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

COUNTRY REPORT 2012

SLOVAKIA

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State of affairs up to 1st January 2013[1]

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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This report has been drafted as part of a study into measures to combat discrimination in the EU Member States, funded by the European Community Programme for Employment and Social Solidarity – PROGRESS (2007-2013). The views expressed in this report do not necessarily reflect the views or the official position of the European Commission.

[1] With the exception of the amendment of the Anti-Discrimination Act No 32/2013 Coll. of 5 February 2013 that is incorporated into the relevant sections of this report.

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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 has a parliamentary form of government and a statutory law system, its basic law being the Constitution[2] 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 Slovakia and promulgated as prescribed by the law, take precedence over national laws.[3] Slovakia is a party to the European Convention on Human Rights[4] (ECHR) and the International Convention on the Elimination of all Forms of Racial Discrimination,[5] as well as the Convention on the Rights of Persons with Disabilities.[6] 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.

[2] 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)). The English text of the Constitution can be found at http://www.concourt.sk. All other laws published in the Collection of Laws from 1998 onwards can be found in the Slovak language at http://www.zbierka.sk/.

[3] Article 7, paragraph 5 of the Constitution which 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 national law was guaranteed only if international law provided for "broader fundamental rights and freedoms" than the relevant national law.

[4] 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.

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

[6] Oznámenie Ministerstva zahraničných vecí Slovenskej republiky č. 317/2010 Z. z. [Announcement of the Ministry of Foreign Affairs No. 317/2010 Coll.]

Together with the Constitution, the Act on Equal Treatment in Certain Areas and Protection against Discrimination (Anti-discrimination Act)[7] adopted by the National Council of the Slovak Republic (the Slovak parliament) on 20 May 2004, established the basic legal framework of Slovak anti-discrimination law.

The Anti-discrimination Act came into force on 1 July 2004. In its provisions it stipulates in more detail the constitutional guarantees of equal treatment. It extends, in some aspects, the scope of 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".[8] The duty to observe the principle of equal treatment is defined as comprising the prohibition of discrimination[9] 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[10] or other status).[11] It also requires "measures for protection against discrimination"[12] to be adopted (without specific reference to prohibited grounds of discrimination) – this 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 protection against discrimination".[13] Thus, the duty to follow good morals does not have an independent, legally enforceable character and can be perceived more or less as providing an interpretative framework to the provision on the content of the duty to observe the principle of equal treatment.

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

[7] 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 laws (Anti-discrimination Act)], as amended.
[8] See Section 3 Paragraph 1 of the Anti-discrimination Act.
[9] According to Section 2a Paragraph 1 of the Anti-discrimination Act, discrimination can take the following forms: direct discrimination, indirect discrimination, harassment, sexual harassment, victimisation, instruction to discriminate and incitement to discriminate.
[10] The Slovak word *"rod"* can be translated as either "lineage" or "gender".
[11] See Section 2 Paragraph 1 of the Anti-discrimination Act.
[12] See Section 2 Paragraph 3 of the Anti-discrimination Act.
[13] See Section 2 Paragraph 2 of the Anti-discrimination Act. "Good morals" are not legally defined anywhere in Slovak legislation. "Good morals" are generally understood to mean recognised principles of behaviour in legal relationships – honesty, non-abusive exercise of rights etc.

This provision may on the one hand appear to be a practical and technically feasible way of transposing the Directives (discrimination usually takes place in legal relations which are regulated by law, 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). However, problems arise in legal relationships where only one of the sides is a clear and incontestable rights-bearer. For example, in situations connected to sexual harassment of teachers perpetrated by pupils/students, pupils/students are clear bearers of the right to education (the rights of students/pupils stem from school legislation), but students/pupils have no explicit and barely any implicit duty to treat their teachers well and in a non-discriminatory manner (this duty is instead incumbent on schools as teachers' employers).

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

The duty to observe the principle of equal treatment in particular spheres of life is also regulated by other laws in addition to the Anti-discrimination Act which either refer to the Anti-discrimination Act or contain their own equal treatment/anti-discrimination clauses which usually duplicate some of the provisions contained in the Anti-discrimination Act and/or add some details specific to 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,[14] with some exceptions listed below. 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 must be outlined explicitly in the respective legislation), 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). It could even lead to the State's duty to properly implement directives being circumvented through the adoption of generally binding legal acts other than laws. It may also lead to a reduction in the scope of protection provided to certain categories of persons in certain environments (for example, to teachers as opposed to their pupils or students). See mainly Chapters 0.1 and 3.2.7 for further details.
- The definition of harassment contained in the Slovak Anti-discrimination Act does not explicitly stipulate that the conduct in question must 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

[14] 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 (the Directives).

may be restrictive when compared to the requirements of the Directives (see also Chapter 2.4 for more details).

- The definition of disability in labour and social security legislation (the Anti-discrimination Act does not contain any such definition) is very restrictive compared to the definition developed by the Court of Justice of the EU in *Chacon Navas* (see Chapter 2.1.1).
- The Act No. 235/1998 Coll.[15] on the Childbirth Allowance and on Allowances for Parents who have Three or More Concurrently Born Children or Twins More than Once within Two Years clearly appears to be indirectly discriminatory towards Roma women, in particular in Section 3 paragraphs 5 and Section 3a paragraph 4. Section 3 paragraph 5 stipulates that a woman who leaves her child in the maternity hospital following his or her birth, without prior consent from their physician, have no right to childbirth allowance, including the extra subsidy for the firstborn child (Section 3a, paragraph 1a). The statistics show that 100% of women leaving their child in hospital after giving birth are of Roma origin and in the majority of cases they do come back to pick up their child. The legitimacy, necessity and proportionality of the regulation are more than questionable.
  The same may be said of Section 3a paragraph 4 on the supplement to the birth allowance which states that the supplement entitlement only applies if the woman has visited a gynaecologist once a month from the fourth month of pregnancy until giving birth. The Act also contains other discriminatory provisions. See Chapter 3.2.7 for more details.
- Some settlements which are explicitly enumerated by the Labour Code as falling outside the definition of "pay" are clearly/very likely in violation of EU law. See Chapter 3.2.3 for more details.
- The Labour Code still contains a few specific provisions which 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 the shift in the burden of proof only applies to judicial proceedings (and not to administrative proceedings carried out, for example, by labour inspectorates or offices of the Slovak Trade Inspectorate). This makes it almost impossible for administrative bodies that are formally authorised to identify and sanction breaches of the principle of equal treatment to carry out their responsibilities in the field of equality efficiently.
- Invalidity of job termination is not explicitly contained among the claims that can be invoked before the 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 initial information available on its application in practice shows that courts

[15] Coll. is an abbreviation for the official 'Collection of Laws of the Slovak Republic'.

may tend to divide these claims into separate proceedings and so increase the costs and reduce the effectiveness and legal certainty of the proceedings. See Chapter 6.1 for further details.

- The conditions of job termination for university professors (when they reach 70 years of age) and for judges and prosecutors (when they reach 65 years of age) are very likely in conflict with CJEU case-law. See Section 4.7.4 c) and f) of this report for more details.
- The way in which the courts have dealt so far with cases where financial compensation for non-pecuniary damage was sought indicates that, with regard to this type of compensation, the sanctions are not effective, proportionate and dissuasive. One of the causes contributing to this outcome may be the obligation (albeit not exhaustive) for plaintiffs to prove that there has been a "considerable impairment" of their dignity, social status or social achievement. Another barrier to effective, proportionate and dissuasive compensation for non-pecuniary damage is the judicial fee, which is 3% of the amount sought and which hinders the plaintiffs from asking for amounts of compensation that would be effective, proportionate and dissuasive. This also opens up broader questions about remedies and enforcement. If, for example, an individual is deterred from filing a lawsuit in the event of them suffering a violation of the principle of equal treatment because the judicial fee they would have to pay in order to obtain adequate compensation is unaffordable, the individual concerned does not have access to a legal procedure which would guarantee the defence of his or her rights, as stipulated in Article 7 of the Directives. See Section 6.5 c) for more details.
- NGOs are still very limited in their ability to recover the costs of legal representation from defendants in cases of successful anti-discrimination claims brought to court, in particular in cases where the work carried out by NGOs was unpaid (due to lack of resources on the part of both the plaintiff and the NGO). This type of legal regulation discriminates against NGOs, compared to lawyers who can invoke the costs of legal representation whether they were actually covered by the plaintiffs or not. This type of legal regulation also creates an absurd situation whereby those who have been affected by discrimination (plaintiffs) and/or those who assist them to assert their rights pay for someone else's discriminatory behaviour.
  This may also be the reason why there have so far been very few instances when NGOs have formally represented persons affected by discrimination before the courts (representation is almost always provided by cooperating lawyers). See Chapter 6.2, in particular Section 6.1 a), for further details.
- Organisations and the Slovak National Centre for Human Rights can represent persons affected by discrimination in civil proceedings and can only do so before "regular courts" (i.e. courts of first or second instance). Legal representation is not possible before the Supreme Court or the Constitutional Court, or even before regular courts in proceedings concerning judicial review of decisions by administrative bodies. This causes significant problems, both for the representing entities and their clients, and ultimately renders the

representation insufficient and inefficient. See Sections 6.2 e) and 7 f) for more details.

- Although the Slovak National Centre for Human Rights fulfils its tasks stemming from EU and national law on paper, it appears to have serious problems with efficiency, transparency, independence and in general with its overall performance. See Section 7 for more details.
- The segregation of Roma children in education remains a very serious problem. Albeit formally prohibited after the adoption of new school legislation in 2008,[16] there are indirectly discriminatory legislative provisions (mainly Section 13 of the Ordinance of the Ministry of Education No 3202008 Coll. on Primary Schools which contains provisions on placing children into "special classes"), as well as practices (such as the process of diagnostics) that amount to segregation and other forms of discrimination against Roma children in education. See Chapter 3.2.8 for further details.
- There are a number of provisions in the Act on State Language which may be indirectly discriminatory with regard to race, ethnicity and nationality etc. Examples of this potential non-compliance are the requirement to draft all legal acts on employment relationships in the official State language (although other language versions are possible in parallel), or the requirement for health professionals to predominantly use the official State language in communication with patients (another language may only be used if a patient has a different mother tongue from the State language or is a member of a national minority). Another problem may be some potentially indirectly discriminatory provisions in the field of providing goods and services. See Chapter 2.3 section e) 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 may 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 with regard to the legal and economic environment in which they operate. See Chapter 2.1.1 for more details.

0.3 Case-law

*Provide a list of any <u>important</u> case-law in **2012** within the national legal system relating to the application and interpretation of the Directives. (The **older case-law mentioned in the previous report should be moved to Annex 3)**. This should take the following format:*

[16] 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 (Schools Act) and on amending and supplementing certain laws, as amended].

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)
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 falling under both anti-discrimination Directives (Please note that you may include case-law going beyond discrimination in the employment field for grounds other than racial and ethnic origin)

Name of the court: District Court in Prešov (decision I of 15 June 2009), Regional Court in Prešov, Supreme Court of the Slovak Republic, District Court in Prešov (decision II of 22 October 2012)
Date of decision: 15 June 2009 (district court decision II), 13 May 2010 (regional court), 22 February 2012 (Supreme Court), 22 October 2012 (district court – decision II)
Name of the parties: plaintiffs not known officially (only known as: "1/ B. S.S.Č., 2/ A. S.S.Č., 3/ I. S.S.H., 4/ T. S.S.H., 5/ I. S.S.D., 6/ T. S.S.D., 7/ Z. S.S.H., 8/ S.S.D."); defendants: the Town of Sabinov and the Ministry of Construction and Regional Development
Reference number: 25 C 197/2007 – 585 (district court – decision I), 13Co/44/2009 – 655 (regional court), 5 Cdo 257/2010 (Supreme Court), 25C 1/12 – 33 (district court – decision II)
Address of the webpage: The rulings are not available online, apart from the decision of the Supreme Court which is available at: www.nssr.gov.sk/data/att/22113_subor.pdf.
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 Discrimination, 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 Sabinov in houses which, from the perspective of their location, made them attractive for business or housing purposes, to a new location one kilometre from the town boundary (where only Roma people were moved to). The new place chosen by the municipality was totally isolated from the town and had very poor infrastructure.

