, or international agreements with the Holy See, or a combination of both?*

Except for pedagogical qualification, teachers of religion in state schools have to obtain a church´s authorisation issued by the relevant church´s establishment. This follows from the Agreement between the Slovak Republic and the Holy See on Catholic Upbringing and Education.[178] Subsequently an agreement between the Slovak republic and Registered Churches and Religious Societies on Religious Upbringing and Education was signed with identical provisions regarding religious education in state schools.[179] Given the strict rules for a church registration there are only Christian and Jewish churches and societies acting as registered in Slovakia. The students of state grammar and high schools have the right to choose between religious education and ethics. The privileges to authorise teachers of religious education are used mostly by the two biggest churches – the Catholic and the Evangelical Church.

4.3 Armed forces and other specific occupations (Art. 3(4) and Recital 18 Directive 2000/78)

a) *Does national law provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78)?*

[178] Published in the Collection of Laws under No. 394/2004 Coll.
[179] Published in the Collection of Laws under No. 395/2004 Coll.

Yes. Section 4, paragraph 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 covering the service of armed forces, armed security services, armed services, the National Security Office, the Slovak Intelligence Service and the Fire and Rescue Services.

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

b) Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?

Yes. Section 4, paragraph 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 covering the service of armed forces, armed security services, armed services, the National Security Office, the Slovak Intelligence Service and the Fire and Rescue Services. The exception does not apply to employees who carry out activities for the above given institutions in the framework of employment relationships regulated by the Labour Code (e.g. auxiliary staff).

4.4 Nationality discrimination (Art. 3(2)

Both the Racial Equality Directive and the Employment Equality Directive include exceptions relating to difference of treatment based on nationality (Article 3(2) in both Directives).

a) How does national law treat nationality discrimination? Does this include stateless status?
What is the relationship between 'nationality' and 'race or ethnic origin', in particular in the context of indirect discrimination?
Is there overlap in case law between discrimination on grounds of nationality and ethnicity (i.e. where nationality discrimination may constitute ethnic discrimination as well?

The Slovak language as well as the Slovak legislation draw a distinction between citizenship, "nationality" and ethnicity. "Nationality" shall mean, according to available commentaries, an individual's membership in a particular nation as a historically established community of people characterised, first of all, by a common historical development, specific culture, common language, relation to a particular territory etc. An ethnic group (ethnicity) is in general understood as a community of people with special features – common historical background, culture, language, but without a specific state territory (such as the Kurds, the Roma…).

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.

Differential treatment based on nationality of a person (meaning "citizenship" under the Slovak legislation) is allowed under the Anti-discrimination Act as far as it results from the legal requirements for entry and stay of aliens in the territory of the Slovak Republic, including the treatment of these aliens, provided for under separate legal regulations.[180] This is not applicable to the citizens of the European Union, citizens of the state which is a party to the European Economic Area Agreement, citizens of the Swiss Confederation and stateless persons and their family members.[181]

Separate legal conditions regarding aliens apply mostly to fulfilment of special requirements for granting permission to business activity, employment or study in the territory of the Slovak Republic. 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 the Slovak legislation) shall be prohibited under the legal regime of the Anti-discrimination Act. This follows from the open-ended list of the prohibited grounds of discrimination contained in the act that implicitly include nationality ("citizenship") among the prohibited grounds of discrimination in most areas covered by the Directives (See Chapter 2.1).

b) Are there exceptions in anti-discrimination law that seek to rely on Article 3(2)?

Differential treatment based on nationality of a person (meaning "citizenship" under the Slovak legislation) is allowed under the Anti-discrimination Act as far as it results from the legal requirements for entry and stay of aliens in the territory of the Slovak Republic, including the treatment of these aliens, provided for under separate legal regulations.[182] This is not applicable to the citizens of the European Union, citizens of the state which is a party to the European Economic Area Agreement, citizens of the Swiss Confederation and stateless persons and their family members.[183]

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[180] Zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov, Zákon č. 480/2000 Z. z. o azyle a o zmene a doplnení niektorých zákonov v znení neskorších predpisov [Act No. 48/2002 Coll. on the Stay of Aliens and on amending and supplementing certain other laws as amended, Act. No. 480/2002 Coll. on Asylum and on amending and supplementing certain other laws as amended]. Both of these acts regulate legal status, conditions for granting permission for business activities, employment, study and stay of aliens and asylum seekers.

[181] Section 4 paragraph 1(a) of the Anti-discrimination Act.

[182] Zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov, Zákon č. 480/2000 Z. z. o azyle a o zmene a doplnení niektorých zákonov v znení neskorších predpisov [Act No. 48/2002 Coll. on the Stay of Aliens and on amending and supplementing certain other laws as amended, Act. No. 480/2002 Coll. on Asylum and on amending and supplementing certain other laws as amended]. Both of these acts regulate legal status, conditions for granting permission for business activities, employment, study and stay of aliens and asylum seekers.

[183] Section 4 paragraph 1(a) of the Anti-discrimination Act.

Separate legal conditions regarding aliens apply mostly to fulfilment of special requirements for granting permission for business activity, employment or study in the territory of the Slovak Republic. 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 the Slovak legislation) shall be prohibited under the legal regime of the Anti-discrimination Act. This follows from the open-ended list of the prohibited grounds of discrimination contained in the act that implicitly include nationality ("citizenship") among the prohibited grounds of discrimination in most areas covered by the Directives (See Chapter 2.1).

4.5 Work-related family benefits (Recital 22 Directive 2000/78)

Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employees and their partners. Certain employers limit these benefits to the married partners (e.g. Case C-267/06 Maruko) or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note: this question is focused on benefits provided by the employer. We are not looking for information on state social security arrangements.

a) Would it constitute unlawful discrimination in national law if an employer provides benefits that are limited to those employees who are married?

The Anti-discrimination Act does not explicitly lay down any rules as far as work-related benefits for partners are concerned. However, it can be argued that work-related benefits in respect of partners fall under the employment-related list of areas for which the duty to observe the principle of equal treatment applies, as the list of these areas enumerated in Section 6 paragraph 2(b) of the Anti-discrimination Act is non-exhaustive. Given also the fact that the Anti-discrimination Act explicitly prohibits discrimination on the ground of family status and marital status, it can be argued that if an employer provided benefits that would be limited to those employees who are married, this would constitute unlawful discrimination.

Also, Section 43, paragraph 4 of the Labour Code contains a general reference according to which further working conditions can be agreed on in an employment contract, notably on further material benefits. At the same time, it also stipulates the duty of the employer to act in conformity with the principle of equal treatment and refers to the Anti-discrimination act (which contains the abovementioned grounds). This confirms the above interpretation (though not confirmed by courts yet) that any discriminatory rules or measures in the provision of work-related family benefits are prohibited.

On the other hand, the Labour Code contains a few specific provisions that are discriminatory (either directly or indirectly or both) in relation to family/marital/personal status. Pursuant to Section 141 paragraph 1(d) of the Labour Act, and employee is entitled to a paid leave of overall duration of three days in case of death of the employees' husband or wife. In case of death of a cohabiting other-sex partner there is no entitlement whatsoever to time off.

Similarly, the Labour Code grants time off from work in case of a wife of an employee giving birth to a child (for time necessary for transport to hospital). This would undoubtedly also discriminate non-married heterosexual couples.

Work-related family benefits are usually not a part of an employment contract. They are often incorporated into collective agreements or internal rules of an employer and are known only to the employees concerned. Many employers provide benefits to "family members" which are usually considered to be married partners and/ or children of the employees concerned as well as their non-married partners. Nonetheless, it must be stated that the practice in this regard, although often appearing as discriminatory from incidental evidence, is not supported by any official data. The rules related to family benefits have never been challenged for being discriminatory on the ground of family or marital status and the law has not yet been officially interpreted in relation to family benefits within employment.

b) Would it constitute unlawful discrimination in national law if an employer provides benefits that are limited to those employees with opposite-sex partners?

The Anti-discrimination Act does not explicitly lay down any rules as far as work-related benefits for partners are concerned. However, it can be argued that work-related benefits in respect of partners fall under the employment-related list of areas for which the duty to observe the principle of equal treatment applies, as the list of these areas enumerated in Section 6 paragraph 2(b) of the Anti-discrimination Act is non-exhaustive. Given also the fact that the Anti-discrimination Act explicitly prohibits discrimination on the ground of sexual orientation, it can be argued that if an employer provided benefits that would be limited to those employees with other-sex partners, this would constitute unlawful discrimination.

Also, Section 43, paragraph 4 of the Labour Code contains a general reference according to which further working conditions can be agreed in an employment contract, notably on further material benefits. At the same time, it also stipulates the duty of the employer to act in conformity with the principle of equal treatment and refers to the Anti-discrimination act (which contains sexual orientation as prohibited ground). This confirms the above interpretation (though not confirmed by courts) that any discriminatory rules or measures in the provision of work-related family benefits are prohibited.

On the other hand, the Labour Code contains a few specific provisions that are discriminatory (either directly or indirectly or both) with regard to sexual orientation.

Pursuant to Section 141 paragraph 1(d) of the Labour Act, and employee is entitled to a paid leave of overall duration of three days in case of death of the employees' husband or wife. In case of death of a cohabiting same-sex partner (where there are no possibilities to officially register the partnerships) there is no entitlement whatsoever to time off. Similarly, the Labour Code grants time off from work in case of a wife of an employee giving birth to a child (for time necessary for transport to hospital). This would undoubtedly also discriminate non-married lesbian couples (who have above all no way to register their partnerships by law).

Work-related family benefits are usually not a part of an employment contract. They are often incorporated into collective agreements or internal rules of an employer and are known only to the employees concerned. Many employers provide benefits to "family members" which are usually considered to be married partners and/ or children of the employees concerned as well as their non-married partners. Nonetheless, it must be stated that the practice in this regard, although often appearing as discriminatory from incidental evidence, is not supported by any official data. The rules related to family benefits have never been challenged for being discriminatory on the ground of sexual orientation and the law has not yet been officially interpreted in relation to family benefits within employment.

4.6 Health and safety (Art. 7(2) Directive 2000/78)

a) Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?

A general exception in relation to disability applies to the service of members of armed forces, armed security services, armed services, the National Security Office, the Slovak Intelligence Service and the Fire and Rescue Services.[184]

Pursuant to Section 8 paragraph 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 shall not constitute discrimination on the ground of disability, provided that this is required by the character of the job or of the job activity.

Pursuant to Section 41 paragraph 2 of the Labour Code, "if health capacity to work or mental capacity to work or other precondition pursuant to special law is required for the performance of work, the employer may only conclude an employment contract with a natural person having health capacity or mental capacity to perform such work, or with a natural person meeting other precondition pursuant to a special law".

Another exception on the ground of disability also applies in the area of the provision of insurance services (See also Chapter 4.7.1)

[184] Section 4, para. 1(b) of the Anti-discrimination Act

The other exceptions in relation to disability connected to health or safety in national law have rather a form of positive action towards people with disabilities (but at the same time also towards women, parents and juveniles) in the area of employment and education and are incorporated in several different acts (for more information see Chapter 4.7.2 and Chapter 5). This follows from the wording of Article 38 of the Constitution which guarantees more extensive health protection and special working conditions to women, minors and persons with disabilities. This constitutional provision is also reflected in Article 8 of the Labour Code´s Basic Principles stipulating that "employees with disabilities are ensured working conditions that enable them to apply and develop their working skills, taking account of their health condition."

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

b) *Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery etc)?*

Such exceptions do not exist in the national law.

4.7 Exceptions related to discrimination on the ground of age (Art. 6 Directive 2000/78)

~~3.1.1~~4.7.1 Direct discrimination

a) *Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78, account being taken of the European Court of Justice in the Case C-144/04, Mangold ?*

b) *Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?*

Justification of discrimination (including indirect discrimination) is specified in Section 8, paragraph 3 of the Anti-discrimination Act which almost follows the wording of Article 6 of Directive 2000/78. It reads as follows: "Differential treatment on the ground of age shall not be deemed to constitute discrimination if it is objectively justified by a legitimate aim and if it is necessary and appropriate for the achievement of that aim and if this is provided for by a specific legal regulation. Differences of treatment on grounds of age shall not be deemed to constitute discrimination if they consist in

a) fixing of a minimum or maximum age as a recruitment criterion,

b) 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,
c) fixing of 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 points a) – c) has, in a particular case, to meet the general test of justification provided by the introductory sentence to Section 8 Article 3 of the Anti-discrimination Act, or whether the introductory sentence is just giving a general context for the exceptions specified in points a) – c) (and perhaps further in other pieces of legislation).

According to the character of the relevant legislation, and also according to the judicial practice that has by now developed on the issue (although there has only been one case decided on this matter – see below), it is more likely that the latter of the approaches (the introductory sentence is just giving a general context for the exceptions specified in points a) – c)) will apply under the current wording of Section 8 paragraph 3 of the Anti-discrimination Act. For example, pursuant to Section 5 paragraph 1 (a) the Act No 385/2000 Coll. 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 be offering no room for justification in the light of the introductory wording of Section 8 paragraph 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).

Another example confirming the interpretation sketched above is a judgement of the District Court Banska Bystrica from 20 November 2007[185] (upheld by a judgement of the Regional Court Banska Bystrica from 27 March 2008[186]) where the plaintiff sued a potential employer for discrimination on the ground of age who, following legislation allowing for subsidies to employers for creating workplaces for so called "disadvantaged job applicants", in this case a citizen younger than 25 years of age who had completed his or her systematic preparation for an occupation through a daily form of study in a time period shorter than two years ago and had not yet acquired his or her first regularly paid job[187], and a subsequent contract with the labour office granting the subsidy, issued an advertisement through which he was looking for a corresponding employee (i. e. employee under 25 years of age).

[185] No 8C/119/2006 – 107
[186] No 12 Co/6/08. The Court probably made a mistake in the official judgement as it states the date of issue of the judgement of the regional court is 27 March 2007. However, this would not have been possible as the district court was deciding on 20 November 2007 and regional courts´ decisions always follow district courts´ ones.
[187] Pursuant to a then valid Section 8 para 3a of the act No 5/2004 Coll. on Employment Services.

For the court, the fact that the defendant acted in pursuance of a contract with a labour office (and hence also legislation providing for exceptions grounded in age) was in itself sufficient reason to state that "the defendant has therefore pursued a legitimate aim and acted in accordance with special regulations" (i. e. the court did not question the nature of the legislatively provided exception as such; see also Chapter 0.3).

It is also worth noting that for example Section 77 paragraph 6 of the Act No 131/2002 Coll. on Higher Education stipulates that employment of university teachers terminates at the end of the academic year in which they reached 70 years of age[188]. Although this provision allows the extension of the employment relationship of university teachers who are aged over 70 for one year (even repeatedly – but without any details on the criteria for doing so), it is questionable whether it is in accordance with the 2000/78 Directive as it is not grounded in any of its explicit provisions.[189] It will therefore remain up to the courts to establish the potential accordance or potential conflict with the EU law regarding this matter.

There are also other similar cases in the Slovak legal system where an employment relationship shall be terminated upon reaching 65 years of age (see Chapter 4.7.3).

With regard to part-time work, the Labour Code stipulates that a part-time employee cannot be given preferential treatment or cannot be disadvantaged as against a full-time employee[190]. This provision has remained as an unconditional anti-discrimination provision relating to part-time work after an amendment of the Labour Code effective since 1 March 2010[191] which abolished some previously-existing discriminatory provisions for part-time workers working less than 15 hour per week[192].

[188] This age limit used to be 65 years of age prior to adoption of an amendment to the Act on Higher Education from 27 April 2010 which is in effect from 1 October 2010. The reason for the amendment presented by its proponent (at the time of adoption of the act coalition MP) was a "lack of professionals guaranteeing study programmes who had ceased their function due to reaching 65 years of age, which does not only significantly endanger future students but also students who are enrolled into study programmes and fields." Almost no arguments related to discrimination appeared in the public debate related to the amendment.