The plaintiffs urged the court to rule 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 detailed in the lawsuit as well as in the ruling and encompasses, for example, the demand that the defendants provide a bus link between Sabinov town centre and the plaintiffs' new place of residence and that the

defendants provide a shop selling basic goods in the plaintiffs' new place of residence). They also asked the defendants to pay €3,319.39 in damages to each plaintiff. 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 the case of a "suspicious criterion" consisting of 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 plaintiffs.

The Regional Court in Prešov based its decision on the argument that, although the lower court had correctly established the facts of the case, it had not interpreted them correctly under 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 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 the basis of a proper request from the Town of Sabinov, it had 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 refusing 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, in particular the compensation of non-pecuniary damages of €1,000 which was awarded to each of the plaintiffs by the lower court (District Court in Prešov).

The legal representative for the Roma plaintiffs referred the case to the Supreme Court of the Slovak Republic which held, on 22 February 2012, that the Regional Court in Prešov violated the plaintiffs' right to act before a court, cancelled its decision and referred the case to the Regional Court for further proceedings.

The reason for the cancellation of the decision was the fact that it was not possible to review the decision of the court of second instance, due to the Regional Court having failed to observe statutory procedural provisions, and hence the violation of the right of the plaintiffs to act before a court. The Supreme Court also confirmed in its decision that the statutory list of possible judicial claims in cases of violations of the principle of equal treatment contained in Section 9 of the Anti-discrimination Act is open-ended, and hence determining that the principle of equal treatment has been breached "is admissible and it is a proportionate and efficient means of declaring a violation of the principle of equal treatment".

On 22 October 2012 the court of first instance (the District Court in Prešov) issued a new decision (relating only to the extent of the appeal and the complaint submitted to the Supreme Court) and confirmed its original decision, in which it basically reiterated all of its original argumentation. Although bound by the original amount of the non-pecuniary compensation awarded (none of the parties appealed against it), it provided some interesting argumentation relating to the violation of human dignity of a person as a ground for granting this type of compensation (showing that the dignity of a person has been "considerably impaired" by the discriminatory treatment in question is a statutory condition for granting non-pecuniary compensation – see Section 6.5 c) of this report). The court said in particular that *"the right to protection of one's dignity is one of the most fundamental rights on which the whole constitutional guarantee of human rights is based. Anyone who unlawfully interferes with fundamental human and personal rights interferes with the dignity of a person per se, as a fundamental social value. It is the right to the preservation of a person's basic integrity, a right to be treated as a human being."*

The defendants appealed again against the ruling by the court of first instance and the case is now once more pending consideration before the court of second instance (Regional Court in Prešov).

Name of the court: District Court in Prešov, Regional Court in Prešov
Date of decision: 5 December 2011 (District Court in Prešov), 30 October 2012 (Regional Court in Prešov)
Reference number: 25C 133/10 – 229 (District Court in Prešov), 20Co 125/2012, 20Co 126/2012 (Regional Court in Prešov)
Name of the parties: Poradňa pre občianske a ľudské práva vs Základná škola v Šarišských Michaľanoch *(Centre for Civil and Human Rights vs Šarišské Michaľany Primary School)*
Address of the webpage: http://poradna-prava.sk/wp-content/uploads/2012/01/PDF-568-kB.pdf (District Court in Prešov), http://poradna-prava.sk/wp-content/uploads/2012/11/PDF-129-MB.pdf (the Regional Court in Prešov)
Brief summary: Poradňa pre občianske a ľudské práva *(Centre for Civil and Human Rights)*, an NGO actively dealing with *inter alia* the protection of the Roma against discrimination, sued, in its own name and using the concept of *actio popularis*, the primary school in Šarišské Michaľany for the long-term and systematic application of

segregation practices, in particular for having segregated Roma classes in each of Years 1-7 for several years. The segregated Roma classes and the non-Roma classes were even separated physically – for example, the classrooms were on different floors and so Roma and non-Roma children had minimal opportunity to encounter and communicate with each other even during breaks. The segregated Roma classes did not have any special legal status, i.e. these were regular classes, comparable to the non-Roma classes in terms of curriculum, number of pupils in a class etc.

The school alleged that the separate classes were set up to allow teachers to adopt a "more individualised approach" when teaching Roma children, as they came from "socially disadvantaged backgrounds" (the school even argued that it was not using discriminatory practices but measures that had an "equalising character").[17] The school also claimed that, by separating the children, they contributed to the Roma children not having to feel "handicapped", knowing that other children were doing better at school. It also stated that one of the reasons for separating the children was the fact that 50 non-Roma children had left the school when the classes were mixed and moved to one in another municipality with only non-Roma children.

The court, applying the burden of proof correctly and referring not only to Slovak legislation but also to relevant international obligations (although there is no reference to the Race Directive in the judgement and the court, although it refers to the European Court of Human Rights (ECtHR), does not quote any particular decision), stated that none of the arguments of the school can serve as an excuse for the discriminatory treatment of the Roma children and that this discriminatory treatment happened solely on the ground of their ethnicity.

In addition to declaring that the principle of equal treatment had been violated and that the discrimination against Roma children was grounded in their ethnicity, the court ordered the school to publish a full and anonymised version of its ruling in a specialist professional teaching periodical and to remedy the illegal situation by mixing the classes. In justification of its ruling, the court also emphasised that the school "failed to carry out its obligations in the process of education when it favoured illegal segregated education over the development of inclusive education".

After an appeal by the defendant, the Regional Court in Prešov gave its decision on 30 October 2012 and substantially upheld the decision by the court of first instance, *inter alia* in relation to the declaration that the principle of equal treatment had been violated on the ground of ethnicity and that illegal and illegitimate segregation took place, and that the school in question was obliged to rectify the illegal situation. The decision also addressed the wider societal context and offered its views and arguments on why segregation is unacceptable, on the meaning of human dignity in

[17] Referring to Section 8a of the Anti-discrimination Act that stipulates the possibility of adopting "temporary equalising measures" (positive action measures – see Chapter 5 for more details).

the context of (non-)segregation, on the importance and benefits of inclusive education and on the importance of *actio popularis*.

The case is very important, as it was the first case in Slovakia dealing with segregation in education. It was also the first time that *actio popularis* was used. The case is now closed.

Name of the court: European Court of Human Rights
Date of decision: 12 June 2012
Name of the parties: NB v Slovakia
Reference number: Application no. 29518/10; the judgement was made final on 15 September 2012
Address of the webpage:
http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"respondent":["SVK"],"documentcollectionid":["COMMITTEE","DECISIONS","COMMUNICATEDCASES","CLIN","ADVISORYOPINIONS","REPORTS","RESOLUTIONS"],"kpdate":["2012-03-24T00:00:00.0Z","2013-03-24T00:00:00.0Z"],"itemid":["001-111427"]}
Brief summary: The case concerned a Roma woman who was sterilised as an under-aged minor without the consent of her legal guardian in Gelnica hospital (Eastern Slovakia) in 2002. The Court, referring to its previous case-law (v. C. v Slovakia), held that the applicant's sterilisation without her informed consent was a violation of Article 3 (but did not find any procedural violation of Article 3 in terms of the alleged failure to conduct a proper investigation).

The Court also found a violation of Article 8, referring to its previous case-law and stating: *"The Court has previously found that the practice of sterilisation of women without their prior informed consent affected vulnerable individuals from various ethnic groups. In view of the documents available, it cannot be established that the doctors involved acted in bad faith, that the applicant's sterilisation was a part of an organised policy, or that the hospital staff's conduct was intentionally racially motivated. At the same time, the Court finds no reason for departing from its earlier finding that shortcomings in legislation and practice relating to sterilisations were liable to particularly affect members of the Roma community (…). In that connection, the Court has found that the respondent State failed to comply with its positive obligation under Article 8 of the Convention to secure to the applicant a sufficient measure of protection enabling her, as a member of the vulnerable Roma community, to effectively enjoy her right to respect for her private and family life in the context of her sterilisation (..)."*

However, the Court did not deal with the claimed breach of Article 14. The applicant was granted €25,000 in non-pecuniary damages.

Name of the court: European Court of Human Rights
Date of decision: 13 November 2012
Name of the parties: I. G. and others v Slovakia; request for referral to the Grand Chamber is pending

Reference number: Application no. 15966/04;
Address of the webpage:
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114666
Brief summary: The applicants, IG, MK and RH, were Roma women who complained that they had been sterilised without their full and informed consent in Krompachy hospital (Eastern Slovakia) under different circumstances in 1999-2002 (two of them were sterilised as under-aged minors and IG was sterilised during the delivery of her second child). The applicants also complained that the ensuing investigation by the authorities into their sterilisation had not been thorough, fair and effective, and that their ethnic origin had played a decisive role in their sterilisation.

They claimed violation of Articles 3, 8, 13 and 14. Reiterating its previous case-law (*VC v Slovakia* and *NB v Slovakia)*, the Court found a substantive violation of Article 3 in relation to the first and second applicants (RH died during the proceedings and so the Court did not consider her complaint). It also found a procedural violation of Article 3 and a violation of Article 8. With regard to the violation of Article 8, the Court held: *"The Court finds that the respondent State failed to comply with its positive obligation under Article 8 to secure through its legal system the rights guaranteed by that Article, by putting in place effective legal safeguards to protect the reproductive health of, in particular, women of Roma origin.*

"Accordingly, the failure to respect the statutory provisions combined with the absence at the relevant time of safeguards giving special consideration to the reproductive health of the first and second applicants as Roma women resulted in a failure by the respondent State to comply with its positive obligation to secure to them a sufficient measure of protection enabling them to effectively enjoy their right to respect for their private and family life." The Court ruled that there had been no breach of Article 13 and did not find it necessary to examine the alleged breaches of Articles 12 and 14.

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 the assistance of NGOs or the Slovak National Centre for Human Rights,[18] are not known (which is very indicative of access to justice for people of Roma origin). There are no official figures available as far as cases brought before courts or other authorities are concerned.

[18] To the best knowledge of a co-author of this report, the Slovak National Centre for Human Rights has so far represented only two people of Roma origin before the courts (one case was unsuccessful and in the other the plaintiff withdrew her authorisation of the Centre to provide her with legal representation).

However, in 2012, Poradňa pre občianske a ľudské práva (*Centre for Civil and Human Rights)* (Poradňa),[19] essentially the only NGO (and at the same time the only organisation) in Slovakia undertaking systematic strategic litigation in cases of discrimination based on ethnic origin, published a study in which it looked at barriers to access to effective legal protection against discrimination from the perspective of vulnerable people who face discrimination. The report also monitored the decision-making activities of the courts in Slovakia in cases of discrimination and highlighted deficiencies in the application of anti-discrimination legislation.[20] The study is indicative of the situation and the trends in cases related to discrimination based on ethnicity.

Between 2004 (when the Anti-discrimination Act was passed and entered into force) and 2012 Poradňa provided legal representation to clients alleging discrimination based on ethnicity in 18 cases [author's note: with some cases still pending] and twice filed an *actio popularis* in its own name.[21] It won one of these cases, on segregation of Roma children in schools, see the case *Centre for Civil and Human Rights vs Šarišské Michaľany Primary School* in the case-law section; the other *actio popularis* concerned indirectly discriminatory provisions on childbirth benefits (see Chapter 3.2.7 for more details) and is still pending before the court of first instance). Poradňa also submitted a lawsuit in its own name claiming it had been discriminated against as a legal entity – due to the unwillingness of a hotel to provide accommodation for its Roma members/trainees. The cases where individuals were represented related mainly to denied access to restaurants, cafés or pubs, denial of services in Eastern Slovakia and discrimination in employment.

Based on the above-mentioned analyses and its legal experience in court, Poradňa sums up the main features of judicial decision-making (concerning claims based on the Anti-discrimination Act) relating to racial and ethnic discrimination as follows (cited from its written comments to the Committee on the Elimination of Racial Discrimination of January 2013):[22]

[19] www.poradna-prava.sk

[20] Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012) *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, Košice, Poradňa pre občianske a ľudské práva. The publication is also available at http://poradna-prava.sk/wp-content/uploads/2012/11/Publikáciu-si-môžete-stiahnuť-tu-105-MB.pdf (in Slovak), last accessed 20 March 2013. See pp 129-133 for the Summary in English (in which the description of the study contained above in the text is also cited – see p 129 and 131).