[189] And apart from the directly discriminatory potential relating to age, the provision has also potential to be indirectly discriminatory on the ground of sex/gender, as the apparently neutral provision may be impacting on women more heavily, mainly due to breaks in carriers caused by carrying out caring responsibility more frequently than men during their working lives. Thus, forcing them to terminate their employment at the university at the age of 65/70 may lower their overall chances to assert themselves through academic performance when compared to men. The unclear and basically arbitrary conditions for extending the contracts of university teachers after reaching the age of 65/70 years can in fact even strengthen the sex/gender discriminatory potential of the provision (but can also have other discriminatory impacts in relation to any other ground of discrimination as they allow for arbitrary decision-making about which employee is going to get an employment contract extension and which one is not).

[190] Section 49 para 5 of the Labour Code.

[191] Amendment of the Labour Code No 574/2009 Coll.

[192] Section 49 para 6 of the Labour Code, as effective before 1 March 2010.

For example, under the previous (and now abolished) law, the notice period for this category of employees was only 30 days (whereas in full-time employment it was and still is 2 months). Since it is very likely that the most numerous group working part-time were (and still are) older employees after their retirement age and women, the abolition of this legal rule certainly contributed to removing room for legalised indirect discrimination of workers on the ground of age, sex and possibly also other grounds (for example disability, family status).

c) *Does national legislation allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by article 6(2) ?*

With regard to occupational social security schemes, differences of treatment in such schemes on grounds of age shall not be considered as discrimination where they consist in the fixing of 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 modes of these pensions based on age criteria, provided that this does not result in discrimination on the ground of sex.[193] Also, under Section 8, paragraph 6 of the Anti-discrimination Act differences of treatment on grounds of age or disability in the provision of insurance services shall 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. The different treatment on the ground of age is allowed in areas regulating service of members of armed forces, armed security services, armed services, National Security Office, Slovak Intelligence Service and Fire and Rescue Services.

~~3.1.2~~4.7.2 Special conditions for young people, older workers and persons with caring responsibilities

Are there any special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection? If so, please describe these.

According to Sections 171 - 173 of the Labour Code, an employer shall be obliged to create favourable conditions for the overall development of 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, under Section 40, paragraph 3 of the Labour Code, defined as an employee younger than 18 years. When dealing with significant matters concerning young employees, employers shall closely co-operate with their legal guardians. Employers shall be obliged to keep records on young employees they employ.

[193] Section 8, paragraph 4 of the Anti-discrimination Act.

Any notice given to a young employee, or termination of employment with immediate effect at the employer's initiative must also be brought to the attention of the young employee's legal guardian or, where employment is terminated on the employee's initiative, the employer is obliged to request the opinion of the young employee 's legal guardian. Employers may only assign young employees to the jobs that are appropriate to their physical and mental development, that do not jeopardise their morality, and they shall provide them with enhanced care at work.

The Labour Code, Sections 174 to 175, stipulates the prohibition of night work and standby duty for young employees. Young employees older than 16 may exceptionally perform night work not exceeding one hour in case it is necessary for their vocational training. The employer must not apply such system of wages and benefits which could result in endangering the health and safety of young employees due to the increasing work performance. If a young employee is prohibited to carry out the work which he or she is qualified for, the employee is obliged to assign him or her to another work, preferably to that corresponding to his or her qualification, until the young employee is permitted to carry out the work concerned. A young employee must not be assigned to work which is inadequate, dangerous or harmful to health for the young employee due to his or her age-related specific anatomic, physiological and psychological features. The lists of kinds of work and workplaces forbidden for young employees are set by a government regulation[194]. Moreover, the employee is forbidden to assign young employees to work exposing them to an increased risk of injury or to work the performance of which could seriously endanger the health and safety of their co-workers or other persons.

Specific protective measures of the Labour Code apply to the prohibition of an immediate dismissal of an employee on maternity and parental leave, a solitary employee[195] taking care of a child younger than three years of age or with an employee who personally cares for a relative or other close person who is a person with severe disability (Section 68 paragraph 3).

[194] Nariadenie vlády č. 286/2004 Z.z. ktorým sa ustanovuje zoznam prác a pracovísk, ktoré sú zakázané mladistvým zamestnancom, a ktorým sa ustanovujú niektoré povinnosti zamestnávateľom pri zamestnávaní mladistvých zamestnancov
[Government Regulation No. 286/2004 Coll. regulating the list of work and workplaces forbidden for juvenile employees and setting certain duties of employers regarding the employment of juvenile employees]

[195] Pursuant to the Labour Code, a solitary employee shall be understood as an "employee who lives alone and is a single, widowed or divorced man or a single, widowed or divorced woman" (Section 40 para 1) or a „solitary man or a woman for other substantive reasons" (Section 40 para 2).

For an employee with disability, a pregnant woman, a woman or man permanently caring for a child younger than three years of age, a solitary employee who permanently cares for a child younger than 15 years of age, working time may only be arranged unevenly[196] upon agreement with them (Section 87 paragraph 3; note the absence of this benefit in relation to employees who personally care for relatives or other close persons who are persons with severe disability). The employer is obliged to excuse an absence from work of an employee for periods of maternity leave and parental leave, periods of attending to a sick family member and periods of caring for a child younger than ten years of age who for substantive reasons may not be in the care of a children's educational facility or school which the child is otherwise in the care of (Section 141 para 1). When designating employees to work shifts, the employer shall be obliged to take into account the needs of pregnant women and of women and men continuously caring for children. A pregnant woman, a woman or man continuously caring for a child younger than three years of age or a solitary man or woman continuously caring for a child younger than fifteen years of age may be employed for overtime work only with their consent. Stand-by work may only be agreed upon with them (Section 164 paragraphs 1 and 3; and note again the absence of this benefit in relation to employees who personally care for relatives or close persons who are persons with severe disability). If a pregnant woman or a man or a woman continuously caring for a child younger than 15 years of age request a reduction in working hours or other arrangement to the fixed weekly working hours, the employer is obliged to accommodate their request if such is not prevented by substantive operational reasons (Section 164 paragraph 2). This provision shall also apply to an employee who personally continually cares for a relative or other close person who is mostly or completely helpless and is not provided with care in social care facilities or institutional care in health-care facilities (Section 165).

The Act on Employment Services expressly defines employment services as well as the implementation of active measures within the labour market. Among others, the act provides specific support to the category of „disadvantaged job seekers".

This category comprises, *inter alia*, parents who care for at least three children before the end of their school attendance or solitary citizens caring for children before the end of their school attendance, people older than 50 years of age, and people younger than 25 years of age who have completed their systematic preparation for an occupation through a daily form of study in a time period shorter than two years ago and have not yet acquired their first regularly paid job.[197]

[196] Pursuant to Section 87 para 1 of the Labour Code, if the character of the work or operating conditions does not permit working time to be distributed evenly (i. e. the difference in the lengths of working time pertaining to individual weeks shall not exceed three hours, and the working time for individual days shall not exceed nine hours – see Section 86 para 2 of the Labour Code) in individual weeks, the employer may distribute working time unevenly in individual weeks after agreement with employees' representatives or the employee. The average working time may not however exceed, in a maximum period of four months, the established weekly working time.

[197] See Section 8 of the Act No 5/2004 Coll, as amended.

Following this Act, the government may provide a job seeker younger than 25 years of age a so-called graduate practical training allowance aimed at widening the opportunities of this person to find a job within the labour market. The graduate practical training is carried out at the workplace corresponding to the reached level of education for a period not shorter than three months and not longer than six months. During the graduate practical training the young trainee receives a state-funded monthly allowance in the amount of subsistence for one adult person set by a special regulation (185,38 € by the end of 2010).[198] The authors have no statistical data available on monitoring and evaluation of the utilisation of this type of support.

The act also introduced a "subsidy for employment of a disadvantaged job seeker."[199] An employer who creates a new workplace and employs a "disadvantaged job seeker" is entitled for a subsidy of up to 30 % (depending on the region) of the monthly cost of labour of one employee calculated from average wage of an employee in the national economy.

As far as persons with caring responsibilities are concerned, the Labour Code protects employees taking care of a next of kin with a serious disability. Apart from the prohibition of immediate dismissal (see above), rescheduling of working hours is permissible only upon an agreement with the employee concerned.

~~3.1.3~~4.7.3 Minimum and maximum age requirements

Are there exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training?

General rules for justification of direct discrimination in employment on the ground of minimum or maximum age requirement are set in Section 8, paragraph 3(a) of the Anti-discrimination Act (See Chapter 4.7.1).

In practice, it happens quite often that one of the criteria stated in job advertisements published within recruitment procedures is an indirect determination of the acceptable age via determination of length of professional work experience or a note "we offer young dynamic team". It is also not uncommon for job advertisements and/or recruitment procedures to be directly discriminatory on the ground of age.

As far as the legislation requirements are concerned, there are several laws stipulating minimum or maximum ages in employment relationships. None of the laws was subject to a specific public discussion as to whether it is compatible with the Directive 2000/78. The Constitution of the Slovak Republic regulates the requirements applicable to the holders of high public positions, including their age.

[198] See Section 51 of the act.
[199] Section 50 of the Act No 5/2004 Coll. on Employment Services, as amended [zákon č. 5/2004 Z. z. o službách zamestnanosti v znení neskorších predpisov]

This applies to the President of the State, in case of whom minimum level of 40 years of age has been set, to judges, judges of the Constitutional Court, the ombudsperson and the members of the Parliament (the National Council of the Slovak Republic)[200]. Other laws regulate for example a minimum age limit applicable to a work assistant for a person with a disability (18 years)[201], a minimum age of a prosecutor (25 years)[202], the general prosecutor (40 years)[203] and judges (30 years – see also Chapter 4.7.1).[204] The President may, upon a recommendation of the Judicial Council, withdraw a judge who reached 65 years of age.[205] 70 years of age is a maximum age limit for a university teacher to be in an employment relationship with a university (although extensions are allowed – see Chapter 4.7.1). The Labour Code stipulates a minimum age of 15 years 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 of work before the applicant has completed compulsory school education.[206] Civil servants must be at least 18 years old. The law also requires a minimum age for obtaining a permit to run an entrepreneur's business (18 years).[207]

~~3.1.4~~4.7.4 Retirement

In this question it is important to distinguish between pensionable age (the age set by the state, or by employers or by collective agreements, at which individuals become entitled to a state pension, as distinct from the age at which individuals actually retire from work), and mandatory retirement ages (which can be state-imposed, employer-imposed, imposed by an employee's employment contract or imposed by a collective agreement).

For these questions, please indicate whether the ages are different for women and men.

a) Is there a state pension age, at which individuals must begin to collect their state pensions? Can this be deferred if an individual wishes to work longer, or can a person collect a pension and still work?

The age for entitlement to a state pension is fixed by the law. Under the Social Insurance Act[208] (effective from January 2004), the pensionable age is fixed equally for men and women at the age 62 years.

[200] See Articles 74, 103, 134, 145 and 151a of the Constitution of the Slovak Republic
[201] Section 59 paragraph 3 of the Act No 5/2004 Coll. on Employment Services.
[202] § 6 zákona č. 154/2001 Z. z. o prokurátoroch a právnych čakateľoch prokuratúry v znení neskorších predpisov [Section 6 of the Act No. 154/2001 Coll. on prosecutors and prosecutors candidates as amended]
[203] § 7 zákona č. 153/2001 Z. z. o prokuratúre v znení neskorších predpisov [Section 7 of the Act No. 153/2001 on prosecution as amended]
[204] § 5 ods. 1 písm. a) zákona č. 385/2000 Z. z. o sudcoch a prísediach a o zmene a doplnení niektorých zákonov v znení neskorších predpisov [Section 11 of the Act No. 385/2000 Coll. on judges and lay judges and on amending and supplementing certain other acts]
[205] Art. 147, paragraph 2 (b) of the Constitution of the Slovak republic.
[206] Section 11 of the Labour Code.
[207] Section 6 of Act No. 455/1991 Coll. on Licensed Trades (Small Business Act), as amended.
[208] Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov [Act No 461/2003 Coll. on Social Insurance, as amended]

However the provision will be fully implemented as of the year 2014. Due to changing of retirement security scheme the Social Insurance Act simultaneously introduced transitional provisions setting the retirement ages for men and women from the year 2004 differently and progressively, starting with 60 years for men and with 53 to 57 years for women (depending on the number of children).[209]

The pensionable age and collection of pension does not prevent the entitled person from working if she or he wishes to continue their employment or start a new one. Thus the person entitled to a state pension can both work and collect the old age pension from the social security scheme and wage from her or his employer.

Under special circumstances an individual can start to collect an early pension[210]. However, as of 1 January 2011, an individual who wants to collect an early pension cannot do so if she or he is compulsorily insured for the purposes of pension as an employee or a self-employed person[211] (i. e. basically if she or he works under an employment contract or as a self-employed person; if, however, she or he works on labour-related contracts outside employment contract – which are limited in the amount of time that can be spent with this type of work[212] -, the collection of an early pension is allowed).

b) *Is there a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements? Can payments from such occupational pension schemes be deferred if an individual wishes to work longer, or can an individual collect a pension and still work?*

In respect of occupational pension schemes and their corresponding entitlements, it has to be mentioned that they do not represent the main and compulsory source of pensionable income (this role is fulfilled by the state social security scheme) but rather a suppplementary source based on a voluntary agreement of employers and employees. Also 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 the Act No 650/2004 Coll. on Accessory Pension Saving[213] (see Chapter 3.2.3 for more details on the act).

[209] Section 65 of the Social Insurance Act. The law envisages the gradual unification of retirement ages for men and women; women's retirement in 2014 will be the same as for men - 62 years, without taking into account the number of children. The men's retirement age 62 years is applicable from the year 2006.
[210] Section 67 of the Social Insurance Act. One of the conditions is that an individual was insured for at least 15 years.
[211] See Section 67 para 4 of the Act No 461/2003 Coll. on Social Insurance.
[212] See Sections 223-228a of the Labour Code.
[213] Zákona č. 650/2004 Z. z. o doplnkovom dôchodkovom sporení a o zmene a doplnení niektorých zákonov [Section 2, paragraph 2 of Act No. 650/2004 Coll. on Accessory Pension Saving and on Amending and Supplementing Certain Other Laws]

Pursuant to Section 16 paragraphs 1 and 2 of the Act on Accessory Pension Saving, a participant in this accessory pension saving who requests to receive payments from an accessory pension shall receive this accessory pension in the event that her or his accessory insurance lasted for at least the minimum period stipulated by the welfare plan (which cannot be shorter than 10 years) and in the event that she or her has attained the age stipulated by the welfare plan, which cannot be lower than 55 years.

c) *Is there a state-imposed mandatory retirement age(s)? Please state whether this is generally applicable or only in respect of certain sectors, and if so please state which. Have there been recent changes in this respect or are any planned in the near future?*

Until recently, the civil service of an employee who attained 65 years of age was supposed to terminate[214]. With the adoption of the Act No 400/2009 on Civil Service (in effect from 1 November 2009), this condition was abolished.

A *de facto* state-imposed mandatory age for retirement is stipulated by Section 77 paragraph 6 of the Act No 131/2002 Coll. on Higher Education that provides that employment of university teachers terminates at the end of the academic year in which they reached 70 years of age. Although this provision allows the extension of the employment relationship of university teachers who are aged over 70 for one year (even repeatedly – but without any details on the criteria for doing so), in case of non-extension the university teacher in question has practically no other option than to retire. See Chapter 4.7.3 for more details.

A possibility of state-imposed mandatory retirement age can under certain circumstances also apply to judges. Pursuant to Article 147, paragraph 2 (b) of the Constitution, the President may, upon a recommendation of the Judicial Council, remove a judge who reached 65 years of age from her or his office.
There are otherwise no state-imposed mandatory retirement ages.

d) *Does national law permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract, collective bargaining or unilaterally?*

There is no possibility to set retirement ages by private contract, by collective bargaining or unilaterally.

e) *Does the law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment, or are these rights lost on attaining pensionable age or another age (please specify)?*

[214] Section 14 and 43 (both abolished) of the Act No. 312/2001 Coll on Civil Service and on amending and supplementing certain other acts, as amended.

The right to protection from unfair dismissal is not lost upon reaching the pensionable age. An employer is therefore not allowed to terminate a contract after an employee attains the pensionable age. This means that anyone can continue employment so long as he or she enjoys sufficient capacity (except for the age limitations mentioned above and in Chapter 4.7.3, and except for the limitations connected to early pensions – see Chapter 4.7.4 (a)) and the state pensionable ("retirement") age simply refers to pension entitlement which 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 in the fixing of different retirement ages for men and women are not considered to be discriminatory.[215]

~~3.1.5~~4.7.5 Redundancy

a) Does national law permit age or seniority to be taken into account in selecting workers for redundancy?

The age of an employee cannot, according to the Slovak law, constitute an aspect to be considered when reducing the number of employees due to redundancy.

b) If national law provides compensation for redundancy, is this affected by the age of the worker?

The redundancy payment does not depend on the age of the employee concerned. The calculations of the redundancy payment are made only by average wage of an employee and by the fact whether the employment relationship lasted less than or at least 5 years.[216]

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

Does national law include any exceptions that seek to rely on Article 2(5) of the Employment Equality Directive?

According to the original wording of Section 3, para 1 of the Anti-discrimination Act there was an exception to the principle of equal treatment if it would or could contradict legal measures which ensure security, internal order, crime prevention, health protection or the protection of rights and interests protected by the law and freedoms of persons. This provision which did not strictly follow the criteria set up by Directive 2000/78 was abolished by the amendment No. 326/2007 Coll. effective from September 2007 and was not replaced by any other exception related to Article 2(5) of the Directive.

[215] Section 8, par. 7(a) of the Anti-discrimination Act
[216] Section 63, para 1(b) and Section 76 of the Labour Code.

4.9 Any other exceptions

Please mention any other exceptions to the prohibition of discrimination (on any ground) provided in national law.

Under Section 8, paragraph 7(b) of the Anti-discrimination Act, differential objectively justified treatment with the aim of protection of pregnant women and mothers shall not be deemed discrimination.

The Anti-Discrimination Act also stipulates an objectively justified exception ("differential treatment") that lies in providing goods and services exclusively or preferably to representatives of one of the sexes. The aim has to be legitimate and the means have to be proportionate and necessary.[217]

Section 161 paragraph 1 of the Labour Code provides that "women may not be employed by works that are physically inappropriate for them or which harm their bodies, in particular such works which threaten their maternal role". The Labour Code further contains provisions ensuring in particular protection of pregnant women, parents caring for children, mothers caring for a child younger than nine months of age. These provisions justify in fact differential treatment based on sex, motherhood and parenthood. Works that must not be carried out by pregnant women, mothers before the end of the ninth month following childbirth or breast-feeding women are specified in a separate governmental regulation.[218]

According to another provision of the Labour Act, an employer is obliged to establish, maintain and improve facilities for women as well as facilities for personal hygiene of women. If a pregnant woman, a mother before the end of the ninth month following childbirth or a breast-feeding woman performs work that is prohibited to pregnant women, or which, according to medical opinion, threatens her health, the employer shall be obliged to implement a temporary change to her working conditions. If a woman earns less after a job transfer than she earned in her previous job, she shall be provided with a compensation benefit. If transfer of such woman to other suitable work is not possible, the employer shall be obliged to provide her with time off and wage compensation.[219]

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[217] Section 8 para 7 of the Anti-discrimination Act.
[218] Nariadenie vlády č. 272/2004 Z.z. ktorým sa ustanovuje zoznam prác a pracovísk, ktoré sú zakázané tehotným ženám, matkám do konca deviateho mesiaca po pôrode a dojčiacim ženám, zoznam prác a pracovísk spojených so špecifickým rizikom pre tehotné ženy, matky do konca deviateho mesiaca po pôrode a pre dojčiace ženy a ktorým sa ustanovujú niektoré povinnosti zamestnávateľom pri zamestnávaní týchto žien [The Government Regulation No. 272/2004 Coll. setting the list of work and workplaces forbidden to pregnant women, mothers before the end of the ninth month following childbirth and breast-feeding women and the list of work and workplaces constituting a specific risk for pregnant women, mothers before the end of the ninth month following childbirth and breast-feeding women and setting certain obligation of an employee when employing such women].
[219] See Sections 160-162 of the Labour Code on women or men taking care of children for more details.

The Labour Code, in Section 166, stipulates the rules for the maternity and parental leave entitlement. An employer is obliged to provide a woman and man with parental leave until the child reaches three years of age or until the child reaches six years of age if having a long-term serious disability.

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

a) What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation? Please refer to any important case law or relevant legal/political discussions on this topic.

The Constitution of the Slovak Republic contains articles that explicitly derogate from the rules of rigid formal equality, permitting measures of positive action for women, pregnant women, juveniles and persons with disabilities. These categories of persons enjoy more extensive health protection and special working conditions.[220] Before the adoption of the Anti-discrimination Act (in 2004) the Constitutional Court held in one case related to equal treatment that it is forbidden to favour or to put at a disadvantage certain groups of citizens.[221] This case dealt with statutory mandatory ethnic quotas in local municipality elections. These quotas reserved a certain percentage of seats in local parliaments for Slovaks – the representatives of majority population – in constituencies in which ethnic Slovaks were a minority. The Constitutional Court abolished these provisions by reference to the general anti-discrimination principle (see Chapter 0.3). In another case the Constitutional Court, while examining constitutionality of a legal provision regulating work of students working on temporary basis, stressed: *„Legal provision favourising certain group of persons cannot be considered as violating the principle of equality just for this reason. In the areas of economic, social, cultural and minority rights are the principles of favouritism, which are appropriate, not only acceptable, but sometimes necessary in order to eliminate natural inequalities in different groups of people. This is confirmed by the Constitution, which by certain fundamental rights directly anticipates preferential treatment of certain groups of natural persons (women, juveniles, disabled) and gives to this favouritism constitutional basis."*[222]

The debate on the constitutionality of positive action started intensively after the adoption of the Anti-discrimination Act in 2004. Section 8 of the Anti-discrimination Act titled „Admissible differential treatment" introduced a general positive action regulation in relation to racial and ethnic origin. It read: *"With a view to ensuring full equality in practice and compliance with the principle of equal treatment, specific balancing measures to prevent disadvantages linked to racial or ethnic origin may be adopted."*

[220] Section 38 of the Constitution reads: "(i) Women, minors and disabled persons shall enjoy more extensive health protection and special working conditions. (ii) Minors and disabled persons shall enjoy special protection in employment relations and special assistance in vocational training". Article 41 paragraph 2 reads: "Pregnant women shall be entitled to special treatment, terms of employment and working conditions".
[221] See decision of the Constitutional Court PL US 19/1998 of 15 October 1998.
[222] See decision of the Constitutional Court PL 10/02 of 11 December 2003.

On 6 October 2004, the Government of the Slovak Republic (three months after the Anti-discrimination Act entered into effect) submitted a petition initiating proceedings before the Constitutional Court on the constitutional conformity of the mentioned provision.[223] The petition argued that only the Constitution can make an exception from the principle of equality, as Article 38 of the Constitution does for women, minors and persons with disabilities in health protection at work and working conditions.

The initiator of the proceeding before the Constitutional Court – the Minister of Justice – declared that this provision would „boost stereotypes that certain groups are not able to be successful without special protection."

The Constitutional Court decided on October 18, 2005 that the former Section 8(8) of the Anti-discrimination Act is not in compliance with:

- Art. 1, paragraph 1 of the constitution (The Slovak Republic is a sovereign, democratic state governed by the rule of law. It is not bound to any ideology or religion.),
- Art. 12 first sentence of the paragraph 1 of the constitution (All human beings are free and equal in dignity and in rights.) and
- Article 12, paragraph 2 of the constitution (Fundamental rights shall be guaranteed in the Slovak Republic to everyone regardless of sex, race, colour, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, descent or any other status. No one shall be aggrieved, discriminated against or favoured on any of these grounds.).[224]

According to the decision of the Constitutional Court the disputed provision was in contradiction with Art.1(1) (principle of rule of law) because:

- "The disputed provision of the Anti-discrimination Act, by taking positive measures, which are also specific balancing measures, constitutes more favourable treatment (positive discrimination) of persons linked to racial or ethnic origin."
- „It does not set out, even in outline, criteria (who can be subject to positive action and what kind of action can be taken – remark of the national expert) for taking specific balancing measures.

[223] The submission was approved by the Government Resolution No. 941/2004. The Government´s proposal prepared by the Ministry of Justice argued that the former Section 8 paragraph 8 of the Anti-discrimination Act contradicted Art. 1 para 1 of the Constitution and Art. 12 paras 1 and 2 in conjunction with Art. 35 paras 1-3; Art. 36; Art. 37 para 2; Art. 39 paras 1 and 2; Art. 40 and Art. 42 of the Constitution which cover basic rights identical with the areas covered by the Anti-discrimination Act regulation. The Minister of Justice insisted that the provision is so broad and vague that it makes it possible to introduce any measure including quotas for members of racial and ethnic minorities.
[224] Decision of the Constitutional Court, PL. ÚS 8/04, http://www.concourt.sk/S/s_index.htm

Therefore it interferes in an unconstitutional manner with legal certainty in legal relationships..."(risk of arbitrary, purpose-built and diverse interpretation and application of the balancing measures).

- There are no rules limiting measures in terms of duration, that is, it could become a basis for discrimination (so-called „inverted discrimination") of other groups without having a constitutional basis for it.

The Constitutional Court did not reject the application of balancing measures (positive action) in principle. However, it stated that taking such action must have a constitutional basis, which is not the case when speaking about racial and ethnic origin. The Constitutional Court was of the opinion that the only constitutional basis for positive action is in Art. 38 (1and 2) of the Constitution under which women, minors and persons with disabilities shall enjoy more extensive health protection at work and special working conditions. Under Art. 38 of the Constitution minors and people with disabilities also have the right to special assistance in training.[225]

The decision of the Constitutional Court put up polemics even within the plenary of the Constitutional Court itself. Five judges out of eleven gave a dissenting opinion to the above quoted decision.

Paradoxically, the defenders of the strictly formal legal approach did not claim that the then existing *de facto* affirmative action measures related to Roma should have been ceased. Nor had there been criticism about supportive measures e.g. for older workers within the labour market which also did not have any direct coverage in the Slovak Constitution.

A new framework provision (Section 8a) for the adoption of positive action measures (named as "temporary balancing measures") aimed at "removing forms of social and economic disadvantage and disadvantage following from the ground of age and disability" was introduced by an amendment of the Anti-discrimination Act which entered into force on 1 April 2008. Although the originally proposed provision, submitted by the Deputy Prime Minister for Knowledge Society, European Affairs, Human Rights and Minorities and drafted in cooperation with the public[226], also contained racial and ethnic origin, national or ethnic group membership and sex among the grounds upon which positive action would have been allowed[227], it was restricted in the Parliament (with an approval of the deputy prime minister for human rights and minorities) to the above mentioned grounds.

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[225] If the Constitutional Court holds by its decision that there is unconformity of a legal regulation with the Constitution, the respective regulations, their parts or some of their provisions lose their effect. The competent body (in a case of an act – the Slovak Parliament) is obliged to harmonize them with the Constitution within six months from the promulgation of the decision. If they fail to do so, the regulation loses its effect after six months from the promulgation of the Constitutional Courts' decision.

[226] A representative of NGO coalition was a member of the interdepartmental committee for drafting the amendment.

[227] There have never been any significant debates on introducing positive action measures on the ground of religion.

Pursuant to Section 8a of the Anti-discrimination Act, temporary balancing measure can only be adopted by state bodies. Their aim shall be "securing equal opportunities in practice". Such temporary balancing measures shall be mainly:

- measures consisting in supporting the interest of representatives of the disadvantaged groups in employment, education, culture, health-care and services,
- aimed at generating equality in access to employment and education mainly through targeted preparatory programmes for representatives of the disadvantaged groups or through spreading information about these programmes or through possibilities to apply for jobs or places in the system of education.

The temporary special 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. The temporary special measures can only be adopted in the fields falling under the material scope of the Anti-discrimination Act. They can only be in force while the inequality which led to their adoption exists. Otherwise the bodies that adopted them have to cease them.

The bodies that would adopt the measures are obliged to monitor and evaluate them continuously and to publish information about them with the view of reappraising their further duration, and shall inform the Slovak National Centre for Human Rights about these matters. By the end of 2009, the Slovak National Centre for Human Rights received no information about measures that would be adopted pursuant to Article 8a[228]. According to the information provided by the Centre on 31 March 2011, the data is being completed for 2010 and will be published in the Centre´ s report on the observance of human rights, published annually by the end of April[229]. .

b) *Do measures for positive action exist in your country? Which are the most important? Please provide a list and short description of the measures adopted, classifying them into broad social policy measures, quotas, or preferential treatment narrowly tailored. Refer to measures taken in respect of all five grounds, and in particular refer to the measures related to disability and any quotas for access of people with disabilities to the labour market, any related to Roma and regarding minority rights-based measures.*

[228] Response to a request for information filed by a co-author of this paper to the Slovak National Centre for Human Rights.
[229] Response of the Centre from 31 March 2011 on request to information from 18 February 2011.

As has been indicated above, measures that would directly follow from the provision of the Anti-discrimination Act on positive action measures seem to be ineffective in practice (by the end of 2009, the Slovak National Centre for Human Rights, although statutorily entitled, received no information whatsoever about any such measures; although the data for 2010 will only be known after the Centre´s report on the observance of human rights in the Slovak Republic is published for 2010[230], such information is neither known from other sources, so it is very unlikely that positive action measures according to the Anti-discrimination Act would be taking place in Slovakia). The authors of this report assume there are various reasons for this.

The first main reason is the concept of the grounds upon which these measures can be adopted. As race and ethnicity (but also for example sex) are not contained in the respective provision explicitly, but are implicitly shadowed by the unclear concept of "social and economic disadvantage" (which is already a result of discrimination based on race/ethnicity, sex etc. and not its cause), it is difficult to draft and adopt properly tailored measures that would address and resolve the needs stemming from racial, ethnical (and other relevant) discrimination. Second, there is almost an absolute lack of monitoring and evaluation policies (including collection of data – although legislatively not hindered – see Chapter 2.3.1) on the side of the state bodies, which basically excludes the possibility to adopt measures that would meet the statutory criteria with regard to provable inequality and the necessity and proportionality test (although some limited sets of data exist, collected mainly by NGOs) and meet the monitoring and evaluation requirements afterwards (see the introductory section on positive action above). Third, only bodies of the state are entitled to adopt the positive measures – which rather reflects a top-bottom approach and denies a possibility for bottom-up situationally and contextually knowledgeable and need-based solutions (that would be adopted for example by municipalities, employers, educational institutions, NGOs etc.).

Thus, on a broad policy level (often also backed by corresponding legislation), there are/have been a few measures that would in principle be eligible to fall under the positive action context (mainly with regard to ethnicity), although they are formulated rather neutrally (i. e. not referring specifically to ethnicity/Roma communities) and principally depart mainly from the concept of "social disadvantage". An example of this approach in education are the so-called zero-grade classes which primary schools are allowed to open for children "from socially disadvantaged backgrounds in whose case it can be assumed that their development will equalise by placing them in the zero-grade classes"[231] and for children who, „by attaining the sixth year of age, have not achieved capability for school attendance and come from socially disadvantaged backgrounds"[232]. Although formulated neutrally, these measures appear to have been aimed especially at Roma children and Roma children are also their almost exclusive beneficiaries.

[230] Response of the Centre from 31 March 2011 to a request for information from 18 February 2011. The report should be published by the end of April 2011.
[231] Section 60 para 4 of the Act No 245/2008 Coll. on Education („School Act")
[232] Section 19 paragraph 4 of the School Act.

The overall efficiency of these measures is however also very questionable – not only because many of the children who would be eligible for education in the zero-grade classes are, due to discriminatory diagnostics and discriminatory legislation, placed into special/specialised schools (see Chapter 3.2.8), but also because of the fact that the existing school system is later on not able to integrate Roma children properly and mainstream their equality.