[21] See Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012) *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, Košice, Poradňa pre občianske a ľudské práva (also available at http://poradna-prava.sk/wp-content/uploads/2012/11/Publikáciu-si-môžete-stiahnuť-tu-105-MB.pdf), p 101.

[22] Centre for Civil and Human Rights; People in Need Slovak Republic (2013) *Written comments concerning the Ninth and Tenth Periodic Reports of the Slovak Republic under the International Convention on the Elimination of All Forms of Racial Discrimination,* pp 2, 13 and 16 (also available at http://poradna-prava.sk/wp-content/uploads/2013/03/PDF-236-KB1.pdf, last accessed 14 March 2013).

- *"The number of cases of racial discrimination dealt by Slovak courts since 2004 under Antidiscrimination Law remains extremely low. Our research documented only 15 cases in which Slovak courts dealt with racial discrimination and at least first instance decision was already issued, all together since 2004.*
- *Implementation of the provisions of Anti-discrimination Law by courts in cases of racial discrimination is inconsistent and seriously flawed (i.e. using reversed burden of proof).*
- *The court proceedings last excessively long periods (several years). For example, we still have pending cases of racial discrimination brought to domestic courts in 2006 or 2007.*
- *Courts remain extremely reluctant to award any financial remedies for victims of discrimination. They tend to downplay seriousness of racial discrimination overlooking or not understanding prima facie impact on human's dignity. In some instances certain bias or preoccupation of courts when dealing with cases of discrimination of Roma can be indicated. Moreover, low damages for racial discrimination do not have sufficient deteriorating effect on other discriminatory subjects and fall short of prevention and elimination of racial discrimination in our society."*[23]

Poradňa also provided legal representation to a number of Roma women in cases of forced and coerced sterilisations which took place in Eastern Slovakia prior to the adoption of the Anti-discrimination Act (therefore the legal proceedings were not based on this act). In 2009 (*K. H. and others v. Slovakia*) and 2012 (*I. G. v Slovak Republic* and *V. C. v Slovak Republic*), the European Court of Human Rights ruled that there had been violations of the rights of these women enshrined in Articles 3 and 8 of the Convention (the European Court did not touch upon Article 14, although a violation of this article was claimed). Another case concerning Roma people, litigated mainly thanks to a large amount of voluntary input from Kristína Babiaková, an attorney, and with some support from NGOs (Citizen, 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 appeal court decision).

All the cases concerning discrimination based on ethnicity reported on in the case-law section of this report were brought upon the initiation and/or with the assistance of Poradňa (apart from the case on discrimination in access to housing decided by the District Court and Regional Court in Prešov).

[23] *Ibid.*, pp 11-12.

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". Article 12 Paragraph 3 of the Constitution guarantees free choice of “nationality”[24] 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 “nationality” is at the discretion of any individual at any point in their 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.”*

[24] In the Slovak legal order, the word “nationality” (*národnosť*) is separate and distinct from the word “citizenship” (*štátne občianstvo*). Whereas “citizenship” is understood as meaning nationality in the sense of having a legal affiliation with a particular State (i.e. being a national/“citizen” of the Slovak Republic), “nationality” is rather an affiliation with a particular “nation” (a group of people defined by common language, geographical and cultural roots etc.) or ethnic group. Thus, “nationality” is often understood as meaning “ethnicity”, including in the practice of state bodies and public institutions. In this report the term ‘nationality’ therefore refers to the Czech term *národnosť.*

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 which are not explicitly listed in the Constitution (these grounds are sexual orientation, disability and age).

b) Are constitutional anti-discrimination provisions directly applicable?

As the Constitutional Court stated in its finding PL. ÚS 8/04-202 of 18 October 2005, *"the basic aim of Article 12 Paragraph 1 and 2 of the Constitution [Paragraph 1 of this Article states that people are free and equal in dignity and rights and Paragraph 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 subjects of private law."*[26] It can therefore be inferred from the cited extract from the Constitutional Court's finding that the constitutional anti-discrimination provisions are not directly applicable horizontally (i.e. between subjects of private law) – about which the Constitutional Court is explicit – but have a vertical direct effect (i.e. are applicable by individuals and other subjects of private law as opposed to the State and its bodies) – although the Constitutional Court is not explicit about this vertical direct effect.

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 of 18 October 2005, *"the basic aim of Article 12 Paragraph 1 and 2 of the Constitution [Paragraph 1 of this Article states that people are free and equal in dignity and rights and Paragraph 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 subjects of private law."*[27]

Interpreting the above finding of the Constitutional Court and using the approach of logical interpretation, the constitutional anti-discrimination provisions have a vertical direct effect.

[25] See also decisions of the Constitutional Court US 19/98, I US 34/96, I US 14/98.
[26] See para13 of the finding.
[27] See para13 of the finding.

Given the fact that courts are obliged to consider constitutional provisions and international regulations in all their decision-making,[28] and using the finding cited above of the Constitutional Court as an interpretative framework, it can be argued that constitutional anti-discrimination provisions may have an indirect horizontal effect, i.e. that in disputes between subjects of private law courts should, as far as possible, interpret 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 also in many other laws), so in the case of legal relations covered by the material scope of the Anti-discrimination Act (and other legislation which contains anti-discrimination clauses), it can also be invoked against private actors (as the duty to observe the principle of equal treatment is vested on "everyone").[29]

[28] See, for example, the Finding of the Constitutional Court of the Slovak Republic PL. ÚS 17/08 of 20 May 2009 where the court found that *"a judge, when exercising [their] 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 Paragraph 1 of the Anti-discrimination Act.

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 generally binding Slovak legal acts, are also constitutionally protected grounds.[34]

The Anti-discrimination Act, which is the basic, cross-cutting law in the area of anti-discrimination which sets out the duty to observe the principle of equal treatment in the fields of "labour relations and related legal relations, social security, healthcare, 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 must always take place on a particular ground.

Other laws also establish other prohibited grounds of discrimination, in addition to those listed in the Anti-discrimination Act. For example, the Labour Code also

[30] The word "lineage" is a translation here of the Slovak word *"rod"* which can also be 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 Paragraph 2 of the Constitution.
[32] See the Finding of the Constitutional Court of the Slovak Republic PL. ÚS 8/04-202 of 18 October 2005.
[33] Such as marital and family status which are covered, for example, by the Anti-discrimination Act or by the Labour Code.
[34] The Constitutional Court has already stated that the fact of being a minister of a certain church constitutes just 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 2001).
[35] Section 3 Paragraph 1 of the Anti-discrimination Act.
[36] The Slovak word *"rod"* can be translated as either "lineage" or "gender".
[37] Section 2 Paragraph 1 of the Anti-discrimination Act.

prohibits discrimination on the ground of trade union activities,[38] unfavourable state of health[39] and genetic features.[40]

2.1.1 Definition of the grounds of unlawful discrimination within the Directives

a) How does national law on discrimination define the following terms: (the expert can provide first a general explanation under a) and then has to provide an answer for each ground)

i) racial or ethnic origin,
ii) religion or belief,
iii) disability. Is there a definition of disability at the national level and how does it compare with the concept adopted by the Court of Justice of the European Union 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"?
iv) age,
v) sexual orientation?

The national law on discrimination (the Anti-discrimination Act) does not define any of the prohibited grounds of discrimination listed in it.

b) Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law? Is recital 17 of Directive 2000/78/EC reflected in the national anti-discrimination legislation?

i) racial or ethnic origin

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 racism and intolerance. Criminal law in particular addresses 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 physical ones (e.g. colour of skin), regardless of the fact that the members of the race concerned live within the territory of the state. Criminal law literature characterises an "ethnic group"

[38] Section 13 Paragraph 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.
[40] This prohibited ground was added by an amendment of the Labour Code in 2011 (Act No 48/2011 Coll.). See Article 1 of the Basic Principles of the Labour Code and Section 13 Paragraph 2 of the Labour Code.

as a "historically formed group of people connected by common history, distinct cultural features (mainly language) and common mentality,[41] traditions, and possibly a distinct way of life. Representatives of a given ethnic group have their own name (…) and have an understanding of mutual belonging and at the same time distinctiveness from other communities. An ethnic group usually exists beyond the borders of one state. In Slovakia an example would be the Roma".[42]

In addition, Slovakia ratified the International Convention on the Elimination of all Forms of Racial Discrimination,[43] 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".

In June 2001, the National Council of the Slovak Republic adopted an amendment to the Criminal Code[44] No. 253/2001 Coll., which added "ethnic group" to the expression "race" in each provision containing the term "nationality" and "race". This addition was made on the initiative of the Ministry of Justice, as a number of problems had occurred in judicial practice in the qualifying of racially motivated crimes, with the application of the term "race" to crimes based on anti-Roma hatred.

In the case of IP (the accused), heard by the District Court in Banská Bystrica and 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 (the District Court in Banská Bystrica) used a literal and very restrictive interpretation of the relevant text of law. The first instance court ruled[45] that the Roma 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 first instance court, there was no reason to qualify the criminal act as falling under Section 221, paragraph 2(b) of the Criminal Code,[46] since this provision does not contain the term "ethnic group". However, the court of appeal –

[41] Although the question is raised of whether referring to common "mentality" does not perpetuate stereotypes about ethnic groups instead of combatting them in the context of racism and racial and ethnic discrimination.
[42] Samaš, O., Stiffel, H, Toman, P (2006) *Trestný zákon – Stručný komentár (The Criminal Code: a brief commentary)*, Bratislava, IURA EDITION, spol. s r. o., pp. 301-302.
[43] Oznámenie Federálneho Ministerstva zahraničných vecí. č. 95/1974 [Announcement of the Federal Ministry of Foreign Affairs No. 95/1974 Coll.]
[44] Trestný zákon č. 140/1961 Z. z. v znení neskorších predpisov [Criminal Code No. 140/1961 Coll. as amended]. In defining racially motivated crimes the Code, adopted in 2006, uses the same terms "race" and "ethnic group".
[45] Decision of the District Court in Banská Bystrica No. 3T 52/98 of 1 July 1999.
[46] Section 221, paragraphs 1 and 2(b) stated that injury to one's health inflicted on account of political conviction, nationality, race, religious or other beliefs carries a higher criminal charge.

the Regional Court in Banská Bystrica – did not agree with this interpretation and finally recognised the racial motivation of the attack which was eventually included in the legal qualification of the offence.

The court of appeal reversed the decision of the first instance 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".[47]

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.

ii) religion or belief (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)?

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

The Criminal Code instead uses the expression "confession/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 faith".[48]

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 a religion is considered to be a believer. The agreement on religious education[49] between the Slovak Republic and the registered churches and religious societies deals only with "religion" as defined by the doctrine of churches or religious societies registered in Slovakia. "Religion and religious education is taught according to the educational programmes and curricula approved by a registered church or religious society after receiving an opinion of the Ministry of Education of the Slovak Republic".[50] The Slovak legal system makes no clear distinction between religion, confession/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 clear distinction

[47] Decision of the Regional Court in Banska Bystrica No. 6 To 594/99 of 29 September 1999.
[48] See e.g., Stiffel, H., Kočica, J. (2001) *Trestný zákon: Stručný komentár* (*The Criminal Code: a brief commentary*), Bratislava, p. 403.
[49] Published in the Collection of Laws under No. 395/2004 Coll.
[50] Article 2, paragraph 7 of the Agreement between the Slovak Republic and Registered Churches and Religious Societies regarding Religious Education.

between them and that there is flexibility in subsuming acts unfavourable to religion/belief/creed under the anti-discriminatory clauses provided by the legislation.

Both the Constitution and the Anti-discrimination Act state explicitly that discrimination against a person without a religion shall be deemed to be discrimination on the ground of religion or belief. In 2001, the Constitutional Court also stated that the fact that someone is a minister of a certain church constitutes "another status" (a formulation at the end of the enumeration of prohibited grounds of discrimination contained in the Slovak Constitution) and hence this person cannot be advantaged or disadvantaged on this ground.[51]

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 and religious societies in Slovakia. Under the new rules a church or a religious society can be registered only when it submits a statutory declaration from 20,000 adult members confirming their membership of the church or a religious society and their permanent residency in Slovakia. The registration process is important, since only registered churches and religious societies are legally acknowledged by the State.[52] The registered churches and religious societies have significant advantages (with regard to the legal and economic environment in which they operate) in comparison with those which are not registered.