Another example of the „social-based" approach that transformed into a programme designed mainly for Roma communities/whose beneficiaries where mainly people of the Romani ethnicity was the program of special social field workers existing since 2002 that later developed into the Program of Supporting Development of Community Social Work in Municipalities.

The programme widened community social work in municipalities with Roma population and about 200 social workers and 400 assistants were trained in its framework. The program was subsidized by the government (The Ministry of Labour, Social Affairs and Family) through municipalities which employed the social workers and their assistants. Although the programme seemed to have been a good investment[233], it ceased to exist in the first half of 2010 due to lack of funding (in particular due to a disproportionately high requirement for co-funding on the side of municipalities). In the first quarter of 2011, a new call for submitting project proposals on community social work was published by the Social Development Fund in Slovakia which should already be removing the high co-financing requirement (the project proposals are being processed at the time of submitting this report, i. e. in the first half of March 2011). The amount of money allocated for this programme is about 16 million EUR and another 520,000 EUR have been allocated for the National Project of Support of Community Social Work which should cover things like coordination and supervision of community social work.

A similar result – although without the relatively hopeful development which can be observed in case of the community social work (see the paragraph above) - can be traced with a programme on health care assistance that was supported by the Ministry of Health in 2007. The programme covered (through a project funding) training and employment of 30 health assistants operating in Eastern Slovakia through the regional offices of public health who worked mainly with Roma communities The programme ceased to exist and the positions of health assistants did not get into the classification of workplaces.

[233] See for example Fedačko, R., Bobáková, M., Rybárová, S.: *Terénna sociálna práca v marginalizovaných rómskych komunitách z hľadiska aktivít terénnych sociálnych pracovníkov a ich asistentov*, 2010, available at http://www.fsr.gov.sk/ews3/files/1293/vyskum_tsp_kvantita.pdf (last time accessed on 20 December 2010); Ústav etnológie Slovenskej akadémie vied: *Výkon terénnej sociálnej práce v marginalizovaných rómskych komunitách*. Bratislava: Ústav etnológie Slovenskej akadémie vied pre Fond sociálneho rozovoja, 2009. Available at http://www.fsr.gov.sk/ews3/files/1293/vykon-tsp-v-mrk_finalna-sprava.pdf (last time accessed on 20 December 2010).

As regards housing, the government carried out a programme on housing development though which it distributed funding for low-cost municipal rental apartments and technical infrastructure to various localities settled by Roma.[234] Although the project proved to have some positive results (increased quality of life, increased school attendance), it contributed to deepening segregation of Roma communities – because the new apartments were not built inside of municipalities but in distant localities, often with very poor infrastructure[235]. Often the construction quality of the newly-built housing was also very poor.

Another measure that could be perceived as a broad policy one is the horizontal priority Marginalised Roma Communities which is a part of the National Strategic Referential Framework of the Slovak Republic for 2007-2013 (a basic document for drawing aid from the Structural Funds). The horizontal priority should enable carrying out of so-called comprehensive projects, which would enable local partnerships to submit so-called Local Strategies of Comprehensive Approach that would contain several project proposals in the form of strategic planning.[236] One of the advantages of this approach – apart from complexity of approaches and solutions - would be a chance of the beneficiaries to get professional assistance throughout the implementation of the complex project and to have a more simple access to financial resources (localities with Local Strategies of Comprehensive Approach would be for example shortlisted for demand-oriented calls for proposals from different operational programmes). Although this scheme is at this moment (March 2011) formally in the second half of its implementation, many difficulties have already arisen and as it seems, the whole initiative is not being implemented in the way it was foreseen.

[234] From 2001 to April 2010, 2700 apartments were built in the framework of this programme. In 2009, 314 municipalities benefited from grants awarded by the Ministry of Construction and Regional Development of the Slovak Republic for the construction of lower-standard rental apartments, in overall amount of 5,07 million EUR, and another 407,780 EUR was allocated for technical infrastructure. In the same year, the Office of the Plenipotentiary for Roma Communities contributed with 390,000 EUR for 33 housing projects and with 305,557 EUR for resolving emergency situations connected with housing. See daily SME, *Rómskych osád pribudlo, v mnohých chýba voda a alektrina*, 5 March 2010, available at http://www.sme.sk/c/5272425/romskych-osad-pribudlo-v-mnohych-chyba-voda-a-elektrina.html (last time accessed on 12 March 2011).

[235] According to an annual report of the Office of the Plenipotentiary for Roma Communities for 2009 (the report is not available online), the number of segregated Roma settlements grew from 620 to 691 between 2000 and 2009 (see daily SME, *Rómskych osád pribudlo, v mnohých chýba voda a alektrina*, 5 March 2010, available at http://www.sme.sk/c/5272425/romskych-osad-pribudlo-v-mnohych-chyba-voda-a-elektrina.html, last time accessed on 12 March 2011).

[236] 200 million EUR has been allocated for these complex projects. See http://www.romovia.vlada.gov.sk/16710/horizontalna-priorita-marginalizovane-romske-komunity---hp-mrk.php (last time accessed on 12 March 2011).

Although it is the Office of the Plenipotentiary for Roma Communities that is responsible for coordination of the Horizontal Priority Marginalised Roma Community and hence also of the Comprehensive Approach (in 2007, a special department at the office of the plenipotentiary was established solely for this purpose), it seems that by now it has not been able to finalise the selection of localities with comprehensive strategies, and hence the calls for proposals under individual operational programmes have either been suspended or cancelled (such as in the case of education and employment and social inclusion), or the money that was supposed to cover the horizontal priority Marginalised Roma Communities has already been spent also on projects with no or very marginalized impacts on Roma communities (as is the case of the Regional Operation Programme supported from the European Regional Development Fund designed for investment projects where about 45 million EUR is missing at the moment for the horizontal priority).

On 26 March 2008, the Medium-Term Concept of the Development of the Roma National Minority in the Slovak Republic SOLIDARITY – INTEGRITY – INCLUSION 2008 – 2013 was adopted by the Slovak government[237]. It was heavily criticised by the civil society, mainly because it is based on national instead of social approach, and also because it does not contain clearly defined targets and tasks nor any specific financial allocation.[238]

In April 2008, the government approved the Concept of Education of Roma Children and Pupils including the Development of Secondary and Tertiary Education[239]. It was also subject to criticism, *inter alia* because it does not contain any particular measures, because it mixes up the "national minority" approach and the social approach, and also because it perpetuates stereotypes about the Roma (the Concept for example proposed "introducing educational courses in which also Roma pupils could assert themselves" – and the examples given were only manual works, and these were above all also gender stereotypical).[240]

On legislative level, and with explicit reference to prohibited grounds of discrimination, mainly measures directed at people with disabilities, young and older people, women (in relation to pregnancy and early motherhood) and people with caring responsibilities (towards children and elder people) in the area of employment and social services can be considered as positive action measures. They are mainly of compensatory (people with disabilities, older people) and opportunities-equalising nature. Here are some examples:

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[237] The document is available at http://www.romovia.vlada.gov.sk/data/att/12371_subor.pdf (last time accessed on 16 February 2011).

[238] For a description of the process of adoption of this document and some remarks on its content, see for example HOJSÍK, M.: Rómovia. In: KOLLÁR, M. – MESEŽNIKOV, G. – BÚTORA, M.: *Slovensko 2008 : Súhrnná správa o stave spoločnosti*. Bratislava: Inštitút pre verejné otázky, 2009, pp 213-215.

[239] Available at http://www.rokovania.sk/appl/material.nsf/0/93C355E5B46377D0C125740F004A580F/$FILE/Zdroj.html.

[240] For more information, see for example HOJSÍK, M.: Rómovia. In: KOLLÁR, M. – MESEŽNIKOV, G. – BÚTORA, M.: *Slovensko 2008 : Súhrnná správa o stave spoločnosti*. Bratislava: Inštitút pre verejné otázky, 2009, p 224.

According to Article 8 of the Labour Code, "employees with disabilities are ensured working conditions that enable them to apply and develop their working skills, taking account of their health condition". This principle is embodied in the abovementioned provisions of Sections 158 - 159 of the Labour Code (See Chapter 2.6) and in the Act on Employment Services. The latter act guarantees, *inter alia*, the right to special working conditions, advisory service, vocational training and guidance, existence of special sheltered workplaces eligible for state aid, financial support for creating a workplace for people with disabilities and other categories of disadvantaged employees, financial support for practical training of persons younger than 25 years of age, financial support for work assistants etc.[241] Pursuant to Section 59 of the Act on Employment Services, an office of labour, social affairs and family may provide to an employee with a disability or a self-employed person with a disability an allowance for the work of his or her work assistant on a monthly basis in the amount of up to 90 % of the overall price of the work calculated from average wage of an employee in the national economy.

Persons with disabilities also enjoy special protection against dismissal – a person with a disability can only be given notice after prior endorsement of the responsible labour office.[242] Pursuant to Sections 63-65 of the Act No 5/2004 Coll. on Employment Services, any employer who employs at least 20 employees is obliged to have at least 3,2 % of citizens with disabilities employed, provided that the local labour office has job seekers with disabilities in its register[243]. 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, by the end of March of the subsequent calendar year he or she is obliged to pay to a labour office a levy equal to 0,9 multiple of the overall price of work calculated from average wage of an employee in the national economy for each person whom he failed to employ during the previous year.[244]

The Act on Social Services[245] stipulates different kinds of social services (such as care, transport and translation services, personal assistance, etc.) for, *inter alia*, persons with a "serious disability" and "unfavourable state of health".

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[241] Sections 50, 50a, 50b-50c, 50i, 51, 53c, 55 -61 of the Act on Employment Services No. 5/2004 Coll. State bodies responsible for providing this type of support are offices of labour, social affairs and family.

[242] Section 66 of the Labour Code. However, the endorsement requirement does not apply in case of employees with disabilities who have attained pensionable age.

[243] According to the response of the Central Office of Labour, Social Affairs and Family of 13 May 2010 to a request for information filed by a co-author of this report, in 2008 13,159 employers were subject to this obligation under the quota law.

[244] The number of employees with disabilities who should have been employed based on the quota but the respective employers paid the levies instead (including in combinations with alternative forms) was 9329 in 2008 and 7 393 in 2009.

[245] 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 prepdisov [Act No 448/2008 Coll. on Social Services and on amending and supplementing Act No 455/1991 Coll. on Licensed Trades (Small Business Act), as amended]

The Act on Benefits for Compensation of Serious Disability[246] regulates legal relationships related to providing financial contributions aimed at compensating social consequences of "serious disabilities".

The Act No 448/2008 Coll. on Social Services also provides various types of social services that include housing of which people with disabilities and people of older age may be beneficiaries (see Chapter 2.1.10).

The School Act contains special provisions designed for accommodating needs of children and pupils with disabilities in kindergartens, primary and secondary schools and in school facilities.[247]

See also Chapter 4.7.2 on specific working conditions for women, pregnant women and persons caring for young children or relatives or other close persons with disabilities and Chapter 4.7.2 on support of young and older workers also in the labour market.

There are no specific measures related to discrimination on the ground of sexual orientation.

[246] 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. [Act No 447/2008 Coll. on Benefits for Compensation of Serious Disability, amending and Supplementing Certain Laws, as amended]

[247] Zákon č. 245/2008 Z. z. o výchove a vzdelávaní (Školský zákon) a o zmene a doplnení niektorých zákonov [Act No 245/2008 Coll. on Education (School Act), as amended]

~~5~~6 REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

In relation to each of the following questions please note whether there are different procedures for employment in the private and public sectors.
In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body).
Are there available statistics on the number of cases related to discrimination brought to justice? If so, please provide recent data.

a) What procedures exist for enforcing the principle of equal treatment (judicial/ administrative/alternative dispute resolution such as mediation)?

The legal provisions specifically aimed at enforcing the principle of equal treatment can be found in several laws. In an administrative complaint proceeding public authorities deal with complaints against unlawful conduct of public authorities.[248] The Labour Code sets in Section 13 the right of employee to submit a complaint to the employer against the infringement of the principle of equal treatment. The employer is obliged to respond to such a complaint without undue delay, perform retrieval, abstain from such conduct and eliminate the consequences thereof. Importance of this provision is in setting the obligation of a private employer to deal with the complaints against discrimination in employment relationships (however, the effect of this particular remedy is questionable and it is not used in practice very much). A similar regulation is contained in the Act on Employment Services[249] pursuant to which a citizen has the right to submit a complaint to the authority (office of labour, social affairs and family) when his or her rights in the area of providing services in search for employment, education and training for the labour market were violated. The authority has the obligation to respond without undue delay, perform retrieval, abstain from such conduct and eliminate the eventual consequences. The Act on Civil Service[250] also contains a provision enabling a civil servant who considers herself or himself wronged in connection with a breach of the principle of equal treatment to file a complaint to a competent authority (the "Service Office" – i. e. the respective office in which the respective civil servant is employed).

The Anti-discrimination Act, adopted in 2004, introduced the most significant changes in the field of judicial remedies for unequal treatment in the areas and on the grounds which fall under its scope.

[248] Zákon č. 9/2010 Z. z. o šťažnostiach [Act No. 9/2010 Coll. on Complaints]. Complaints against a public body are usually dealt with by a higher public authority. The complaint should be processed within a time limit of 60 days.
[249] Act No 5/2004 Coll., as amended.
[250] Act No 400/2009 Coll.

Pursuant to the Anti-discrimination Act, a natural person and/or legal entity who consider themselves wronged in their rights and interest protected by law because the principle of equal treatment has not been applied to them may pursue their claim by judicial proceeding before the civil court of the first instance. There are no special labour courts for discrimination cases in the area of employment. In particular, the persons injured have the right to sue the discriminator – be it a natural person or a legal entity, a public or a private body – and demand mainly (the list of the possible remedies is not exhaustive) that he/she be made to refrain from such conduct and, where possible, rectify the illegal situation or provide adequate satisfaction. If the adequate satisfaction would not be sufficient, mainly when the violation of the principle of equal treatment has considerably impaired the dignity, social status or social achievement of the person injured, the person injured may also seek non-pecuniary damages in cash. The amount of the non-pecuniary damage shall be determined by the court, which has to take into account the seriousness of the non-pecuniary damage and all underlying circumstances. Material damages that result from such treatment may be claimed as well.[251] There is no difference in the proceeding when suing public or private entity.

Even though invalidity of job termination can in principle be claimed also within the framework of the proceedings provided for by Section 9 of the Anti-discrimination Act (see above – the list of existing damages is non-exhaustive), the available information about judicial practice in this matter seems to indicate that judges exclude proceedings, in parts which involve claiming job termination invalidity, into separate proceedings, which makes the exercise of rights and hence remedies less efficient, more complicated and sometimes also confusing and more expensive (for example with regard to the need for legal representation, with regard to the type of representation needed[252]).

The potential barriers for initiating anti-discrimination judicial proceedings can be the court fees, especially when seeking non-pecuniary damage 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 opinion of the authors of this report is a barrier to seeking amounts that would be really efficient, proportionate and dissuasive.

Socially disadvantaged applicants can be exempted from payment of court fees upon the decision of the judge in the respective proceeding.[253]

[251] Section 9 of the Anti-discrimination Act.
[252] The proceedings on invalidity of employment termination are not regulated by the Anti-discrimination Act as special anti-discrimination proceedings but by the Labour Code as specific labour-related proceedings. Thus, it is unclear whether courts would for example accept representation by NGOs or apply shift in burden of proof under these proceedings.
[253] See Section 138 of the Civil Procedure Act. The criteria for exempting a plaintiff from judicial fees are, however, not set firmly – the respective provision says that a "full or partial exemption can be granted if the situation of the party to the proceeding justifies it and if the invocation or the defence of the rights in question is not arbitrary or apparently unsuccessful".

The most important barrier is scepticism towards judicial proceedings and their outcomes, resulting from low trust in the judiciary in general but also from the lack of expertise of judges in the field of anti-discrimination, which also adds on another risk and barrier connected to the potential risk of losing – in particular fear that the person initiating the judicial proceedings would have to, in case of losing, pay the proceeding costs of the defendant. The delays in judicial proceedings also make the proceedings for persons injured by discrimination ineffective.

The courts´ physical accessibility is not fully guaranteed for people with disabilities in old court buildings. The newly constructed or reconstructed buildings of the courts as well as all other public buildings have to be accessible for people with disabilities. Information provided in Braille script is prescribed solely for service panel in the elevators. This regulation is applicable as of 1 December 2002. It does not deal with accessibility of the older building and does not pose any obligations as far as reconstructions of the older buildings. The Constitution guarantees the right to an interpreter in case that a person is not able to speak official language. The Act on Civil Judicial Procedure allows the court to appoint a guardian if the plaintiff suffers from a mental disorder or is not able to express him/herself comprehensibly.

Another serious barrier is a lack of qualified legal aid in the field of anti-discrimination (but also lack of accessibility of legal aid in general – in terms of financial accessibility[254]). A relevant factor in this regard is the fact that although NGOs (who have good expertise in the field of anti-discrimination) can represent plaintiffs before courts, they cannot recover costs of legal representation. This generates an absurd situation of those (potentially) successfully invoking their rights (persons injured by discrimination) and/or those representing them (NGOs) having to pay for someone's discriminatory behaviour, and hence also the necessity on the side of the NGOs to carefully select cases they will get involved in. This is also the reason why there are still only a very few cases of NGOs representing plaintiffs before courts in cases of breaches of the principle of equal treatment. In other cases where NGOs are involved, the plaintiffs are officially represented by attorneys cooperating with these NGOs (although the NGOs often provide various types of inputs such as research assistance, financial coverage of the legal aid etc.).

An amendment of the Anti-discrimination Act that has been in effect from 1 April 2008 has also made an explicit reference to the right of persons injured by breaches of the principle of equal treatment to mediation.

[254] Except for the capacity of the equality body which should arrange legal aid for the victims of discrimination, the access to free legal representation for those whose income is very low is provided by the State. The threshold for the entitlement to free legal aid is quite low and there will still be a relatively significant group of people who would not be able to pay for legal services. The law has no prescriptions concerning the obligatory legal representation in proceedings dealing with the breach of the principle of equal treatment.

The process of mediation is regulated by the Act on Mediation[255] (in effect from 1September 2004[256]) which is not adjusted to discrimination-specific mediation. Although the possibility of mediation undoubtedly extends (at least theoretically) the scope of remedial options for persons wronged by 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 etc.) and whether it is not, in some cases, even perpetuating the inequality.

Persons whose right to equal treatment has been violated can in principle also refer to inspectorates in the respective fields falling under the material scope of the Anti-discrimination Act (e. g. labour inspectorates, inspectorates of the Slovak Trade Inspection) that oversee the observance of the respective legislation falling under their competence in general. However, no shift of burden of proof applies to the inspection legislation (see Chapter 6.3 of this report for more information), and so investigations into breaches of the principle of equal treatment by inspectorates have in most cases ended in finding no breaches of this principle (and in cases breaches of this principle were identified, the labour inspectorates did not impose fines but ordered the entities responsible for breaching this principle to remove the shortcomings identified)[257]. It also becomes more and more apparent that the inspectorates are not having sufficient and appropriate methodology for identifying breaches of the principle of equal treatment and/or for investigating them.[258]

There are no official statistics available related to discrimination cases brought to courts.

b) Are these binding or non-binding?

They are binding in terms of the procedural rules they have to follow once initiated. They are non-binding in terms of the freedom of the potential complainant to choose between the procedures available and also in the sense that none of the procedures available has to formally precede any other in order to be invokable (for example a complaint does not have to precede a judicial action).

c) What is the time limit within which a procedure must be initiated?

There is no time limit for initiating a complaint or other administrative procedure. Neither there is time limit for initiating judicial proceedings.

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[255] Zákon č. 420/2004 Z. z. o mediácii a o doplnení niektorých zákonov [Act No. 420/2004 Coll. on Mediation and supplementing certain other acts].
[256] So mediation was basically possible in anti-discrimination cases from the beginning of the existence of the Anti-discrimination Act.
[257] See for example Občan, demokracia a zodpovednosť: *Inšpektoráty práce a ich pôsobenie pri plnení záväzkov SR týkajúcich sa presadzovania dodržiavania zásady rovnakého zaobchádzania v pracovnoprávnych a štátnozamestnaneckých vzťahoch*, Bratislava: Občan, demokracia a zodpovednosť, 2011, pp 1-2, available at http://www.oad.sk/node/587 (last time accessed on 14 March 2011).
[258] *Ibid*, pp 8-9.

However, claiming invalidity of the employment termination can be only done within a period of 2 months after the employment relationship was supposed to cease to exist.

d) Can a person bring a case after the employment relationship has ended?

As far as initiating judicial proceedings is concerned, the person injured may bring the case to court also after the employment relationship has ended. The law equally does not prohibit initiating other than judicial proceedings after the employment relationship has ended.

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

Please list the ways in which associations may engage in judicial or other procedures

a) What types of entities are entitled under national law to act on behalf or in support of victims of discrimination? (please note that these may be any association).

The Anti-discrimination Act introduced the possibility for a plaintiff to be represented in judicial proceedings concerning discriminatory treatment also by a legal entity. The legal entity has to have such authority under a separate law[259], or has to be aimed at or deal with protection against discrimination[260] (these are in practice usually NGOs; the law does not stipulate any more details about these organisations). If the legal entity takes up the representation, it authorises one of its members of employees to act on its behalf.[261]

In all civil judicial proceedings in general (i. e. including proceedings concerning breaches of the principle of the equal treatment), an individual can always get represented by an attorney or by any natural person of her or his choice.[262] This natural person has to have a full capacity to act legally and a court has to decide that it does not admit representation if the selected natural person is "apparently not capable of a proper representation" or if he or she "performs representation in various cases repeatedly".[263]

In all civil proceedings connected to employment relations, a party to these proceedings who is a member of a trade union organisation can get represented by this organisation.[264]

[259] See Section 10 para 1 (a) of the Anti-Discrimination Act. Under the Act on the Slovak National Centre for Human Rights (See Chapter 7), the Centre is entitled by law to represent the plaintiff in the proceeding concerning violation of the principle of equal treatment.
[260] Section 10 para 1 (b) of the Anti-Discrimination Act.
[261] *Ibid*, Section 10 para 2.
[262] See Section 25 and 27 of the Civil Procedure Act.
[263] *Ibid*, Section 27.
[264] Section 26 para 2 of the Civil Procedure Act.

In administrative proceedings, parties to the proceedings, their legal representatives and their guardians can get represented by an attorney or by "another representative of their choice".[265] This means persons affected by discrimination can in principle select any natural or legal person to get represented by, including NGOs or the Slovak National Centre for Human Rights. However, if an administrative decisions against which there is no regular legal remedy gets examined by a civil court in special civil proceedings[266], the plaintiff has to be represented by an attorney, unless she or he, or their legal representative, does have a legal education herself or himself[267].

As far as criminal law is concerned, the victim in criminal proceedings can be represented by a mandatary. Any person whose capacity to act legally is not limited can become a mandatary, including an authorised representative of an organisation with the aim of helping those affected by crimes.[268] "An organisation aimed at helping those affected by crimes" is, pursuant to Section 10 para 23 of the Criminal Procedure Act, an NGO that provides free legal aid 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 doesn't prohibit other natural persons or legal entities to act (submit a complaint) on behalf of a complainant.

With regard to acting "in support" of victims of discrimination, the first legislative provision on this type of NGO engagement in anti-discrimination disputes is a provision added into the Civil Procedure Act by an amendment of the Anti-Discrimination Act which has been in effect from 15 October 2008. According to this provision (Section 93 paragraph 2 of the Civil Procedure Act), the Slovak National Centre for Human Rights and any legal entity aiming at or dealing with protection against discrimination (NGOs in most of the cases) can join the proceedings, either on the side of the plaintiff or on the side of the defendant. To the athors´ knowledge, this provision has so far been used only once by an NGO and it has so far not been used by the Slovak National Centre for Human Rights.

Even though it is not explicitly prohibited, it is not very common to use other forms of support (e.g. written legal opinion from an NGO or other entity in a form of amicus brief). However, expert opinion issued by the Slovak National Centre for Human Rights[269] upon a request of a plaintiff are sometimes submitted to courts (by the plaintiffs – if they decide to submit the opinions requested from the Centre).

[265] Section 17 para 1 of the Administrative Code.
[266] Pursuant to Sections 244-250k of the Civil Procedure Act.
[267] *Ibid*, Section 250a.
[268] Section 53 of the Criminal Proceeding Code.
[269] Under Section 1, par. 2 (f) of the Act on Slovak National Centre for Human Rights Centre *is* granted the competence to prepare expert opinions concerning compliance with the principle of equal treatment upon a request or its own initiative.

b) *What are the respective terms and conditions under national law for associations to engage in proceedings on behalf and in support of complainants? Please explain any difference in the way those two types of standing (on behalf/in support) are governed. In particular, is it necessary for these associations to be incorporated/registered? Are there any specific chartered aims an entity needs to have; are there any membership or permanency requirements (a set number of members or years of existence), or any other requirement (please specify)? If the law requires entities to prove "legitimate interest", what types of proof are needed? Are there legal presumptions of "legitimate interest"?*

The Anti-Discrimination Act and the Civil Procedure Act which provide for the possibility of associations to act "on behalf or in support" of complainants (see Chapter 6.2 (a) above) do not provide any specific details with regard to these entities, apart from the brief explicit rule that these legal entities have to "aimed at or deal with protection against discrimination"[270]. From the fact that these have to be legal entities, it can be inferred that they have to be registered (otherwise they would not be eligible to exist legally) – either as civic associations[271], as foundations[272], or as non-profit organisations providing pro bono services[273]. Civic associations and foundations register at the Ministry of Interior and non-profit organisations providing pro bono services register at district offices in the seat of a region (although the central register of these non-profit organisations is administered by the Ministry of Interior as well)[274].

The law doesn't stipulate how the aim or content of activities of an association can be proved. It can be assumed (and it has proved to be the case in the few proceedings where NGOs have so far represented plaintiffs in proceedings according to the Anti-Discrimination Act) that the court will follow the statute of the organisation, in which its mission can be found.

The law does not stipulate any other conditions for associations to act in support or on behalf of complainants in cases of discrimination.

c) *Where entities act on behalf or in support of victims, what form of authorization by a victim do they need? Are there any special provisions on victim consent in cases, where obtaining formal authorization is problematic, e.g. of minors or of persons under guardianship?*

[270] See Section 10 para 1 (b) of the Anti-Discrimination Act.
[271] Pursuant to the Act No 83/1990 Coll. on Association of Citizens, as amended [zákon č. 83/1990 Zb. o združovaní občanov v znení neskorších predpisov].
[272] Pursuant to the Act No 34/2002 on Foundations and on Changing the Civil Code, as amended [zákon č. 34/2002 Z. z. o nadáciách a o zmene Občianskeho zákonníka v znení neskorších predpisov].
[273] Pursuant to the Act No 213/1997 Coll. on Non-Profit Organisations Providing Pro Bono Services, as amended [zákon č. 213/1997 Z. z. o neziskových organizáciách poskytujúcich všeobecne prospešné služby v znení neskorších predpisov].
[274] *ibid*, Section 9.

Where entities act on behalf of victims, they need an authorisation that has to be provided by the party to the proceedings – either in writing, or it has to be dictated into the court's/respective administrative body's minutes[275]. In case of victims/complainants who do not have a full legal capacity to act and thus need a statutory representative or a legal guardian, the authorisation can be given by these legal representatives. In these cases the consent of the victims is not required.

If entities want to join judicial proceedings "in support of victims" pursuant to Section 93 paragraph 2 of the Civil Procedure Act (see Chapter 6.2 (a) above), the consent of the respective victim is basically not required (although the entity may join the proceedings, besides joining it on its own initiative, also on the initiative of one of the parties to the proceedings – which presupposes an implicit consent of the victim[276]).

d) Is action by all associations discretionary or some have legal duty to act under certain circumstances? Please describe.

Yes, action by all associations is discretionary in the sense that they do not have a legal duty to act. What is in practice influencing their decision-making as to whether they are going to represent a particular plaintiff is the environment they operate in – mainly the lack of resources for human rights NGOs in general and the impossibility to recover costs of legal representation in case of representing plaintiffs before courts (see Chapter 6.1 (a) above for more details).

The Slovak National Centre for Human Rights has a duty to act – although it is not obliged by the law to represent each person affected by discrimination physically but to "provide legal aid to victims of discrimination and manifestations of intolerance"[277].

e) What types of proceedings (civil, administrative, criminal, etc.) may associations engage in? If there are any differences in associations' standing in different types of proceedings, please specify.

If they act on behalf of the victims, they can engage in civil, administrative as well as in criminal proceedings (with the exception of civil proceedings under which effectuate decisions of administrative bodies are examined). See Chapter 6.2 (a) above of this report.

In support of the victims, they can also engage in civil proceedings as an accessory party pursuant to Section 93 para 2 of the Civil Procedure Act (see Chapter 6.2 (a) for more details).

[275] See Section 28 of the Civil Procedure Act and Section 17 para 3 of the Administrative Code.
[276] See Section 93 para 3 of the Civil Procedure Act.
[277] See Section 1 para 2 (e) of the Act No 308/1993 Coll. on Establishing the Slovak National Centre for Human Rights, in conjunction with Section 10 para 1 (a) of the Anti-Discrimination Act.

f) What type of remedies may associations seek and obtain? If there are any differences in associations' standing in terms of remedies compared to actual victims, please specify

In proceedings where associations represent the victims of discrimination, they can seek, on behalf of those who gave them the legal authorisation, all the remedies to which the victims are entitled (see Chapters 6.1 (a) of this report in conjunction with Chapter 6.2 (a)).

In cases of *actio popularis*, the associations initiating the proceedings may seek to obtain that the entity breaching the principle of equal treatment refrains from such conduct and, where possible, rectifies the illegal situation (the list of these two options is exhaustive). See Chapter 6.2 (h) of this report for more details.

In civil proceedings, when association act as accessory parties pursuant to Section 93 para 2 of the Civil Procedure Act (see Chapters 6.2 (a) and 6.2 (f) for more details), they have equal rights and duties as the parties themselves[278] - acting on their own behalf only. However, if their acts contradict the acts of the party to the proceedings whom they support in the proceedings, the court "will judge these acts after consideration of all the circumstances"[279].

g) Are there any special rules on the shifting burden of proof where associations are engaged in proceedings?

No. The rules for burden of proof apply according to the type of proceedings, without regard to whether associations are engaged in the particular proceedings.

*h) Does national law allow associations to act in the public interest on their own behalf, without a specific victim to support or represent (**actio popularis**)? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

As of 15 October 2008, an amendment of the Anti-discrimination Act has been in force which introduced the concept of *actio popularis* (see Section 9a of the Act). The respective provision stipulates that if a breach of the principle of equal treatment could violate rights, interests protected by the law or freedoms of a higher or non-specified number of persons, or if the public interest could be seriously endangered by such violation, the right to invoke the protection of the right to equal treatment is also vested in a the Slovak National Centre for Human Rights or a legal entity that is "aimed at or deals with protection against discrimination" (usually NGOs active in the field of *anti*-discrimination).

[278] Section 93 para 4 of the Civil Procedure Act.
[279] *Ibid,*

These entities can claim that the entity breaching the principle of equal treatment refrain from such conduct and, where possible, rectify the illegal situation (the list of these two options is exhaustive). Although this provision is quite a progressive one, only one NGO (Poradňa pre občianske a ľudské práva – see Chapters 0.3 and 2.3.1 (c) of this reprot) has filed actio popularis so far. One of the reasons may be the very limited scope of invokable remedies – in particular the missing possibility to claim that the court determines that the principle of equal treatment has been breached (which may be the only possible remedy in cases where the gravely discriminatory behaviour was a one-off and finished act – such as a discriminatory advertisement – and so no refraining and rectifying the illegal situation is possible). Other reasons may be the very limited resources with which NGOs operate, and also an absolute lack of statistical data that the state would collect. The reasons why the Slovak National Centre for Human Rights has so far not initiated any *actio popularis* proceedings may be different, including a lack of strategic approaches on the side of the Centre.