Only registered churches and religious societies can legitimately claim State support (including payment of clergy or exemption from taxation), organise religious education in schools, establish their own schools (partly funded by the State), establish and run hospitals and social services facilities etc. Other small churches which cannot be registered do not exist legally. They can only be established as civil society organisations.

iii) 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).

[51] See the finding of the Constitutional Court No III. ÚS 64/00-65 of 31 January 2001.
[52] There are currently 18 registered churches and religious societies in Slovakia. These registered churches and religious societies include the Roman Catholic Church, the Augsburg Evangelical Lutheran Church, the Greek Catholic Church, the Orthodox Church and the Reformed Christian Church.

The Labour Code defines an "employee with a disability" as an employee who is officially acknowledged as disabled on the basis of the Social Insurance Act[53] and who submits to their employer a decision proving entitlement to a disability pension.[54] The Social Insurance Act[55] defines the following conditions to qualify for a disability pension:

- at least 40% loss of the ability to work (when compared to a "healthy" person);
- attainment of a sufficient number of years of pension insurance;
- long-term unfavourable state of health, i.e. state of health causing a loss of ability to perform gainful activities expected, on the basis of medical assessment, to last at least one year.[56]

The body authorised to decide on the level of reduced ability to work is the Social Insurance Agency (a public body set up by law).

However, it is also important to state in relation to the Labour Code that Article 1 of the Basic Principles and Section 13 Paragraph 2 of this code also prohibit discrimination on the ground of unfavourable state of health.

A similar test for determining whether someone has a disability is used by the Act on Employment Services[57] (which regulates the system of institutions and measures to support and help participants in the labour market). This act considers a person with a disability to be a citizen who is officially registered disabled in accordance with the Social Insurance Act (and who can also prove their disability with a decision or a notification from the Social Insurance Agency).[58]

The Act on Benefits for Compensation of Serious Disability[59] uses the term "serious disability" and defines it as a "disability with a level of functional impairment of at least 50%".[60] "Functional impairment" is defined as a lack of physical abilities, sensory abilities or mental abilities with a prognosis in excess of 12 months.[61]

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[53] Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov [Act. No. 461/2003 Coll. on Social Insurance as amended].
[54] Section 40 Paragraph 8 of the Labour Code.
[55] Zákon č. 461/2003 Z. z. o sociálnom poistení, v znení neskorších predpisov [Act No 461/2003 Coll. on Social Insurance, as amended].
[56] See sections 70-72 of the Act No 461/2003 Z. z. on Social Insurance, as amended.
[57] 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].
[58] See Section 9 of the Act on Employment Services.
[59] 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].
[60] Section 2 Paragraph 3 of the Act on Benefits for Compensation of Serious Disability.
[61] Section 2 Paragraph 4 of the Act on Benefits for Compensation of Serious Disability.

It is possible that state authorities, as well as courts, will in some cases base their understanding of the concept of "disability" on the legal definitions listed above. This may become problematic, especially in cases where the concept of disability being defined falls outside the scope of employment (in case of employment, the definition generated in *Chacón Navas* will have to apply; the concept of the prohibition of discrimination on the ground of unfavourable state of health contained in Article 1 of the Basic Principles of the Labour Code would probably also mitigate the perception of "disability" for labour law purposes). However, it must be considered that the Anti-discrimination Act also prohibits discrimination on the grounds of past disability and presumed disability ("discrimination against a person who could be presumed, based on external signs, to have a disability").[62] It should also be borne in mind that Slovakia signed and ratified the Convention on the Rights of Persons with Disabilities which defines disability much more broadly than the *Chacón Navas* decision and which, in conjunction with Article 7 Paragraph 5 of the Slovak Constitution, takes precedence over Slovak laws. 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.

The Constitutional Court has not yet provided any explicit and comprehensive interpretative framework for the concept of disability. However, in a case concerning an individual with psycho-social and intellectual disabilities,[63] which were not temporary, the Constitutional Court took it as a given that the complainant had a disability (without examining the complainant's circumstances under national, EU and international legal definitions of disability). The case did not concern the Framework Directive or fall under the Anti-discrimination Act but concerned the illegality of a district court and a regional court decision fully depriving an individual of their legal capacity to act, which the Constitutional Court ruled breached various articles of the Constitution, the European Convention and Article 12 of the UN Convention on the Rights of Persons with Disabilities.[64] The Constitutional Court also included an *obiter dictum* in this particular decision which, while not defining disability, provided some hints on the Court's perception of the legal definition of disability as a social concept. In particular, the Constitutional Court stated: *"Experts nowadays (and in Slovakia, it is more jurisprudence and legal theory – a [court´s] note) perceive disability as well as the rights of people with disabilities differently from in the past. Today, disability is not only understood within a medical (individual) framework but the meanings of the*

[62] Section 2a Paragraph 11d) of the Anti-discrimination Act.
[63] However, the disability of the complainant concerned was not clear from the decision – the Constitutional Court did not deal with the particular type of disability and the courts of first and second instance used disability terminology confusingly, randomly and interchangeably (in a literal translation, the courts of first and second instance used the terms "psychiatric disorder" and "mental disability"). The expert opinions issued during the proceedings, and to which the courts of first and second instance referred, used the terms (in a literal translation) "psychiatric disorder" and "mental retardation".
[64] Finding of the Constitutional Court of the Slovak Republic of 28 November 2012, file No I. ÚS 313/2012-52, available at www.zpmpvsr.sk/dokumenty/I_US_313_2012.pdf.

social and legal framework are also increasing – which, when compared to the past, integrate the values that represent the substrate of human rights, such as respect and the protection of dignity (…)"[65]

The Schools Act,[66] regulating legal relations in the field of primary and secondary education and in related facilities, also uses the term "health disadvantage". A child or a pupil with a "health disadvantage" is defined, in Section 2 Paragraph k), as a child or a pupil with a "disability", a child or a pupil who is "ill or their health is impaired", a child or a pupil with "developmental disorders" and a child or a pupil with a "behavioural disorder".

Sections 94-102 of the Schools Act contain further provisions on children and pupils with a "health disadvantage". Section 94 states that education of children and pupils with health disadvantages shall take place in schools for children with health disadvantages (these schools are, pursuant to this provision, called "special schools") or in other schools pursuant to this act (kindergartens, primary schools, secondary schools, practical schools[67] and training institutions), either in special classes or in classes or educational groups together with other children/pupils of the school (in which case the child/pupil can have an individual educational programme).

The Act itself does not state on what criteria the choice between these three forms of schooling for children/pupils with health disadvantages should be made. Given the fact that "health disadvantage" is not contained in the Schools Act as a specific ground on which discrimination would be prohibited, and given the context under which "health disadvantage" is mentioned in the Schools Act (a reason for placing a child or a pupil into a "special school" or a "special class"), it can be argued that the concept of "health disadvantage" (which also encompasses the concept of "disability") is more likely to open the door to segregation and other forms of discrimination than to protect children and pupils against discrimination. See also Chapter 3.2.8 for more details.

Recital 17 of Directive 2000/78/EC is not explicitly reflected in the national legislation. However, there are a few provisions in the national legislation that could be perceived as implicitly building upon or implicitly connected with the recital. For example, Section 8 Paragraph 5 of the Anti-discrimination Act stipulates that objectively justified differential treatment grounded in specific health requirements in relation to the selection process for a job or performing certain activities in a

[65] *Ibid*, Paragraph 34 of the Constitutional Court's decision.
[66] Act No 245/2008 Coll. on Education (Schools Act), as amended.
[67] A "practical school" (a literal translation of the Slovak term used in the School Act) is "a type of school in which educational programmes provide education and training for the exercise of simple working activities to pupils with an intellectual disorder in combination with another type of disability whose level of disability does not make it possible for them to get vocational training or high school education. The educational programme of a practical school prepares pupils for the life in a family, for self-maintenance, for various simple practical activities, including work in the household (...)".

particular job, provided that this is required by the nature of the job or of the job activity, shall not constitute discrimination. In addition to this, Section 41 Paragraph 2 of the Labour Code stipulates that, *"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 preconditions pursuant to a special law".*

Correspondingly to both of these provisions and pursuant to Section 41 Paragraph 7 of the Labour Code, a natural person who is in pre-contractual relationship with a potential employer "shall be obliged to inform the employer of circumstances inhibiting the performance of work, or which may otherwise prove detrimental to the employer (…)".

Section 63 Paragraph 1 c) of the Labour Code is relevant with regard to job termination by the employer. Pursuant to this provision, an employer may give notice to an employee, if "a medical opinion states that the employee's health condition has caused a long-term loss of his/her ability to perform his/her previous work or if he/she can no longer perform such work as a result of an occupational disease or the risk of such a disease, or if he/she has already received the maximum permitted level of exposure in the workplace as determined by the decision of a competent public health body".

iv) age

With regard to age, Slovak law provides no specific definition.

v) sexual orientation

Sexual orientation is not defined either by the law, case-law or by legal literature. An exception is a legal commentary to the Anti-discrimination Act which refers to non-legal literature on sexual orientation, defining it as "erotic and/or emotional attraction towards another person. When this attraction is directed at persons of the same sex, we speak about homosexual orientation. When it is directed at persons of another sex, we speak about heterosexual orientation. If it is directed at persons of both sexes, we speak about bisexual orientation".[68]

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)?

[68] See Debrecéniová, J. (2008) *Anti-discrimination Act: A commentary*, Bratislava, Občan a demokracia, p 17, citing Ondrisová, S. 'Sexuálna orientácia' In: *Neviditeľná menšina. Čo (ne)vieme o sexuálnej orientácii*. Bratislava, Nadácia Občan a demokracia, Minority Rights Group – Slovakia, 2002, p 13.

Neither the Anti-discrimination Act, nor any other piece of Slovak legislation, determines a minimum age below which the anti-discrimination law would not apply.

2.1.2 Multiple discrimination

a) *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, in your view, national or European legislation dealing with multiple discrimination be necessary in order to facilitate the adjudication of such 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. The concept sometimes appears in policy documents but more at a rhetorical level than with regard to specific measures proposed and implemented.

In March 2012 the Slovak National Centre for Human Rights (the national equality body) stated that, of the discrimination-related submissions the Centre dealt with in 2011, 45% were cases of multiple discrimination.[69] The Centre noted that multiple discrimination is usually connected to age, gender and "nationality".[70] 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 or other breaches of the duty to observe the principle of equal treatment must take place on individual prohibited grounds of discrimination. Thus, it could be argued that the concept of prohibition of multiple discrimination is contained in the act implicitly (although it will be up to the courts to establish this interpretation more authoritatively; it is hard to anticipate how the courts will cope with issues of multiple discrimination and whether special legislative initiatives will be needed either on the part of Slovakia or on the part of the EU, or both).

In addition, the occurrence of multiple discrimination could be treated as an "aggravating circumstance" relevant in determining the amount of financial compensation to be paid to 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 their dignity, social status and social functioning (which is

[69] Response from the Centre of 19 March 2012 to a request for information filed by one of the authors of this report on 5 March 2012.
[70] *Ibid*. The Centre probably meant ethnicity, as it uses the term "nationality" in connection with Roma in various places in the document.

undoubtedly also the case with 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. However, Section 6.5 c) of this report includes a discussion of the problems with the application of this provision which would be in accordance with the requirements for sanctions contained in the Directives.

b) 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?

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 the rights pursuant to this act cannot therefore be involved, the organisation providing legal assistance to the women affected (the Centre for Civil and Human Rights) has used other legal mechanisms. In three of the cases of unlawful sterilisations which have already been decided by the European Court of Human Rights, the Court did not address violations of Article 14, although they were claimed in all of the cases. See also Chapter 0.3 and Annex 3 for more details.

2.1.3 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, in determining whether discrimination has occurred, 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 past disability or discrimination against a person who could be presumed, based on external signs, to have a disability, shall be deemed to constitute discrimination based on disability.