For *actio popularis* proceedings the same concept of the shift in burden of proof applies as in all other proceedings in cases of breaches of the principle of equal teratment initiated on the basis of the Anti-Discrimination Act (See Chapter 6.3 for more details).

i) Does national law allow associations to act in the interest of more than one individual victim (class action) for claims arising from the same event? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.

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). Also class actions are possible in the Slovak civil judicial proceeding meaning that a group of citizens lodge an action based on the same facts of the case where each victim must stand as a plaintiff. If an NGO takes up representation of a person affected by discrimination (or more persons affected by discrimination in case of a class action), it shall 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 take up legal representation in civil proceedings under the Anti-Discrimination Act, all conditions applicable for legal representation of individuals mentioned above (i. e. on the type of conditions the legal entity has to meet, on the types of remedies it can request on behalf of the plaintiff, on the conditions regarding the burden of proof etc.) are equally applicable.

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

Does national law require or permit a shift of the burden of proof from the complainant to the respondent?

Identify the criteria applicable in the full range of existing procedures and concerning the different types of discrimination, as defined by the Directives (including harassment).

The general provisions for judicial proceedings guarantee equality of parties in a court proceeding[280]; the relevant law places the burden of proof upon the party that files a particular claim. The Civil Procedure Code states that "parties are obliged to bring evidence to prove their claims"[281]. Parties to the proceedings have a procedural evidential duty, i.e. they have to provide evidence proving their claims.

The Anti-discrimination Act has changed this general principle by introducing an exception for discrimination-related cases. Pursuant to Section 11 paragraph 2, if the plaintiff "communicates to the court facts which give rise to a reasonable assumption that 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" (a part of the official title of the respective chapter of the Act dealing with procedural issues). It is, however, not clear yet how courts will deal with other proceedings initiated on the basis of legislative instruments other than the Anti-discrimination Act (for example the Labour Code – in proceedings on invalidity of job termination – see also Chapter 6.1).

As the principle of equal treatment is defined very broadly (to include also, for example, victimisation, instruction to discriminate, incitement to discrimination, breach of the duty to adopt measures to prevent discrimination etc.), the concept of shifted burden of proof should apply to all the components of the equal treatment principle.

The Constitutional Court has provided this interpretation of the shift in the burden of proof: *"[B]urden of proof does not only and exclusively burden the defendant but it also burdens the plaintiff. The plaintiff 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 plaintiff 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, he must allege that his race or ethnic affiliation (origin) is the inducement for the discriminatory action. It is only thereafter that the burden of proof is shifted onto the defendant who has the right to prove her or his allegations that she or he has not breached the principle of equal treatment."*[282] The Regional Court in Košice held that [t]he principle of shift in the burden of proof means that the plaintiff does not have to prove the alleged discrimination (breach of the principle of equal treatment) with certainty but a certain degree of probability is sufficient (obvious or apparent discrimination at first sight – *prima facie case of discrimination*) (…).

[280] Article 47 paragraph 3 of the Constitution.
[281] Section 120 paragraph 1 of the Civil Procedure Code.
[282] Finding of the Constitutional Court No IV. ÚS 16/09 from 30 April 2009, available at http://www.concourt.sk/rozhod.do?urlpage=dokument&id_spisu=300198.

Then the burden of proof shifts onto the defendant who has to prove that he did not breach the principle of equal treatment"[283].

With regard to administrative proceedings, regulated under the Administrative Code[284], the law does not provide for shift in the burden of proof. Instead, the Administrative Code stipulates that "an administrative body is obliged to precisely and entirely find out the real state of matters and procure all the necessary materials for this purpose. When doing so, it is not bound only by the proposals of the parties to the proceedings"[285].

The Act on Labour Inspection[286] does not contain any explicit and clear provisions on the burden of proof in relation to identifying breaches of the principle of equal treatment.[287] It only contains a list of entitlements of labour inspectors when carrying out the labour inspection, such as the right to enter to premises of the natural or legal person subject to the inspection, the right to request information and explanations from persons present in the employer´s premises, the right to request documentation etc.[288], and a very vague provision stating that "a labour inspectorate is independent when carrying out labour inspection"[289]. Statutory rules for establishing evidence are only available for stages when labour inspectorates are imposing fines for breaches of the principle of equal treatment (the Administrative Code applies here – see the paragraph above)[290], but it is in any case not clear what rules of procedure the labour inspectorates should apply when identifying and proving the breaches of the principle of equal treatment as such. This has undoubtedly contributed to the very low amount of cases where labour inspectorates identified breaches of the principle of equal treatment (see also Chapter 6.1(a) for more details), making the implementation of this principle in the field of employment rather ineffective.

The Criminal Procedure Act allows for no exceptions from the traditional concept of burden of proof in criminal proceedings.

[283] Ruling from 18 March 2010, reference No 1Co/334/2008-238.
[284] Act No 71/1967 Coll. on Administrative proceedings (Administrative Code), as amended [Zákon č. 71/1967 Zb. o správnom konaní (Správny poriadok) v znení neskorších predpisov].
[285] Section 32 para 1 of the Administratrive Code.
[286] Act No 125/2006 Coll. on Labour Inspection and on Changing and Supplementing the Act No 82/2005 Coll. on Illegal Work and Illegal Employment and on Changing and Supplementing Certain Laws, as amended [zákon č. 125/2006 Z. z. o inšpekcii 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].
[287] Apart from proceedings related to
[288] See Section 12 para 1 of the Act on Labour Inspection for more details.
[289] See Section 7 para 10 of the Act on Labour Inspection.
[290] See Section 19 of the Act on Labour Inspection, in conjunction with Section 7 para 3 (i) and Section 25 para 2 of this act.

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

What protection exists against victimisation? Does the protection against victimisation extend to people other than the complainant? (e.g. witnesses, or someone who helps the victim of discrimination to bring a complaint)

As far as victimisation is concerned, Article 12 paragraph 4 of the Constitution generally prohibits any victimisation resulting from the exercise of basic rights guaranteed under the Constitution. Under the Anti-discrimination Act, victimisation is considered to be a form of discrimination. The Anti-discrimination Act also contains an explicit definition of victimisation pursuant to which victimisation means any action or omission which is unfavourable for 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.[291] 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.

Apart from this provision, several other laws regulate protection against victimisation. The Act on Complaints stipulates that the mere fact of filing an action must not be used to the detriment of the complainant. Moreover, the complainant may request that his or her identity not be disclosed.[292] The other law is the Labour Code. Its Section 13, paragraph 3 states that no person shall be persecuted or otherwise adversely treated at the workplace as a reaction to a complaint, action or a petition to start criminal proceeding against another employee or the employer. Similar provisions are entrenched in other acts, for example the Act on State Service of Customs Officers, Act on State Service of Members of the Police Force, Act on Fire and Rescue Service, Act on Employment Services, Act on Higher Education, in the School Act and in the Act on Health Care. The only procedural guarantee against victimisation is included in the Anti-discrimination Act. To the best of the authors' knowledge there has not yet been a judgement issued in this regard.

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

a) *What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.*

[291] Section 2a, paragraph 8 of the Anti-discrimination Act
[292] Sections 7 and 8 of the Act No 9/2010 Coll. on Complaints.

As mentioned above, the persons injured have the right to sue the discriminator – be it a natural person or a legal entity, a public or a private body – and demand mainly (the list of the possible remedies is not exhaustive) that he/she be made to refrain from such conduct and, where possible, rectify the illegal situation or provide adequate satisfaction. If the adequate satisfaction would not be sufficient, mainly when the violation of the principle of equal treatment has considerably impaired the dignity, social status or social achievement of the person injured, the person injured may also seek non-pecuniary damages in cash. The amount of the non-pecuniary damage shall be determined by the court, which has to take into account the seriousness of the non-pecuniary damage and all underlying circumstances. Material damages that result from such treatment may be claimed as well.[293] There is no difference in the proceeding when suing public or private entity.

If the principle of equal treatment is breached in the phase of applying for a job, the person harmed is entitled to an "appropriate pecuniary compensation".[294] In the area of employment, it is in principle also possible to claim invalidity of job termination, although it is unclear how effective this possibility is with regard to the requirements of the directives, especially from the procedural point of view (see Chapter 6.1).

In the area of both public and private employment, labour inspectorates (based in every region of the country) as bodies exercising control over the observance of the employment legislation (including establishment, dismissal, pay and working conditions) have the authority to impose a fine of up to 100,000 € on the entities that fall under their jurisdiction and that have breached their duties under provisions of the employment legislation. The management whose behaviour breaches their statutory duties in the field of employment and obligations under collective agreements may be fined in the amount between three times and twelve times of their average monthly salary. Despite the existing regulation of controlling mechanisms, these are not used in practice by the inspection in relation to supervising the observance of the anti-discrimination principle (no single case is known in which such fine would have been imposed;– see also Chapters 6.1 (a) and 6.3). The same applies to the area of education where the competent body is the State School Inspection.[295]

In the area of access to goods and services the controlling authorities (inspectorates of the Slovak Trade Inspection) may punish discriminatory conduct by a fine of up to 16,600 €. By multiple violation of a legal obligation within one year it may impose a fine up to 33,000 €.[296] In a few cases, fines were imposed, after using the methodology of testing in cooperation with the NGO Poradňa pre občianske a ľudské práva.

[293] Section 9 of the Anti-discrimination Act.
[294] See Section 41 paragraph 9 of the Labour Act.
[295] If the subject under inspection fails to remove the deficiencies disclosed by the inspection, it can be fined in the amount of 330 € to 3,300 €. Section 37 of the Act No. 596/2003 Coll. on State Administration of the School System and the School Self-Governance
[296] The Slovak Trade Inspectorate is the entity responsible for the implementation of these provisions.

b) *Is there any ceiling on the maximum amount of compensation that can be awarded?*

The amount of non-pecuniary damages is not limited and depends primarily on the seriousness of the detriment caused and the circumstances under which it occurred.

The amount of pecuniary damage is not limited – the plaintiff has to prove the real material damage which he or she has suffered and the causal link between the damage suffered and the unlawful act of the defendant.

c) *Is there any information available concerning:*
the average amount of compensation available to victims
the extent to which the available sanctions have been shown to be - or are likely to be - effective, proportionate and dissuasive, as required by the Directives?

The amounts of the non-pecuniary damages are not systematically monitored by the state and to the authors´ best knowledge, the amount awarded as non-pecuniary damages has never been higher than 4,000 € (and the amounts actually awarded are usually much lower – generally up to 1,000 €, which only slightly exceeds the average wage in the national economy). The question of remedies and their effectiveness, proportionality and dissuasiveness has actually not even become a subject of an expert or a general public debate yet. Unofficial sources from the business sector have also confirmed that fear from serious sanctions in discrimination-related claims has so far not become a part of their risk-assessment in management.

Given the fact that labour inspectorates are basically not finding any breaches of the principle of equal treatment, the question of effectiveness, proportionality and dissuasiveness of their sanctions answers by itself. The same can be said about school inspectorates.

~~6~~7 SPECIALISED BODIES, Body for the promotion of equal treatment (Article 13 Directive 2000/43)

When answering this question, if there is any data regarding the activities of the body (or bodies) for the promotion of equal treatment, include reference to this (keeping in mind the need to examine whether the race equality body is functioning properly). For example, annual reports, statistics on the number of complaints received in each year or the number of complainants assisted in bringing legal proceedings.

a) Does a 'specialised body' or 'bodies' exist for the promotion of equal treatment irrespective of racial or ethnic origin?(Body/bodies that correspond to the requirements of Article 13. If the body you are mentioning is not the designated body according to the transposition process, please clearly indicate so.)

Since July 2004 The Slovak National Centre for Human Rights has become the specialised body for the promotion of equal treatment for all grounds of discrimination falling under the Anti-discrimination Act. Along with the adoption of the Anti-discrimination Act, the Act on the Slovak National Centre for Human Rights ("Centre" hereinafter) was significantly amended.

b) Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable.

According to the Act No. 308/1993 Coll. the Centre is an independent, non-judicial body, subsidised by the State.[297] The governing body of the Centre is an executive director as a statutory position, and a Board consisting of nine independent members.[298] The executive director is elected and dismissed by the Board upon nomination from the Board members. The staff is appointed and dismissed by the executive director who is the statutory representative of the Centre.

[297] The Treaty on the Establishment of the Slovak National Centre for Human Rights between the Government of the Slovak Republic and United Nations was signed on March 9, 1994 in Geneva. Under the Treaty's provisions the Centre was established to be engaged in human rights issues. According to the Treaty the first two years of its existence were supported from the Voluntary Fund subsidized by the Government of the Netherlands and by contribution of the Slovak Government. The further maintenance of the Centre was undertaken by the Slovak Government. Although the Centre exists since January 1994 its activities were very formal until the election of the new executive director in November 2003 and the amendment of the Act in July 2004. Some degree of formalism, however, still exists till today.

[298] One member is appointed by the President of the Slovak Republic, one member by the Chairman of the National Parliament, one member by the Ombudsman, one member is appointed by the Prime Minister of the Government of the Slovak Republic upon a proposal of 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.

As far as the formal independence of the Centre is concerned according to Article 3 of the Treaty the Slovak Republic is obliged to provide the Centre with adequate accommodation and to guarantee the Centre financial means which will enable it to continue its activities at a minimum of the level achieved during the first two years of its existence. The Slovak Republic is also obliged to guarantee legal and operational independence of the Centre.

The guarantee of the existence of the Centre resulting from the international treaty is important. At the same time it has to be pointed out that the purpose of the treaty was not to establish an equality body but rather a more general human rights institution.

Another formal guarantee of the existence of the Centre is the Act No. 308/1993 Coll. on Establishing the Slovak National Centre for Human Rights per se – which can only be changed or abolished by the Slovak Parliament. The formal guarantee of independence of the Centre is stipulated by Article 2 para 1 which states that "the Centre is an independent legal person".

The Act on the Centre does not deal with the question to whom the Centre is accountable (it only stipulates that the executive director of the centre is accountable to the Board and enumerates the areas of this accountability, such as the activities of the Centre, proper management and bookkeeping, fulfilling the decisions of the Board etc.[299]). Given the fact that the Centre is a public institution set up by the law, it can be argued that it is accountable to the public (although there is no particular mechanism contained in the act on the Centre that would set up mechanisms for carrying out this accountability and/or controlling it).

c) *Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues.*

According to Section 1 of the Act on the Slovak National Centre for Human Rights, the Centre fulfils tasks in the field of fundamental rights and freedoms including rights of the child. For these purposes, the Centre mainly:

- monitors and evaluates the observance of human rights and the observance of the principle of equal treatment according to the Anti-discrimination Act
- gathers information on racism, xenophobia and Anti-Semitism in the Slovak Republic and provides them 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 to increase tolerance in society,

[299] See Section 3b para 4 of the Act No 308/1993 Coll. on Establishing the Slovak National Centre for Human Rights for more details.

- secures legal aid to victims of discrimination and intolerance[300],
- issues, on request of natural persons or legal entities or from its own initiative, expert opinions in matters of observance of the principle of equal treatment according to the Anti-discrimination Act,
- carries out independent probes concerning discrimination,
- drafts and publishes reports and recommendations on issues connected to discrimination,
- provides librarian services,
- provides services in the field of human rights.[301]

The Centre is entitled to represent a party to proceedings in matters connected to violations of the principle of equal treatment (Section 2 paragraph 3). Pursuant to Section 2 paragraph 3, the Centre is obliged to annually (before 30 April) draft and publish a report on the observance of human rights including the principle of equal treatment in the Slovak Republic in the previous year.

d) Does it / do they have the competence to provide independent assistance to victims, conduct independent surveys and publish independent reports, and issue recommendations on discrimination issues?

Yes. Actually the Centre has a statutory obligation to carry out the activities in question (see the answer to the previous question).