There is no case-law addressing 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 the grounds of someone's relationship with a person of a particular 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 someone's relationship with a person of a particular religion or belief, or discrimination against a natural person without a religion, shall be deemed to constitute discrimination based on religion or belief. The above-mentioned general rule enshrined 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 (or to association with persons possessing or presumed to possess 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 relevance in finding somebody guilty of a racially motivated crime (e.g. murder or assault based on race, colour of skin, membership of an ethnic group or nationality, blackmail, defamation of a nation, ethnic group, race or belief)[71] whether or not the crime was committed on the basis of mistaken beliefs or facts.

The amendment to the Criminal Code No. 253/2001 Coll. effective from 1 August 2001 removed from the definition of racially motivated crimes the wording that the aggrieved person 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 people because of their own race, nationality or religion; this concept also covered attacks against a person attacked because of the race, nationality or religion of another person. However, the adoption of the Criminal Code No. 300/2005 Coll. represented a retrograde step in this regard. Some crimes

[71] § 145, §147, § 148, § 155, § 156, § 189, § 423 Trestného zákona č. 300/2005 Zb. v znení neskorších predpisov [Sections 145, 147, 148, 155, 156, 189, 423 of the Criminal Code No. 300/2005 Coll. as amended].

related to racially motivated attacks have again been defined through the possessive pronoun “their race”, “their belonging to a nationality or ethnic group” etc.

Taken literally, the anti-discrimination provisions contained in the Constitution do not stipulate that the ground of discrimination must necessarily be connected with the 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? Please indicate whether the definition complies with those given in the directives.

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

Section 2a Paragraph 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 selection process for a job. In particular, Section 6 Paragraph 2 (a) of the Anti-discrimination Act states that the principle of equal treatment applies in the field of “applying for a job, occupation, other gainful activity or function (…) including the job requirements and the conditions and methods used in the selection process for a job”. The Labour Code also reiterates (in Section 41 Paragraph 8) that “an employer, when selecting a natural person for a job, shall not breach the principle of equal treatment during the selection process.”

Discriminatory job advertisements are in principle capable of constituting direct discrimination, provided that the way they are formulated falls under the concept of direct discrimination as defined by Section 2a Paragraph 2 of the Anti-discrimination Act (including the concept of a hypothetical comparator, see above). The same applies to discriminatory statements, as they can represent “action” that falls within the scope of the definition of direct discrimination (see Chapter 2.2 a) above) and at

the same time be “less favourable” than a treatment with a real or hypothetical comparator.

However, there is a questions about how the public authorities in general and courts in particular deal with the so-called “generic masculine” – a linguistic male form which is, theoretically, supposed to include women but is (at least indirectly) exclusive in nature. The usage of the generic masculine is very much accepted by society as well as by official legal and language authorities.[72]

Neither the law nor case-law deal with the issue of 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, there is no explicit prohibition and can only be derived by logical interpretation (a clause on the 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).

To some extent, exceptions to the prohibition of direct discrimination are permitted, although these are not framed as possible justifications of direct discrimination but as “permissible differential treatment”[73] which disqualifies the particular treatment from being discriminatory. The particular forms of the “permissible differential treatment” are as follows (this is a brief outline as most of them will be dealt with in Chapters 4 and 5 of this report):

- Genuine and determining occupational requirements (determined by the nature of the activities carried out in a particular job or by the circumstances under which the activities are carried out; the aim must be legitimate and the requirement proportionate).[74]
- 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

[72] By “language authorities“, the author means mainly the representatives of the Linguistic Institute of Ľudovít Štúr that is a part of the Slovak Academy of Science.
[73] See the title of Section 8 of the Anti-discrimination Act.
[74] Section 8 Paragraph 1 of the Anti-discrimination Act.

activities to be carried out or according to the context under which they are performed.[75]

- Differential treatment based on age in relation to access to employment and to vocational training, working conditions (including remuneration and job termination) and job-related benefits. Such differential treatment must be justified by following a legitimate aim, be necessary and proportionate and be provided for in a special legal act.[76]
- Differential treatment in occupational pension systems based on age (provided that they are not simultaneously discriminatory on the ground of sex).[77]
- Differential treatment based on specific health requirements in relation to application for a 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 must be objectively justified.[78]
- Differential treatment based on age or disability in the provision of insurance services. The differential treatment must follow from a different level of risk verifiable by statistical or similar data and the terms of the insurance services must be proportionate to this risk.[79]
- Differential treatment based on 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 members of one of the sexes. The aim must be legitimate and the means must be proportionate and necessary.[80]
- "Temporary equalising measures" (positive action measures) in accordance with Section 8a of the Anti-discrimination Act (aimed at removing disadvantages based on racial and ethnic origin, belonging to a particular national minority or ethnic group, gender and sex, age, and disability and to be adopted by public bodies or other legal entities). They can only be adopted if there is demonstrable inequality, if the aim of the measures is the reduction or removal of this inequality and if the measures are proportionate and necessary for achieving the aim. See Section 5 a) of this report for more details.

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

[75] Section 8 Paragraph 2 of the Anti-discrimination Act.
[76] Section 8 Paragraph 3 of the Anti-discrimination Act.
[77] Section 8 Paragraph 4 of the Anti-discrimination Act.
[78] Section 8 Paragraph 5 of the Anti-discrimination Act.
[79] Section 8 Paragraph 6 of the Anti-discrimination Act.
[80] Section 8 Paragraph 7 of the Anti-discrimination Act.

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 discriminatory treatment was age.

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

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.*

Slovak national law does not use the term "situational testing" or define it and no clear permission or prohibition of the method is contained in Slovak law. However, the Civil Procedure Act,[81] which 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 from 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 eligible in principle (and the courts basically accept it).

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

The second aspect of situational testing is the admissibility of evidence used before the courts, such as audio recording. Although in principle admissible, there are

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

issues in the legal interpretation concerning the admissibility of recordings, in particular 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 a 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 individual nature can be made or used only with the consent of the individual.

The counter-argument, however, is that using an audio recording exclusively in order to document an illegal action by the defendant for a court does not constitute an infringement of 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.

Under Section 377, anyone who breaches the confidentiality of privately presented words or other manifestations of a personal nature by means of illegitimate recording and provides this recording to another person or uses it in another way, thereby causing serious detriment to the rights of an individual, shall be punished by imprisonment of up to two years. Although this does not make situational testing illegal (as it does not primarily concern manifestations of a personal nature and does not usually cause serious detriment to the rights of the individual recorded but documents his/her illegal action) and courts generally accept it, the lack of explicit legal permission for the use of this legal concept is certainly discouraging, as is the threat of potential criminal proceedings. It may also encourage defendants to contest the evidence of plaintiffs who allege that they have been discriminated against 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 to monitor practices of discrimination and prove them in court.

The key player in using testing for judicial proceedings is the NGO Poradňa pre občianske a ľudské práva, based in Košice, which has already successfully litigated a few discrimination cases using this method of testing (see Chapter 2.2.1 d), as well as Annex 3, case-law).[82] The use of situation testing by Poradňa has focused mainly on proving discrimination in the fields of access to goods and services, access to employment and access to education and involves creating comparable situations on the spot and securing the evidence (testimonies, audio recordings and transcripts of the audio recordings).

Using testing, Poradňa also contributed to identifying and penalising cases of breaches of the principle of equal treatment in access to goods and services by the Slovak Trade Inspectorate in 2008 and 2009 (see Chapter 2.2.1 d).

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

The Slovak National Centre for Human Rights – the national equality body – declared that there have been a number of instances when it used testing in 2010 (this method was used to carry out independent inquiries into alleged discrimination in access to services, on the request of persons of Roma origin who alleged that they had been discriminated against on the ground of their ethnicity).[83] In cases where 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.[84]

In response to a request for information from one of the authors of this report, the Centre stated that representatives of its regional offices used situation testing again in 2011 when examining complaints from its clients about discrimination. The testing apparently took place in the fields of services and education. The Centre did not specify how the testing was carried out and what the results of it were.[85]

[82] See the case of the three Roma activists who were denied access to a café (names of the parties to the proceedings unknown) – cases 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); reference number of the Constitutional Court unknown); see also the case of 10 November 2006 decided by the District Court in Kežmarok (names of the parties unknown) – file No. 3C 157/05; see also the case of a Roma man who was refused a contract with a mobile phone operator because he only had a fixed-term employment contract instead of a permanent contract decided by the District Court in Spišská Nová Ves (file No 5C 226/05) and the Regional Court in Košice (1Co/334/2008-238) – names of the parties unknown.
[83] Response from the Centre of 31 March 2011 to a request for information of 18 February 2011.
[84] *Ibid*.
[85] Response from the Centre of 19 March 2012 to a request for information of 5 March 2011.

In response to a request for information from March 2013 on the use of situation testing by the Centre, it responded that it has "not applied the testing method".[86]

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 great extent. Courts usually, with some minor exceptions,[87] do not have a problem with accepting evidence gained as a result of testing (witness testimonies, audio recordings). However, the fact of evidence being gained through testing seems to have an impact on the amount of non-pecuniary compensation awarded to plaintiffs relying on testing: if situation testing has been used as evidence, the courts usually do not award this kind of compensation or only award it on a symbolic level.

Case-law in other countries in this respect (although not yet having had any explicit impact) might influence national interpretation if raised by parties to proceedings. In any case, guidance or even legislation from 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 Michalovce District Court on 10 June 2005 against the owner of a café. They claimed discriminatory treatment on the ground of their ethnicity and requested that the owner of the café 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, who later followed them, decided to use the services of the local café and to test it in its policies towards customers of Roma ethnic origin. They were refused access to the café as they were not able to prove "club membership" (i.e. they were not in possession of "membership cards"). They made a sound recording of their encounter with the bar personnel.

The non-Roma activists from Poradňa who followed them a few minutes later had no problem entering the café. On 31 August 2006, the court ordered the owner to issue a written apology but it did not grant the financial compensation which was requested 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 that the whole action was planned).

[86] Response from the Centre of 11 March 2013 to a request for information of 1 March 2013.
[87] For example, a judge refused to play an audio recording in a court hearing.

On the basis of an appeal submitted by the applicants, the Regional Court in Košice overturned the decision on 25 October 2007 and returned it to the court of first instance for a new decision.[88] Upon receiving a binding legal opinion from the Regional Court in Košice, Michalovce District Court decided on 29 January 2008[89] that there had 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). However, it is important to note that Michalovce District Court accepted a transcribed sound recording which was made by the Roma activists in front of the café and submitted as evidence in the proceeding. Michalovce District Court stated that "no provision of the Civil Procedure Act nor any other piece of legislation prevents [a court] from considering evidence, such as the transcript of a sound recording which was made in public and which in no way interferes with the privacy of the parties to the proceedings 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), Košice Regional Court, as an appeal court, upheld the decision of Michalovce District Court on 15 July 2010.[90] The injured Roma activists referred the case to the Constitutional Court which rejected the case. The case is now (at the beginning of 2013) pending before the Committee on the Elimination of Racial Discrimination. For more detailed information about the case, see Annex 3 to this report.

Another important case, so far ruled on by the District Court in Spišská Nová Ves[91] and by the Regional Court in Košice,[92] was initiated by a Roma man who was refused a contract with a mobile phone operator because he only had a fixed-term employment contract instead of a permanent contract. Non-Roma activists from Poradňa conducted a situation test by trying to enter into a contract with the same mobile operator. They had no problem and no employment contract was required from them. Both the plaintiff and the non-Roma activists recorded their communication with the mobile operator and submitted the sound recordings as evidence in the judicial proceedings.

The plaintiff claimed discriminatory treatment on the ground of his ethnicity and requested that the court find that the defendant breached the principle of equal treatment order them to issue a written apology and to pay financial compensation amounting to SKK 100,000 (€3,319.40) 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 (arguing, for example, that the plaintiff

[88] Reference No: 2Co/430/2006-148.
[89] Reference No: 12C/139/2005-158.
[90] Reference No: 2Co/115/2008-192.
[91] Reference No: 5C 226/05. The district court's date of decision is not known.
[92] Reference No: 1Co/334/2008-238. The decision of the regional court was taken on 18 March 2010.

and the NGO activists were not asking the same questions and the information was not provided by the same staff members of the mobile phone operator) and that there was no discrimination on the basis of the Roma man's 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 to the court of first instance for a new decision. The court of appeal argued, *inter alia*, that given the fact that the recording was made in the publicly accessible premises of the defendants and did not affect the privacy of any of the persons present, the use of the recording as a form of evidence was not conditional on the defendant's consent. The court also rejected the suggestion that the fact that the plaintiff prepared his evidence in order to prove discriminatory treatment renders this type of evidence inadmissible. The appeal court also held that if a plaintiff also submits a transcription of a sound recording, the court should compare it with the recording itself so that its credibility can be verified.

With regard to testing, the court said explicitly that "for the purpose of acquiring comparative information, testing by means of which a comparator organises a comparable situation to that of the plaintiff is admissible as evidence." The court specified that "the situations of the plaintiff and the comparator do not have to be absolutely identical, i.e. they do not have to ask absolutely the same questions but the questions (possibly formulated differently) must be directed at obtaining information about the same thing (…). The testing does not have to be performed in relation to the same employee of the entity involved [the defendant in this case], because it is not the conduct of a particular employee which is at stake but that of the entity in the name of which the employee communicates with the person interested in the services of this entity".

The District Court in Spišská Nová Ves ruled on the case once more and found that the plaintiff had been discriminated against on the ground of his ethnicity and ordered the defendant to apologise. However, the court did not grant non-pecuniary compensation to the plaintiff. The plaintiff appealed again to the Regional Court in Košice. See also Annex 3 for more details.

The admissibility of audio recordings in connection to potential or ongoing judicial proceedings for an offence of "breaching the confidentiality of oral expression and of other expression of a personal nature" described in Chapter 2.2.1 a) was the subject of a decision by the District Court of Banská Bystrica in 2011.[93] The case concerned a female plaintiff alleging gender-based discrimination in the field of employment. During the (still pending) proceedings before the District Court in Zvolen – a first instance court – she submitted evidence in the form of an audio recording from a meeting with her employer during which she was given notice (two representatives of

[93] Ref. No 14Co/82/2011; 6710201619. The decision was taken on 28 April 2011.

the employer, one representative of a trade union organisation and the plaintiff were present at the meeting).

Following the submission of this evidence, the defendant initiated criminal proceedings against the plaintiff, alleging that she had committed a crime of "breaching the confidentiality of oral expression and of other expression of a personal nature" (Section 377 of the Criminal Code, see Chapter 2.2.1 a)) and asked that the court of first instance suspend the pending anti-discrimination proceedings until a decision on the criminal proceedings had been made. One of the main arguments of the plaintiff was that evidence obtained illegally cannot be used in civil proceedings and hence the proceeding should be suspended.

The court of first instance decided not to suspend the proceedings, arguing that the criminal proceedings in question are not relevant to the decision of the court in the case concerning an alleged violation of the principle of equal treatment. It also stated that the aim of the evidence submitted was to prove that the plaintiff had been discriminated against in the field of employment. It added that it is up to the court of first instance to decide whether the evidence submitted will be used or not and further noted that, by suspending the pending proceeding, the question of whether this type of evidence can be used in civil proceedings will not be resolved, as the subject of criminal proceedings is to decide about crime and punishment and not about legality of evidence submitted in civil proceedings. Therefore the court of first instance concluded that the criminal proceeding did not have any relevance for its decision.

The defendant appealed and the case went to a court of second instance, the Regional Court in Banská Bystrica. The Regional Court upheld the decision of the court of first instance and stated that it identified with the grounds for the decision of the court of first instance. It further stated that, "if a plaintiff submitted a sound recording as evidence in [civil] proceedings, with which she is proving a breach of the principle of equal treatment in an employment relationship, the district court [i.e. the court of first instance] must evaluate this evidence with regard to the subject matter of the given proceeding. … In addition, with regard to other evidence submitted, the district court will therefore evaluate and judge whether it will use this evidence further in the proceeding. Not even a regional court can intervene in the evaluation by the court of first instance at this stage of the proceedings."

This particular decision is very important because, when compared with cases regarding the use of audio recordings as evidence, it adds the context of criminal proceedings following initiated civil proceedings in the field of equal treatment, which the discriminating defendants may use to intimidate and disqualify the plaintiffs. Therefore this decision may give the plaintiffs greater security when they seek to exercise their right to equality through judicial means and make their cases more likely to be successful.

In 2008 and 2009, the Slovak Trade Inspectorate, in cooperation with Poradňa, also used situation testing when carrying out an inspection on the observance of the principle of equal treatment in the provision of services and issued the first decisions imposing fines in this field.[94]

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

a) How is indirect discrimination defined in national law? Please indicate whether the definition complies with those given in the directives.

Indirect discrimination, according to Section 2 Paragraph 3 of the Anti-discrimination Act, as amended by Act No 32/2013 Coll. on 5 February 2013 (coming into effect on 1 April 2013) means "an apparently neutral regulation, decision, instruction or practice that puts or could put a person at a disadvantage as compared with another person, unless such regulation, decision, instruction or practices objectively justified by following a legitimate aim and are appropriate and necessary to achieving that aim."

The definition now complies with those given in the Directives (as compared to the state of affairs before the amendment of the Anti-discrimination Act No 32/2013 Coll. of 5 February 2013 (see also section c) below for more details).

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.

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

The first difference is that, whereas the definition contained in the Directive requires that the provision, criterion or practice in question "would put" persons with a particular feature at a disadvantage, the definition in the Slovak Anti-discrimination Act is more concrete and admits both actual disadvantage ("puts at a disadvantage") as well as the possibility of disadvantage ("could put at a disadvantage"). However, the possibility of disadvantage in the case of an apparently neutral regulation, decision, instruction or practice was only added to the Anti-discrimination Act by an amendment in February 2013 (Act No 32/2013, see also Section a) of this chapter). Thus, although it seems that the previous way of regulating indirect discrimination in the Slovak Anti-discrimination Act was in contradiction with the directives (as it seemed not to accept any probability/conditionality in this regard – "puts at a disadvantage"), the last amendment of February 2013 seems to have brought the definition of indirect discrimination into harmony with 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 an individual approach ("person"). This may lead to more favourable conditions for proving indirect discrimination (there might be no need to provide very precise and significant statistical evidence), although it is unclear yet how the individualised concept of indirect discrimination will be applied.

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 has arisen in which differences in treatment on the ground of language might be interpreted as racial or ethnic discrimination (real or potential). There are also no examples of this issue arising in public debate or academic discussion.

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

For example, the Civil Service Act[95] stipulates command of the official state language as a precondition for employment in the civil service.[96]

Similarly, Section 4 of the Act on the State Language[97] stipulates that teaching staff at all schools and school facilities in Slovakia, apart from teachers and lecturers from abroad, are obliged to have command of the state language and to be able to use it both orally and in writing.[98]

Act No 270/1995 Coll. on the State Language of the Slovak Republic contains some rules with regard to the duty to use the Slovak language in public (such as in schools, in the provision of medical services or social services etc.)[99] which may also have implications relating to indirect discrimination with regard to race, ethnicity, nationality etc. Although there was vigorous debate about this law when it was being amended in 2009 (in order to encompass a number of restrictive provisions in a range of areas, many of which fall outside the scope of the Directives), this indirect discrimination aspect was not discussed. Many of its provisions are, however, questionable in terms of their compliance with the Race Equality Directive, due to the potential for indirect discrimination contained, for example, in the requirement to draft all the legal acts in an employment relationship in the state language[100] 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's mother tongue is different or she or he is a member of a national minority).[101] The Act also contains a provision that requires the exclusive use of the state language when labelling domestic or imported goods, in instruction manuals for use of goods, in conditions of warranties and in other information for consumers,[102] and a provision that requires all bookkeeping to be conducted in the state language.[103]

[95] Act No 400/2009 Coll.
[96] *Ibid*, Section 19 Paragraph 1 (e).
[97] 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].
[98] *Ibid*, Section 4 Paragraph 2.
[99] *Ibid*, Sections 4 and 8.
[100] *Ibid*, Section 8 Paragraph 2. Although a version in another language may also be drafted, provided it has the same content as the state language version.
[101] *Ibid*, Section 8 Paragraph 4.
[102] Section 8 Paragraph 1 of the Act.
[103] Section 8 Paragraph 3 of the Act. Although it is possible to conduct parallel bookkeeping in another language, provided the content is the same.

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

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 (European strategic litigation issue)?

The use of statistical evidence is very scarce, in fact, it has actually only been used by one NGO. One reason for this may be the non-existence of sufficient volumes of relevant data collected by the State, as per its international and national human rights obligation (no data means it cannot be used in court). Equally, the Slovak National Centre for Human Rights (the national equality body), which is obliged, *inter alia*, to monitor the situation in the field of equality and (non-)discrimination, is not fulfilling its duty in a satisfactory manner (see Chapter 7 for more detail). Employers and institutions in general (both public and private) do not collect statistics – first, because they do not perceive it as their duty and, secondly, because they believe it to be illegal (see point d) below).

When the concept of indirect discrimination does start to be invoked,[104] the Slovak courts will very likely look for inspiration to other countries and/or the Court of Justice of the EU and/or the ECtHR. However, it should be borne in mind that the concept of indirect discrimination is individualised under Slovak legislation – as compared to the

[104] So far, there have only been a very few instances when plaintiffs have claimed indirect discrimination – and in these few cases the courts held correctly that indirect discrimination had not taken place; on the other hand, there have been a few cases where indirect discrimination, although not claimed by plaintiffs, was identified by courts, but in only one of the cases was the identification correct (for more information, see Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012) *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, Košice:,Poradňa pre občianske a ľudské práva, p 78-79. The publication is also available at http://poradna-prava.sk/wp-content/uploads/2012/11/Publikáciu-si-môžete-stiahnuť-tu-105-MB.pdf, last visited on 20 March 2013.

group approach adopted in most jurisdictions, which may lead to an unjustifiably and illegitimately restrictive interpretation of the Slovak legislation in force (see Chapters 2.3 a) and 2.3 d)).

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

The relevant cases, with legal representation provided by an NGO (Poradňa pre občianske a ľudské práva) (see above), concerned discrimination claims connected to a refusal by an office of labour, social affairs and family to pay a childbirth allowance to Roma women, pursuant to a law that was indirectly discriminatory (see the case-law above as well as Chapter 3.2.7 for more details). The Centre used its own statistical data, obtained through fact-finding and surveys (e.g. figures on ethnicity of patients from hospitals in Eastern Slovakia, numbers of refusals by offices of labour, social affairs and family in regions with a large 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 childbirth allowance and the Supreme Court upheld the decisions, none of the courts has dealt with the indirectly discriminatory nature of the claim or the statistics submitted, and the proposal to bring a preliminary question before the European Court of Justice was also ignored. Thus, in 2010, the Centre for Civil and Human Rights submitted an *actio popularis* on the same matter, using the same statistical data. The case is pending before the court of first instance.

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 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 enshrined in Section 2 Paragraph 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 of discrimination contained in the Anti-discrimination Act and hence also in the Directives.

It should also be noted that Slovakia is a party to all the principal UN human rights conventions (such as the CERD, CESCR, CEDAW etc.), the committees of which require data collection and which, in accordance with the Slovak Constitution, form part of Slovak law and even take precedence over national laws.

However, it is well known and has also been confirmed by a survey conducted by the civil society organisation, Citizen, Democracy and Accountability, in 2009[105] that neither public nor private institutions collect data relating to prohibited grounds of discrimination in general (including the grounds covered by the Directives). The survey[106] also found that the institutions concerned do not collect data as they wrongfully deem it illegal in the context of the Act on Protection of Personal Data.[107]

According to Section 8 Paragraph 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 note that Section 3 of the Act on Protection of Personal Data defines personal data as "data concerning a specific or identifiable natural person who may be identified either directly or indirectly, mainly on the basis of a generally usable identifier or on the basis of one or more features or characteristics 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 a voluntary basis and so implicitly presumes the consent of the persons concerned.