The expert opinions or recommendation of the Centre are not binding for parties or private and public bodies. The Act on Establishing the Slovak National Centre for Human Rights does not specify what is meant by "securing legal aid to the victims of discrimination". Following a logical interpretation of the respective provision, it can be argued that it covers a broad range of options including providing legal consultations, representing plaintiffs (but also the defendants) in court proceedings but also cooperating with attorneys or NGOs providing legal aid in the field equal treatment. In any case, there is no clear statement about providing financial assistance with the costs of litigation and the Centre does not provide any kind of financial assistance to the persons allegedly discriminated.

e) Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?

Under Section 1, paragraph 3 of the Act, the Centre has the authority to represent parties in proceedings concerning violation of the principle of equal treatment. In these cases the persons represented by the Centre do not pay for the legal representation provided by the Centre.

[300] The act on the Centre does not specify how shall the legal aid be secured, nor what is meant by legal aid for the purposes of this act.
[301] Section 2 paragraph 2 of the Act on the Centre.

In 2009, the Centre was resolving 1571 complaints (out of which 38 per cent could be qualified as concerning discrimination), out of which 912 were being resolved by the Centre's regional offices[302]. In 2010, the Centre has resolved 1418 complaints, out of which 781 were being resolved by the Centre's regional offices[303]. In the discrimination-related complaints, the most frequent themes were labour relations, in particular bullying, mobbing and bossing, job termination, collective redundancies for reasons of the economic crisis, job termination in probation period on the ground of pregnancy, discrimination in access to employment for the reason of age, gender and nationality, sexual harassment in employment, unequal remuneration of women and men, non-admission to employment because of Roma ethnic origin, not adjusting working conditions for a person with disability and inappropriate working conditions in general. In other fields, the discrimination alleged by the complainants occurred in the field of denying provision of goods and services to persons of Roma ethnicity, health care of the elderly, the Roma and persons with disabilities, in the field of social services and in the field of education where unequal treatment was claimed by persons with disabilities, in particular in access to university education.

In 2009, the Centre filed three lawsuits to courts. In 2010, the Centre did not file any new lawsuits but continued with 4 pending cases.

As of 15 October 2008, the Slovak National Centre for Human Rights can join judicial proceedings related to breaches of the principle of the equal treatment, either on the side of the plaintiff or on the side of the defendant.[304] By the end of March 2011, the Centre has not used this statutory provision to join discrimination-related judicial proceedings[305].

Also, the Centre can, in cases in which breaches of the principle of equal treatment could violate rights, interests protected by the law or freedoms of a higher or non-specified amount of persons, or if the public interest could be seriously endangered by such violation, invoke the protection of the right to equal treatment in its own name.[306] (See Chapter 6.2 for more details). By the end of March 2011, the Centre has not joined any judicial proceedings in discrimination-related cases. It has neither filed an *actio popularis* in its own name.[307]

In 2009, the Centre received 18 requests for mediation (out of which 16 were submitted by women and 2 by men). One mediation agreement was concluded in 2009. No mediation proceedings that would be initiated/carried out by the Centre took place in 2010[308].

[302] Annual Report on the Activities of the Slovak National Centre for Human Rights in 2009.
[303] Response of the Centre from 31 March 2011 to request for information from 18 February 2011.
[304] Section 93 paragraph 2 of the Civil Procedure Act
[305] *Ibid.*
[306] Section 9a of the Anti-discrimination Act.
[307] Response of the Centre from 31 March 2011 to request for information from 18 February 2011.
[308] *Ibid.* According to the information provided by the Centre, although it proposes mediation constantly and 5 of its clients agreed to it in 2010, the respondent employers did not.

In 2009, the Centre issued 13 expert opinions. Some expert opinions were also issued in 2010 (although the exact number is not known)[309].

It seems from the abovementioned that the Centre usually does not represent the victims in court proceedings (in 2009 only three cases submitted to courts and no case submitted to courts in 2010[310]) and takes rather a consultative role, encourages mediation and provides expert opinions. According to information provided by the Centre itself, it does not carry out any strategic litigation[311].

f) *Is / are the body / bodies a quasi-judicial institution? Please briefly describe how this functions. Are the decisions binding? Does the body /bodies have the power to impose sanctions? Is an appeal possible? To the body itself? To courts?) Are the decisions well respected? (Please illustrate with examples/decisions) Is the independence of the body / bodies stipulated in the law? If not, can the body/bodies be considered to be independent ? Please explain why.*

The Centre is neither a judicial nor a quasi-judicial institution. The Centre neither has the power to impose sanctions of any kind.

Answer to the question whether the independence of the Centre is stipulated in the law: yes. As has been mentioned above in Chapter 7 b), the formal guarantee of independence of the Centre is stipulated by Article 2 para 1 of the Act on the Centre which states that "the Centre is an independent legal person".

g) *Are the tasks undertaken by the body / bodies independently (notably those listed in the Directive 2000/43; providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, conducting independent surveys concerning discrimination and publishing independent reports)*

There are not enough resource materials, reports or independent monitoring and evaluations that would make it possible to draw a comprehensive picture about the quality and independence of the work of the Centre. The only available sources of information are basically the reports issued by the Centre about its own activities, and some fragmented pieces of their work published on their website.[312]

What is, however, a problem of principle with regard to the independence or potential dependence of the Centre is the way the Centre is financed.

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[309] Response of the Centre from 31 March 2011 to request for information from 18 February 2011.
[310] *Ibid.*
[311] *Ibid.*
[312] Although on 8 March 2011 (through a response on a request of a co-author of this report for information), the Office of Government of the Slovak Republic informed the co-author of this report that it is in the process of preparation of a document called "Evaluation Analytical Report on the Performance of the Slovak National Centre for Human Rights", with the process to be carried out in April 2011. More information about the document is available on http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=19007 (last time accessed on 18 April 2011).

According to the Act on the Centre, the Centre is financed from subsidies from the state budget pursuant to an international treaty (see Chapter 7 b) above). Although this treaty guaranties that the Slovak Republic is obliged "to provide the Centre with adequate accommodation and to guarantee the Centre financial means which will enable it to continue its activities at a minimum of the level achieved during the first two years of its existence", and also to "guarantee legal and operational independence of the Centre", this treaty (and neither the Act on the Centre nor the Constitution) does not guarantee any minimum threshold for the actual annual financing or a key to determine it.

As it is the government who proposes the act on the state budget on annual basis, and the parliament who approves the act (dominantly represented by the same political parties that represent the government), this mechanism casts doubts on whether the Centre can in principle be independent from the actual political powers.

h) Does the body treat Roma and Travellers as a priority issue? If so, please summarise its approach relating to Roma and Travellers.

No sign of giving priority to Roma and Travellers is visible – although the Slovak National Centre constantly states in its annual reports on the observance of human rights in the Slovak Republic that complaints about discrimination on the ground of Roma ethnicity are more frequent. When asked whether any special attention is paid to the Roma and Roma communities as discriminated individuals and groups, the Centre responded that "the Roma issue is given the same attention as any other issue of discrimination and breaches of the principle of equal treatment in the fields covered and on the grounds protected by the Anti-discrimination Act."[313]

The seats of the regional offices of the Centre established in 2007 were chosen after analysis of situation in different regions of Slovakia that included inhabitancy by marginalised population such as Roma as a criterion. One of the regional offices of the Centre is based in Eastern Slovakia with high density of Roma inhabitants with a contact person of Roma ethnicity.

[313] Response of the Centre from 31 March 2011 to request for information from 18 February 2011.

~~7~~8 IMPLEMENTATION ISSUES

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

Describe briefly the action taken by the Member State

a) to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

As of 2000, the Section of Human Rights and Equal Treatment of the Office of the Government[314] has been continuously preparing and coordinating the realisation of action plans to prevent all forms of discrimination, racism, xenophobia, anti-Semitism and other forms of intolerance[315]. The activities carried out under the action plans by public bodies as well as by NGOs include education and training, dissemination of information, advocacy, monitoring and research etc. The document is updated roughly every second year. In 2008 (within the framework of the 2006-2008 Action Plan), the government supported 39 projects of NGOs and of the Slovak National Centre for Human Rights, contracting altogether the sum of 296,894 Euro. In 2009, this sum was 236,630 Euro, supporting 27 projects of NGOs, a few public institutions and the Slovak National Centre for Human Rights altogether (with the lowest amount of resources allocated for one project being 2,000 Euro and the highest amount being 24,000 Euro)[316]. In 2010, the sum allocated was 299,252.01 Euro and it supported 32 projects of mainly NGOs and a few public institutions (with the financial support ranging from 1,650 Euro to 19,986 Euro)[317]. See also Chapter 8.1 (b) and Chapter 9 of this report.

In the framework of the European Year of Equal Opportunities for All that took place in 2007 the Office of the Government supported various NGO projects that dealt with awareness raising, information campaigns, surveys and monitoring, data collection etc. An anti-discrimination awareness-raising media campaign was organized by the Office of Government in September and October 2007 in TV, Slovak Radio, newspapers and some public transport.[318]

In 2008, the Office of the Government supported a project of four NGOs active in the field of anti-discrimination[319] in framework of the Europe-wide Progress programme.

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[314] See www.mensiny.vlada.gov.sk.
[315] For more information about the action plans, see http://www.mensiny.vlada.gov.sk/index.php?ID=1113
[316] See http://www.mensiny.vlada.gov.sk/data/files/5209.xls (last time accessed on 15 February 2011).
[317] See the response of the Office of Government of the Slovak Republic from 8 March 2011 on a request from information from 19 February 2011.
[318] Although the campaign was a bit confusing as it was based on a concept of criminalisation of discrimination which is not the case in most of the cases of discrimination.
[319] Citizen and democracy (www.oad.sk), Institute for public affairs (www.ivo.sk), Partners for Democratic Change Slovakia (www.pdcs.sk) and Hlava98 (www.hlava98.sk).

The project comprised, for example, publishing the first comprehensive commentary on the Anti-Discrimination Act, supporting the website www.diskriminacia.sk on anti-discrimination (administered by the Citizen, Democracy and Accountability Civic Association; the website was launched within the framework of the European Year of Equal opportunities – see above),; publishing brochures about discrimination for lay persons, anti-discrimination campaign launched in TV, radio and on billboards, research activities, anti-discrimination training and assistance with policy-making in local communities, etc.[320]

From December 2009 till December 2010, the Slovak National Centre for Human Rights carried out a project "Equality of Opportunities Pays Off"[321], supported under the Progress scheme (though without a contribution of the Office of Government) which also included some information activities aimed at awareness-building – such as publishing three studies (on benefits of diversity in employment, on good practice examples in non-discrimination, promoting equality of opportunities and diversity in labour relations, and a comparative study on the principle of equal treatment in selected European countries) and information seminars where the results of these studies were presented. In general and according to the law, dissemination of information as well as an awareness raising campaign in the area of human rights fall under the obligation of the Slovak National Centre for Human Rights.

Both the anti-discrimination campaigns that have taken place so far were of a rather small scale.

Although the government originally allocated 75,000 Euro in 2010 to support the Progress programme on the national level in 2011, it did not support any project in the end. For supporting the Progress Programme in 2012, the government allocated 75,000 Euro in 2011.

Neither the Section of Human Rights and Minorities of the Office of the Government nor the Slovak National Centre for Human Rights provide access to the Anti-Discrimination Act (and basically also to other relevant national-level information on (anti)discrimination) in any other language than in Slovak. This may be hampering the rights of representatives of national minorities as well as of foreigners whose right to equal treatment is also formally guaranteed by the Anti-discrimination Act.

[320] For more information about the project On the Way to Equality, supported by the EU Progress scheme and the Slovak government, see http://www.oad.sk/?q=sk/projects/progress (last time accessed on 28 March 2009).
[321] The project was carried out together with the following partners: Institute for Labour and Family Research (www.sspr.gov.sk), Institute of Economic Research of the Slovak Academy of Sciences (http://www.ekonom.sav.sk/), Slovak Disability Council (www.nrozp.sk) and SEESAME Communication Experts.

b) 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) and

Some kind of dialogue between the government and NGOs exists in relation to anti-discrimination, although it is questionable how efficient, democratic and representatives the dialogue is.

Various "councils of the government" (The Council of the Government for National Minorities and Ethnic Groups, the Council of the Government for Non-Governmental organisations, the Council of the Government for Persons with Disabilities, the Council of the Government for Seniors and the Council of the Government for Gender Equality) have been set up by the government as its advisory, coordinative and initiative bodies of the government in the fields they cover.

Although all of them have relevance in the (anti)discrimination context, they were not established with the primary goal to eliminate discrimination (and for example the existing Council of Government for Non-governmental Organisations and the Council of Government for National Minorities and Ethnic Groups do not focus on the issues related to discrimination at all).

They are composed (in various ratios) of representatives of the central, local and regional governments, by representatives of other public bodies (e. g. the Slovak National Centre for Human Rights, the ombudsman) and of NGOs and other representatives of the groups that are concerned by the individual governmental councils. By now, they have not proved to be efficient fora for dialogue between the government and the NGOs, some of the reasons being the formalism under which they operate, the unclear rules for appointment of members of these councils, as well as for the lack of mainstreaming approaches, mainly as regards the grounds of discrimination they cover – the approach is very fragmented and lacks complexity).

With the amendment of the Act No 575/2001 Z. z. on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration which is in effect from 1 November 2010[322], the Council of Government of the Slovak Republic for Human Rights, National Minorities and Gender Equality was set up as a permanent advisory body of the Government of the Slovak Republic[323].

[322] The amendment took place by the Act No 403/2010 Coll. Amending and Supplementing Act No 575/2001 Z. z. on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration as Amended, and on Amending and Supplementing Certain Laws (zákon č. 403/2010 Z. z., ktorým sa mení a dopĺňa zákon č. 575/2001 Z. z. organizácii činnosti vlády a organizácii ústrednej štátnej správy v znení neskorších predpisov a ktorým sa menia a dopĺňajú niektoré zákony).

[323] See Section 2 paragraph 3 of the Act No 575/2001 Z. z. on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration, as amended by the Act No 403/2010 Coll.

Although the statute of this council of government was not in existence by the end of the period covered by this report[324], the government has already sent signals that the councils of government that have been in existence up to now (see the paragraphs above) are going to be cancelled[325] and subsumed under the newly-formed Council of Government of the Slovak Republic for Human Rights, National Minorities and Gender Equality[326]. It therefore remains to be seen whether the government manages to remove the shortcomings of the above described governmental councils.

The Action Plans for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Forms of Intolerance have established its Intersectoral Working Group which is supposed to coordinate activities in the framework of the Action Plan as well as to include other state departments or non-governmental organisations in the preparatory work and the implementation of the Action Plan. Although the working group has 28 members, it was not until 2009 that NGOs got representation in it – although with only two members (and the transparency and legitimacy of the selection of the NGO representatives is again questionable, as they were not selected through a transparent process of inviting all potentially interested NGOs dealing with Anti-discrimination but were recruited through the Council of the Government for Non-Governmental organisations which does not deal with (anti-)discrimination. In any case, the Intersectoral Working Group had only four meetings between 2008 and 2011 (with no meeting having taken place in 2010)[327] and the plan of the government is now to transform the Intersectoral Working Group into a committee of the newly-established Council of Government for Human Rights, National Minorities and Gender Equality (see above). As the Office of the Government stated, "the aim of this transformation is a consistent institutionalisation, making the work on the issue more effective and increasing its importance".[328]

A positive example of cooperation between the government and NGOs was the processes of amending the Anti-Discrimination Act that resulted into comprehensive amendment of the act in spring 2008.[329]

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[324] Pursuant to Section 2 paragraph 7 of the Act on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration, as amended by the Act No 403/2010 Coll. , it is up to the government to approve the statutes of advisory bodies of the government that contain tasks, composition and rules of procedure of these bodies.
[325] These councils of the government have not been set up by the law but by decisions of the government (which can cancel them by its decision any time).
[326] See for example http://www.vicepremier.sk/index.php?ID=24318, http://hnonline.sk/c1-49625850-vlada-planuje-zrusit-takmer-vsetky-poradne-organy or http://spravy.pravda.sk/vlada-rusi-devat-poradnych-organov-dup-/sk_domace.asp?c=A110128_115900_sk_domace_p29 (last time accessed on 16 February 2011).
[327] A response of the Office of Government of the Slovak Republic from 8. March 2011 on a request for information from 19 February 2011 by the co-author of this report.
[328] *Ibid.*
[329] By amendment No 85/2008 Coll., approved by the parliament on 14 February 2008 and in effect from 1 April 2008.