The Strategy of the Slovak Republic for Roma Integration to 2020, adopted on 11 January 2012,[108] seeks in its introductory section to present the relevant data pertaining to Roma communities and their situation in the fields covered by the Strategy. However, the problem is that the majority of the data are only estimates (i.e. they do not go beyond quantitative research as conducted by the government). Furthermore, although the Strategy repeatedly mentions the unsatisfactory nature of data collection on ethnicity and positive action measures related to ethnicity, it does not appear to have any particular ambition to resolve these problems.

[105] See Hodoňová, S. (2010) *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 Data Relating to Prohibited Grounds of Discrimination]*, Bratislava, Občan, demokracia a zodpovednosť, available at www.oad.sk/sites/default/files/downloads/Akcny_plan_Zber_dat_analyza.doc (last accessed 1 April 2010).
[106] *Ibid*
[107] 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].
[108] The document was adopted by government resolution No 1/2012 and can be found at www.rokovania.sk/Rokovanie.aspx/GetUznesenia/?idRokovanie=622 (last accessed 1 April 2012).

A similar situation can be seen with the Revised National Action Plan for the Decade of Roma Inclusion 2005-2015 for 2011-2015,[109] adopted on 10 August 2011, which later became part of the Strategy. One of the main problematic aspects of the Action Plan is that it relies on out-of-date data contained in the Roma Communities Atlas 2004 which no longer provides a realistic picture of the location of Roma communities. It also makes no attempt to contribute to resolving the problem of the non-existence of data collection based on ethnicity (as well as on other grounds) and relies only on the existing inadequate and insufficient data.

For more details on the Strategy for Roma Integration and the National Action Plan of the Decade of Roma Inclusion, see Chapter 5 of this report.

In 2010 and 2011, the Slovak National Centre for Human Rights (the national equality body) obtained information about a number of measures by state bodies which are entitled to carry out positive action measures (so-called "temporary equalising measures") and forwarded it to one of the authors of this report at her request.[110] Based on the Centre's report on the observance of human rights in 2010 and the information it provided to one of the authors of this report, one conclusion which can be drawn is that the adopted measures do not stem from data-based analyses but rather from general knowledge about existing problems and/or from wider policy documents. By the deadline for submitting the update of this report for 2012, the Slovak National Centre for Human Rights had no information on positive action measures adopted by state bodies in 2012. See Chapter 5 for more details.

2.4 Harassment (Article 2(3))

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

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

It should be noted that the definition of harassment does not explicitly stipulate that the conduct must be unwanted. This may lead to interpretations under which courts or defendants would require the application of "objectivity tests" with regard to the capacity of the environment in question to meet the required statutory characteristics.

[109] Revidovaný akčný plán Dekády začleňovania rómskej populácie 2005-2015 na roky 2011-2015, adopted by government resolution No 522/2011. The document is available at www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=19992 (last accessed 1 April 2012).
[110] Request of 5 March 2012, response from the Centre of 19 March 2012.

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

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 specific laws. Article 19 of the Constitution states that "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 in their privacy and family life. Everyone 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 the Criminal Code[111] (Section 189 – Blackmail, Section 190 – Serious Coercion, Section 360 – Dangerous Threat, 423 – Defamation of Nation, Race and Conviction and Section 424 – Incitement to National, 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, to some extent, be 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 a 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 Offences Act.[112] 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".

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

As mentioned above, personal dignity (without expressly mentioning discrimination or racial discrimination) is also protected under civil law provisions. Section 11 of the Civil Code[113] 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 a personal nature" (e.g. pictures, drawings, literary outputs etc.). Section 13 of the Civil Code provides a remedy in case of a 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 remedy." In serious cases, non-pecuniary damages can be sought also in the form of pecuniary compensation.

Summarising the above, 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 (although here the definition does not quite comply with those contained in the Directives), but, in special circumstances, also under criminal, misdemeanour and civil law. However, the problem is that public authorities often underestimate or refuse to recognise the racial or general hateful motivation of such unwanted conduct. It happens that, when examining a crime, the investigators do not scrutinise further the intention of potential perpetrators who often insist, for example, that 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 the victims being reluctant to report their cases and often to them suffering further victimisation.[114]

b) Is harassment prohibited as a form of discrimination?

Harassment is explicitly prohibited under the Anti-discrimination Act as a form of discrimination.[115]

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

[113] Zákon č. 40/1964 Zb. Občiansky zákonník v znení neskorších predpisov [Act. No. 40/1964 Coll. Civil Code as amended].
[114] 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 (the mother of a son who was killed because he was a Roma) are entitled to effective remedies and to non-pecuniary damages . The court decided to grant the mother non-pecuniary damages of SKK 100,000 (€3,319.39) and non-pecuniary damages for the deceased son of SKK 200,000 (€6,638.78). The court proceeding took more than five years.
[115] Section 2a Paragraph 1 of the Anti-discrimination Act.

There is no Code of Practice or other sources providing an additional hard law or soft law concept of harassment in Slovakia (apart from private bodies such as companies whose codes of conduct are not usually public). The governmental or public bodies' codes of conduct usually contain only a very brief clause on the prohibition of discrimination and a subsequent referral to the Anti-discrimination Act.

d) *What is the scope of liability for discrimination? Specifically, can employers or (in the case of racial or ethnic origin, but please also look at the other grounds of discrimination) 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 does not provide a direct answer as to who is to be held liable for unlawful actions breaching the principle of equal treatment; it only uses the term "the person violating the principle of equal treatment".[116] Section 11, Paragraph 1 of the Anti-discrimination Act further states that "the plaintiff is obliged to identify the person who has allegedly violated the principle of equal treatment".

The liability rules (although not explicit) are universal with regard to all forms of discrimination contained in the Anti-discrimination Act (and they are in principle also applicable to breaches of the duty to "adopt measures to prevent discrimination", which is enshrined in Section 2 Paragraph 3 of the Anti-discrimination Act, as an independent component of the principle of equal treatment which is also legally invokable).

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".

Given the fact that the provision uses the term "everyone" and does not mention that a particular breach of the principle of equal treatment can only lead to the liability of one person, it is arguable that liability for breaches of the principle of equal treatment is not vested in sole and mutually exclusive liability holders but can lie in parallel with individuals who breach the principle of equal treatment with their direct personal actions/omissions (such as (co-)employees, schoolmates etc.) and at the same time with persons with 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 as stipulated by special laws (Section 3 Paragraph 2 of the Anti-discrimination Act) and it is therefore hard to establish the rights to

[116] Section 9, Paragraph 2 of the Anti-discrimination Act.

which, for example, an employee of a service provider is entitled as opposed to a customer of the service provider, or the rights to which a teacher is entitled as opposed to a pupil or a student.

Secondly, 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) also has interpretative significance in terms of liability. Provided some kind of causation is established between the actions/omissions of individuals in certain environments relevant from the point of view of the Anti-discrimination Act (such as schools, social services facilities, workplaces, hospitals etc.), and negligence on the part of persons with decision-making/statutory powers in these environments is identified, the liability should also lie with these entities (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 which stipulates that the principle of equal treatment shall be applied in the fields of "access and provision of" social security, healthcare, education and goods and services including housing. Thus, it follows from the quoted provision that both persons who access as well as persons who provide the enumerated items are entitled to protection against violations of the principle of equal treatment, and those who interact with them in these environments should be held liable for the breaches (as "everyone" is obliged to observe the principle of equal treatment). However, confusing in the framework of this interpretation is the wording of Section 6 Paragraph 1 of the Anti-discrimination Act which states 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,[117] 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 the employee.[118]

No court has yet dealt explicitly with any of the above-mentioned issues.

Below is a brief description of some additional statutory provisions which also apply to liability for discrimination/other breaches of the principle of equal treatment.

According to the general provisions of the Civil Code[119] regarding liability for damages, the damage is caused by a legal entity or a natural person provided it was

[117] See for example Barancová, H., Schronk, R. (2007): *Pracovné právo*, Bratislava, Sprint, pp 197-208.
[118] See Sections 81 and 82 of the Labour Code respectively.
[119] Section 420, Paragraph 2 of the Civil Code No. 40/1964 Coll., as amended.

caused during the performance of their business and by the people engaged to perform the business. It is of no importance whether the person engaged performs an activity in the context of an employment relationship, self-employment or on the basis of another type of legal relationship. According to the Civil Code, individuals acting on behalf of a legal entity or a natural person are not liable for damages without prejudice to their liability for damage as stipulated by labour regulations. Moreover, Section 192 of the Labour Code makes the employer responsible in relation to the employee for damage occurring to the employee due to a breach of legal regulations or due to intentional behaviour in breach of good morals during the performance of work or in direct connection with such behaviour. The employer is liable towards the employee for damages occurring due to a breach of legal obligations by the personnel performing the tasks of the employer on behalf of the employer.

This shows that, if 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 on their own legal liability).

The person or entity responsible for the infringement of the principle of equal treatment may enforce, in accordance with the respective labour regulations[120] or general damage regulations,[121] the reimbursement of the claim against the person who caused the damage due to the breach of his or her duties.

2.5 Instructions to discriminate (Article 2(4))

a) *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 Paragraph 1 of the Anti-discrimination Act, considered as a form of discrimination. A definition is given in Section 2a Paragraph 6 of the Anti-discrimination Act and means conduct consisting of abuse of the subordinate position of a person for the purpose of discriminating against a third person.

[120] 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).
[121] According to Section 420, Paragraph 1 of the Civil Code, an individual is responsible for the damage occurring due to a breach of his or her legal obligation.

The law does not contain any specific provisions, apart from those described in Chapter 2.4 d) of this report, regarding the liability of legal persons for either instruction or incitement to discriminate.

Publicly issuing instructions which have the effect of discrimination on the grounds of racial or ethnic origin (such as denial to the Roma of entry to a pub or restaurant, which is quite common in some regions of Slovakia) could be, in certain circumstances, considered a crime under Section 424 of the Criminal Code (incitement to racial and ethnic hatred).[122] If such instruction is issued by a public authority (representative of a state or self-governing body), this act could be considered an offence - abuse of power by a public authority pursuant to Section 326 of the Criminal Code.

b) *Does national law go beyond the Directives' requirement? (e.g. including incitement)*

Yes. The Anti-discrimination Act also defines incitement to discriminate as "persuading, affirming or inciting a person to discriminate against a third person".[123] Pursuant to Section 2a Paragraph 1 of the Anti-discrimination Act, incitement to discriminate is considered a form of discrimination.

c) *What is the scope of liability for discrimination? 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?*

Please see Chapter 2.4 d) of this report, as it applies here too.

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?*

[122] There are some villages and places in some regions (mainly in the East of Slovakia) 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).
[123] See Section 2 Paragraph 7 of the Anti-discrimination Act.

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;
- the financial resources of the employer, including the possibility of obtaining funding or any other assistance for the adoption of the measure; and
- the possibility of attaining the purpose of the measure referred to in Paragraph 1 in a different, alternative manner.

The measure shall not be considered as giving rise to a disproportionate burden if its adoption by the employer is mandatory under separate provisions.[124]

Employers' duties in this regard are also prescribed 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"(Section 158 Paragraph 1). As regards employees with disabilities who cannot be employed under usual working conditions, employers "may set up for them sheltered workshops or sheltered workplaces" (Section 158 Paragraph 2). 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 to technological progress with a view to safeguarding their employment". In these activities, employers must cooperate with trade unions or employee representatives.

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

[124] 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.

interpretative framework for Sections 158 and 159 of the Labour Code in any case). There is no case-law yet on the duty to provide reasonable accommodation.

b) 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.

The Anti-discrimination Act contains no definition of disability. The Labour Code does (in Section 40 Paragraph 8 – for the purposes of the Code) and defines an "employee with a disability" as an employee who is officially registered as disabled on the basis of the Social Insurance Act[125] and who submits to their employee evidence of their disability pension eligibility.[126] The Social Insurance Act[127] defines the following conditions as conditions for acquiring a disability pension:

- at least 40%loss of the ability to work (when compared to a "healthy" person);
- attainment of a sufficient number of years of pension insurance;
- long-term unfavourable state of health, – i.e. state of health causing a loss of ability to perform gainful activities, expected, in the basis of medical assessment, to last at least one year.[128]

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 a person with disability and therefore entitled to claim reasonable accommodation. However, both the definition of disability developed by CJEU in *Chacón Navas* and the definition contained in the UN Convention on the Rights of Persons with Disabilities would be applicable – given that EU legislation and the UN Convention take precedence over national law, and given also the hints of the Constitutional Court that indicate a shift in the concept of disability from medical to social (see Chapter 2.1.1 b) point iii) of this report).