Based on the comments of the public (represented by NGOs) to a governmental amendment of the Anti-Discrimination Act drafted in spring 2007, a representative of the NGOs was invited to become a member of the inter-governmental body on another more elaborate amendment of the act that resulted into the act adopted in spring 2008. The process was transparent, democratic and lead to a relatively satisfactory result, and can also be considered as a value per se. This process, however, still represents a scarce exception of NGO participation in law-making in the field of anti-discrimination. Although NGOs participate in anti-discrimination-related law-making a lot, it is in most of the cases up to their initiative and up to the pressure they develop on the government and individual ministries.

c) *to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)*

Activities initiated by the Government that are specifically aimed at increasing dialogue between social partners or monitoring workplace practices or internal rules of employers are mainly focused on gender equality and gender mainstreaming and are of rather formal character.

The Department of Gender Equality and Equal Opportunities at the Ministry of Labour, Social Affairs and Family informed a co-author of this report in April 2010[330] that it "co-operates with the Commission for Equality of Opportunities of Women and Men at the Confederation of Trade Unions of the Slovak Republic and regularly twice a year organise an expert seminar focusing on issues of equal treatment together" and that "social partners are represented in the Council of Government of the Slovak Republic for Gender Equality and in its Executive and Consultative Committee and are invited to all educational and conference activities". Basically the same has been reiterated by the Department of Gender Equality and Equal Opportunities at the Ministry of Labour, Social Affairs and in March 2011[331] when it informed the co-author of this report that apart from regular working meetings that take place between the Department of Gender Equality and Equal Opportunities at the Ministry of Labour, Social Affairs and Family and the Confederation of Trade Unions of the Slovak Republic, two seminars took place in 2010 one on exchange of experience between the Confederation of Trade Unions of the Slovak Republic and its Austrian partner and the other on "support of new paternity and the role of a father in the family"[332].

[330] Response of the Department from 7 April 2010 on a request for information.
[331] Response of the Department from 16 March 2011 on a request for information.
[332] *Ibid*, p 3.

The Department of Gender Equality and Equal Opportunities at the Ministry of Labour also mentioned in its official March 2011 response to a request for information that on 30 September 2009, the government signed the Memorandum on Cooperation between the Government of the Slovak Republic and the Confederation of Trade Unions of the Slovak Republic[333] that was later "transferred to practice through adoption of the Action Plan on Gender Equality for 2010-2013" (which has been, however, constantly heavily criticised by the civil society). The Department of Gender Equality and Equal Opportunities at the Ministry of Labour also noted that social partners have representation in advisory bodies of the Ministry of Labour, Social Affairs and Family.

Neither the Office of the Government, nor the individual ministries or the Slovak National Centre for Human Rights have an equality code of practice.

d) to specifically address the situation of Roma and Travellers

On 26 March 2008, the Medium-Term Concept of the Development of the Roma National Minority in the Slovak Republic SOLIDARITY – INTEGRITY – INCLUSION 2008 – 2013 was adopted by the Slovak government[334]. It was heavily criticised by the civil society, mainly because it is based on national instead of social approach, and also because it does not contain clearly defined targets and tasks nor any specific financial allocation.[335]

In April 2008, the government approved the Concept of Education of Roma Children and Pupils including the Development of Secondary and Tertiary Education[336]. It was also subject to criticism, *inter alia* because it does not contain any particular measures, because it mixes up the "national minority" approach and the social approach, and also because it perpetuates stereotypes about the Roma (the Concept for example proposed "introducing educational courses in which also Roma pupils could assert themselves" – and the examples given were only manual works, and these were above all also gender stereotypical).[337]

[333] Adopted by the Resolution of the government No 670/2009.
[334] The document is available at http://www.romovia.vlada.gov.sk/data/att/12371_subor.pdf (last time accessed on 16 February 2011).
[335] For a description of the process of adoption of this document and some remarks on its content, see for example HOJSÍK, M.: Rómovia. In: KOLLÁR, M. – MESEŽNIKOV, G. – BÚTORA, M.: *Slovensko 2008 : Súhrnná správa o stave spoločnosti*. Bratislava: Inštitút pre verejné otázky, 2009, pp 213-215.
[336] Available at http://www.rokovania.sk/appl/material.nsf/0/93C355E5B46377D0C125740F004A580F/$FILE/Zdroj.html.
[337] For more information, see for example HOJSÍK, M.: Rómovia. In: KOLLÁR, M. – MESEŽNIKOV, G. – BÚTORA, M.: *Slovensko 2008 : Súhrnná správa o stave spoločnosti*. Bratislava: Inštitút pre verejné otázky, 2009, p 224.

See also Chapter 5 b) on the National Strategic Reference Framework for 2007-2013 (NSRF), the basic strategic document of the Slovak Republic for using funds of the European Union in 2007-2013 that defines Equal Opportunities and Marginalised Roma Communities as two of its four horizontal priorities and the implementation of which has become very problematic.

It can be said in general that neither after the election in June 2010 have the Roma become a focus of systematic and complex public policies or that the public policies could be perceived as focusing at solving the situation of the Roma.

8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Are there mechanisms to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment? These may include general principles of the national system, such as, for example, "lex specialis derogat legi generali (special rules prevail over general rules) and lex posteriori derogat legi priori (more recent rules prevail over less recent rules).

The Anti-discrimination Act set in its transitory provisions a general clause which states that employers and relevant trade union bodies that concluded collective agreements are obliged to bring the provision of collective agreements into compliance with the principle of equal treatment by 1 January 2005. Employers have the same obligation to adopt the provision in their internal rules. This means that after January 2005 no collective agreements and internal rules of employment contrary to the Anti-discrimination Act can be legally applied. The provision of the Anti-discrimination Act does not mention statutes or internal rules of other professions or independent occupations. This does not mean that the duty to follow the principle of equal treatment does not apply to these. It is guaranteed that any normative act, registered by a state agency (by-laws of associations, by-laws of independent professions and workers´ and employers´ organisations, by-laws of profit-making organisations, etc.) must not be contrary to the principle of equality (and more generally, not contrary to the existing laws of higher legal force). If a by-law underlying registration procedure is in breach of this principle, the registration body must reject it.

b) Are any laws, regulations or rules that are contrary to the principle of equality still in force?

Yes, there are still some laws in force that are discriminatory, for example the Act No. 235/1998 Coll. On Childbirth Subsidy, on Subsidy to Parents of Concurrently Born Three or More Children or to Parents of within Two Years Repeatedly Born Twins (see chapter 3.2.7 of this report), or Section 141 of the Labour Code granting some labour-related benefits which are discriminatory on the grounds of family and marital status and on the ground of sexual orientation (see Chapter 4.5 of this report).

There is no specific mechanism to control or to abolish discriminatory provisions of the existing internal rules. The only reliable way to challenge a provision of internal rules of a self-governing body would be a discrimination case brought to the court by an aggrieved individual or group of individuals.

~~8~~9 CO-ORDINATION AT NATIONAL LEVEL

Which government department/ other authority is/ are responsible for dealing with or co-ordinating issues regarding anti-discrimination on the grounds covered by this report?

Is there an anti-racism or anti-discrimination National Action Plan ? If yes, please describe it briefly.

The Section of Human Rights and Equal Treatment of the Office of the Government[338] is an expert workplace of the Office of Government of the Slovak Republic that deals with issues of human rights, equal opportunities, as well as with issues of cooperation with non-governmental non-profit organisations. It provides the deputy prime minister for human rights and national minorities[339] with expert, advisory and initiative support in the field of human rights and equal treatment. In the international context, the Section of Human Rights and Equal Treatment provides for expert communication with foreign and international institutions in the field of protection of human rights and participates on the preparation of regular reports of the Government of the Slovak Republic that stem out of international documents on human rights. It has also co-authored the anti-discrimination legislation and is supposed to fulfil some other implementation tasks related to the Directives. The Section is supposed to fulfil the tasks of the Secretariat of the Council of Government of the Slovak Republic for Human Rights, National Minorities and Gender Equality that was established by law in 2010[340]. Organisationally, the Section is divided into the Department of General Rights and of Implementation of International Human Rights Treaties and the Department of Equal Treatment and Gender Equality.

As of 2000, the section has been continuously preparing and coordinating the realisation of action plans to prevent all forms of discrimination, racism, xenophobia, anti-Semitism and other forms of intolerance[341].

The activities carried out under the action plans by public bodies as well as by NGOs include education and training, dissemination of information, advocacy, monitoring and research etc. The document is updated roughly every second year. In 2008 (within the framework of the 2006-2008 Action Plan), the government supported 39 projects of NGOs and of the Slovak National Centre for Human Rights, contracting altogether the sum of 296,894 Euro.

[338] See www.mensiny.vlada.gov.sk.
[339] www.vicepremier.sk
[340] This council of the government was established by the Act No 403/2010 Coll. Amending and Supplementing Act No 575/2001 Z. z. on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration as Amended, and on Amending and Supplementing Certain Laws (zákon č. 403/2010 Z. z., ktorým sa mení a dopĺňa zákon č. 575/2001 Z. z. organizácii činnosti vlády a organizácii ústrednej štátnej správy v znení neskorších predpisov a ktorým sa menia a dopĺňajú niektoré zákony) which is in effect from 1 November 2010.
[341] For more information about the action plans, see http://www.mensiny.vlada.gov.sk/index.php?ID=1113

In 2009, this sum was 236,630 Euro, supporting 27 projects of NGOs, a few public institutions and the Slovak National Centre for Human Rights altogether (with the lowest amount of resources allocated for one project being 2,000 Euro and the highest amount being 24,000 Euro)[342]. In 2010, the sum allocated was 299,252.01 Euro and it supported 32 projects of mainly NGOs and a few public institutions (with the financial support ranging from 1,650 Euro to 19,986 Euro)[343].

See also Chapters 8.1 (a) and 8.1 (b) of this report.

[342] See http://www.mensiny.vlada.gov.sk/data/files/5209.xls (last time accessed on 15 February 2011). A report on evaluation of the fulfilment of the Action Plan in 2009 can be found at http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Mater-Dokum-120252?prefixFile=m_ (last time accessed on 18 April 2011).
[343] See the response of the Office of Government of the Slovak Republic from 8 March 2011 on a request from information from 19 February 2011.

ANNEX

1. **Table of key national anti-discrimination legislation**
2. **Table of international instruments**

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Name of Country: Slavakia

Date: 01 January 2011

Title of Legislation (including amending legislation)	Date of adoption:	Date of entry in force from:	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
This table concerns only key national legislation; please list the main anti-discrimination laws (which may be included as parts of laws with wider scope). Where the legislation is available electronically, provide the webpage address.		Please give month / Year			e.g. public employment, private employment, access to goods or services (including housing), social protection, social advantages, education	e.g. prohibition of direct and indirect discrimination, harassment, instruction to discriminate or creation of a specialised body
The Constitution of the Slovak Republic No. 460/1992 Coll. as amended by No. 244/1998 Coll., No. 9/1999 Coll., No. 90/2001 Coll., No. 90/2001 Coll., No. 140/2004 Coll., No. 323/2004 Coll., No. 463/2005 Coll.,	1 September 1992	1 October 1992	sex, race, skin colour, language, faith, religion, political affiliation, conviction, national or social origin, nationality or	Constitutional Law	human rights and fundamental freedoms guaranteed by the Constitution	human rights and fundamental freedoms guaranteed by the Constitution

Title of Legislation (including amending legislation)	Date of adoption:	Date of entry in force from:	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
No.92/2006 Coll., No. 210/2006 Coll. and No 100/2010 Coll. http://www.concourt.sk/A/a_index.htm			ethnic origin, property, lineage or any other status.			
Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination, amending and supplementing certain other laws (Anti-discrimination Act) amended by No. 539/2005, No. 326/2007 Coll., No 85/2008 Coll., No 245/2008 Coll., No 384/2008 Coll., No 400/2009 Coll. http://www.snslp.sk/images/stories/file/legislativa/antidiskriminacni-zakon.pdf	20 May 2004	1 July 2004	sex, religion or belief, race, national or ethnic group membership, disability, age, sexual orientation, marital and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status	Civil Law	Employment, social security, old age pension saving, accessory old age saving, social advantages, health care, education, access to and provision of goods and services, housing	Definition of discrimination, principle of equal treatment, areas and grounds, procedural issues and judicial remedies

Title of Legislation (including amending legislation)	Date of adoption:	Date of entry in force from:	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
Act No. 308/1993 Coll. on establishing the Slovak National Centre for Human Rights as amended by Act No.136/2003 Coll., Act No. 365/2004 Coll., Act No. 269/2007 Coll. and Act No 85/2008 Coll.	15 December 1993	1 January 2004	All grounds covered in the national legislation: sex, racial and ethnic origin, religion, belief, disability, age and sexual orientation, marital and family status, colour, language, political or other opinion, trade union involvement, national or social origin, property, lineage/gender or other status		All areas covered in the national legislation: Employment, social security, old age pension saving, accessory old age saving, social advantages, health care, education, access to and provision of goods and services, housing	Powers, competencies and tasks of the equality body

Title of Legislation (including amending legislation)	Date of adoption:	Date of entry in force from:	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
Labour Code No. 311/2001 Coll. as amended by Act No. 408/2002 Coll., 210/2003 Coll., No. 413/2002 Coll., No. 453/2003 Coll., No. 461/2003 Coll., No. 5/2004 Coll., No 365/2004 Coll., 82/2005 Coll, 131/2005 Coll, No. 244/2004 , No. 570/2005 Coll.., No. 231/2006 Coll., No. 124/2006 Coll., No. 348/2007 Coll., No 200/2008 Coll., No 460/2008 Coll., No 49/2009 Coll., No 184/2009 Coll., No 574/2009 Coll., No 543/2010 Coll.	2 July 2001	1 April 2002	All grounds covered by the Anti-discrimination Act + trade union involvement and unfavourable state of health	Civil Law	Employment, especially private employment	Prohibition of discrimination in employment relationships

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country: Slovakia

Date: 01 January 2011

Instrument	Date of signature (if not signed please indicate))	Date of ratification (if not ratified please indicate)	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 21/2/1991	Ratified 18/3/1992	No	Yes	Yes
Protocol 12, ECHR	Signed 4/11/2000	Not ratified	No	No	No
Revised European Social Charter	Signed 18/11/1999	Ratified 23/4/2009	Yes Reservations applied by Slovak Republic: Article 15 para 3 Article 18 para 3 Article 19 para 2, 3, 4c, 8, 10, 12 Article 31	Ratified collective complaints protocol? No	Yes
International Covenant on Civil and Political Rights	Signed 7/10/1968	Ratified 28/5/1993	No	Yes	Yes

Instrument	Date of signature (if not signed please indicate))	Date of ratification (if not ratified please indicate)	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?
Framework Convention for the Protection of National Minorities	Signed 1/2/1995	Ratified 14/9/1995	No		Yes
International Convention on Economic, Social and Cultural Rights	Signed 7/10/1968	Ratified 28/5/1993	No		Yes
Convention on the Elimination of All Forms of Racial Discrimination	Signed 7/10/1966	Ratified 28/5/1993	No	Yes	Yes
Convention on the Elimination of Discrimination Against Women	Signed 17/7/1980	Ratified 28/5/1993	No	Yes	Yes

Instrument	Date of signature (if not signed please indicate))	Date of ratification (if not ratified please indicate)	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?
ILO Convention No. 111 on Discrimination	Signed 25/6/1958	Ratified 1/1/1993	No		Yes
Convention on the Rights of the Child	Signed 30/9/1990	Ratified 28/5/1993	No		Yes
Convention on the Rights of Persons with Disabilities	Signed 26/9/2007	Ratified 26/5/2010	Yes Yes Reservation applied by Slovak Republic: Article 27 1a	Yes	Yes