It is not yet possible to answer the question of how the courts determine whether accommodation is "reasonable" or whether it imposes a "disproportionate burden". Nor is it possible to give an example of the application of the duty of reasonable accommodation by the court, as there has as yet been no case-law on the issue.

[125] Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov [Act. No. 461/2003 Coll. on Social Insurance as amended].
[126] Section 40 Paragraph 8 of the Labour Code.
[127] Zákon č. 461/2003 Z. z. o sociálnom poistení, v znení neskorších predpisov [Act No 461/2003 Coll. on Social Insurance, as amended.]
[128] See sections 70-72 of the Act No 461/2003 Z. z. on Social Insurance, as amended.

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

Some specific duties in other pieces of legislation (the Regulation Determining Details of General Technical Requirements in Construction,[129] the Road Transport Act,[130] the Railways Act)[131] could also be considered as stipulating the duty to provide reasonable accommodation. A special provision is also included in the Act on Higher Education,[132] guaranteeing reasonable accommodation for students with disabilities, including financial support in certain circumstances. For more details, see points i), j) and k) below in this Section.

d) *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 person with a disability 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 this 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, the actions or omission of an employer cannot at the same time also fall under definitions of the

[129] Vyhláška Ministersta životného prostredia SR č. 532/2002 Z. z. ktorou sa ustanovujú podrobnosti o všeobecných technických požiadavkách na výstavbu 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 of General Technical Requirements in Construction and on General Technical Requirements for Buildings used by Persons with Restricted Ability to Movement and Orientation].
[130] Zákon č. 168/1996 Z. z. o cestnej doprave v znení neskorších predpisov [Act No 168/1996 Coll. on Road Transport, as amended].
[131] Zákon č. 194/1996 Z. z. o dráhach [Act No. 194/1996 Coll. on Railways as amended].
[132] Section 16a, 57, 96 and 100 of the Act No 131/2002 Coll.

specific forms of discrimination as defined by the Slovak Anti-discrimination Act – mainly direct discrimination, indirect discrimination or harassment.

There is no case-law yet dealing with the application of the concept of reasonable accommodation. Nor have there been any specific measures taken or discussions initiated on appropriate ways to implement the reasonable accommodation duty.

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

i) race or ethnic origin
ii) religion or belief
iii) age
iv) sexual orientation

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) involve the adoption of measures to prevent discrimination.

From this principle it can be inferred that the duty to provide reasonable accommodation applies not only to employers and people with disabilities in the area of employment 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 in the above-mentioned obligation of the employers.

There has so far only been one known case when non-compliance with the duty to adopt measures to prevent discrimination has been successfully invoked before a court[133] (the case concerned discrimination on the ground of ethnicity in housing – see Chapter 3.2.10 and Chapter 0.3 for more details). However, the case has not yet been concluded.

f) Please specify whether this is within the employment field or in areas outside employment

i) race or ethnic origin
ii) religion or belief
iii) age
iv) sexual orientation

[133] The case of *1/ B. S.S.Č., 2/ A. S.S.Č., 3/ I. S.S.H., 4/ T. S.S.H., 5/ I. S.S.D., 6/ T. S.S.D., 7/ Z. S.S.H., 8/ S.S.D. versus the Town of Sabinov and the Ministry of Construction and Regional Development.*

It applies to all the fields covered by the Anti-discrimination Act (i.e. employment, social security, including social advantages, healthcare, provision of goods and services, including housing, and education).

g) Is it common practice to provide for reasonable accommodation for other grounds than disability in the public or private sector?

No, it is not. And it is actually very rare, even in relation to disability. For example, only about 6%of schools have barrier-free access for children with disabilities.[134]

h) 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 when claiming the right to reasonable accommodation. However, the general provision on the burden of proof contained in Section 11 Paragraph 2 of the Anti-discrimination Act does apply to these situations. Section 11 Paragraph 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".

i) 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 buildings, non-residential buildings designed for use by the public, buildings in which persons with limited mobility and orientation are likely to be employed) and infrastructure (for example, pavements and roads for pedestrians, car parks, access to parks, access to post boxes and cash dispensers etc.) must be designed and built in a disability-accessible way, in accordance with the Regulation Determining Details of General Technical Requirements in Construction.[135] Buildings and infrastructure which do not meet the criteria set by the Regulation should not receive approval from the relevant construction office (however, reality shows that these rules are often ignored or violated).

[134] See www.ta3.com/clanok/1016775/ministerstvo-skolstva-pracuje-na-bezbarierovom-pristupe-do-skol.html, last accessed 23 March 2013.

[135] Vyhláška Ministersta životného prostredia SR č. 532/2002 Z. z. ktorou sa ustanovujú podrobnosti o všeobecných technických požiadavkách na výstavbu 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 of General Technical Requirements in Construction and General Technical Requirements for Buildings used by Persons with Restricted Mobility and Orientation].

A building constructed after 1 December 2002 (the date when the Regulation came into force) and not made accessible for persons with disabilities could be considered in breach of the principle of equal treatment (although the link is only implicit and interpretative), 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 basically applicable to all the areas covered by the Anti-discrimination Act (employment and occupation, social security, healthcare and provision of goods and services including housing and education). There is no case-law on this issue yet.

j) 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, healthcare, provision of goods and services including housing and education), account must be taken of the general duty to adopt measures aimed at the prevention of discrimination which is enshrined in Section 2 Paragraph 3 of the Anti-discrimination Act and which 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 legal duties mentioned below.

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 carry out certain activities at work, to promotion or other advancement and to training.

This does not apply if the adoption of such measures would impose a disproportionate burden on the employer (this is further defined in 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 of General Technical Requirements in Construction[136] applies. It sets out special technical requirements taking account of the needs of people with disabilities in buildings (for example,

[136] Vyhláška Ministersta životného prostredia SR č. 532/2002 Z. z., ktorou sa ustanovujú podrobnosti o všeobecných technických požiadavkách na výstavbu 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 of General Technical Requirements in Construction and General Technical Requirements of Buildings used by Persons with Restricted Mobility and Orientation].

residential buildings, non-residential buildings designed for use by the public, buildings in which persons with limited mobility and orientation are likely to be employed) and infrastructure (for example, pavements and roads for pedestrians, car parks, access to parks, access to post boxes and cash dispensers etc.). Anyone involved in construction (mainly architects, builders etc.) is bound by these requirements. Justification for non-compliance includes "serious cultural, historical or technical/operational reasons; the justification must be contained in project documentation".[137]

In the field of transport, Section 4 Paragraph 2 of the Road Transport Act[138] stipulates that carriers are obliged to have transport orders that shall contain, *inter alia*, "the scope of special rights and duties of passengers with a disability and of passengers with limited mobility including accompanying persons, as well as of pensioners, pupils and students".[139] It also stipulates that the transport order should contain the "conditions of transport of a specially trained dog which provides assistance to a person with a serious disability".[140] Section 13 Paragraph 4 of the Road Transport Act also stipulates that "passengers with a disability who are accompanied by a specially trained dog or passengers with limited mobility shall have the right to a reserved seat". There is no justification clause applicable in case of a failure to satisfy the duties mentioned.

The Railways Act[141] contains general rules for creating conditions for access for people with disabilities. Special regulations allowing reduced fares for public transport are adopted by the self-governing regions.

There is no case-law in this field yet.

k) 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, healthcare, education and access to buildings and certain public services.

There are several legal guarantees to support participation by people with disabilities in the labour market. In accordance with 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 state of

[137] Section 2 Paragraph 4 of the regulation.
[138] Zákon č. 56/2012 Z. z. o cestnej doprave v znení neskorších predpisov [Act No 56/2012 Coll. on Road Transport, as amended].
[139] Section 4 Paragraph 2 f) of the Road Transport Act.
[140] Section 4 Paragraph 2 h) of the Road Transport Act.
[141] Zákon č. 194/1996 Z. z. o dráhach [Act No. 194/1996 Coll. on Railways as amended].

health". This principle is further embodied in the above-mentioned 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 conditions, advice services, vocational training and guidance, the existence of special sheltered workplaces eligible for state aid, financial support for creating a workplace for people with disabilities and financial support for work assistants etc.[142] Workplace quality for people with disabilities is specifically regulated by a governmental regulation.[143] There is also legal regulation covering state-funded financial allowances for employers who employ people with disabilities.[144]

In accordance with Section 59 of the Act on Employment Services, an office of labour, social affairs and family may provide an allowance to an employer who employs people with disabilities or to a self-employed person with a disability to contribute to paying for their work assistant, representing an amount of up to 90% of the cost of the 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.[145]

The Social Services Act[146] 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". The Act on Benefits for Compensation of Serious Disability[147] regulates legal relationships related to providing financial contributions which are aimed at compensating the social consequences of "serious disabilities".

The Schools Act contains special provisions designed to accommodate the needs of children and pupils with disabilities in kindergartens, primary and secondary schools and in school facilities.[148]

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[142] 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.
[143] Regulation No. 391/2006 Coll. on Minimum Security and Health Requirements for the Workplace.
[144] Section 50 of the Act on Employment Services No. 5/2004 Coll.
[145] Section 66 of the Labour Code.
[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] 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].
[148] 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 (Schools Act), as amended].

A special provision is also included in the Act on Higher Education,[149] guaranteeing reasonable accommodation for students with specific needs, including financial support in certain circumstances.

The Road Transport Act and the Railways Act 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 “sheltered workshop” and “sheltered workplace” in Section 55.

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 trained and where working conditions and working requirements are accommodated to their abilities. “Sheltered workplace” also means that each individual workplace is established or accommodated for an individual with a disability. Such workplaces 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 whose 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, a subsidy for supplementary expenses (such as equipment for workshops with special tools or machines and their installation) and a subsidy for operational costs and transportation 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 16 times the amount of the overall price of labour calculated on the basis of the 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 the case of small and medium enterprises) or three years (in the case of other businesses).

[149] Section 16a, 57, 96 and 100 of the Act No 131/2002 Coll.

The subsidy for operational costs and transportation for a person with a disability is a maximum of seven times the minimum monthly cost of labour. The 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.

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

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

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 conditional on a person'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 stipulates that the provisions of the Anti-discrimination Act shall not apply to differences of treatment resulting from the requirements for entry and residence for aliens in Slovakia, including the treatment of these aliens provided for under separate provisions,[150] except for citizens of EU Member States, a state which is party to the European Economic Area Agreement, Swiss citizens and stateless persons and their family members.

According to the Act on the Residence of Aliens[151] an alien is anybody who is not a citizen of the Slovak Republic.

In addition, separate acts set out the requirement to be a citizen of the Slovak Republic for specific professions or employment.[152]

Article 35 of the Constitution guarantees the right to choose a profession and appropriate training freely, the right to conduct entrepreneurial or other gainful activity, as well as the right to material welfare for those who, through no fault of their own, are unable to enjoy this right. 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. 404/2011 Coll. on the Residence of Aliens and on amending and supplementing certain other laws, Act No. 480/2002 Coll. on Asylum and on amending and supplementing certain other laws.).

[150] E.g. Zákon č. 404/2011 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov, Zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov v znení neskorších predpisov [Act. No. 404/2011 Coll. on the Residence of Foreigners and on amending and supplementing certain laws, Act. No. 480/2002 Coll. on Asylum and on amending and supplementing certain laws as amended].
[151] Zákon č. 404/2011 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov [Act. No. 404/2011 Coll. on the Stay of Aliens and on amending and supplementing certain laws].
[152] Senior state officials, prosecutors, constitutional judges, judges, police officers, customs officers, fire and rescue service members, mountain rescue service members and professional soldiers.

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

a) 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 on "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 against 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[153] with respect to its members, associates, shareholders, members of its bodies, employees, persons acting on its behalf or persons on behalf of which such a legal entity is acting".

b) Is national law applicable to both private and public sector including public bodies?

Yes, the Anti-discrimination Act does not distinguish between public and private bodies in terms of its applicability. The only explicit exception is housing where the duty to apply the principle of equal treatment does not apply to natural persons who are not entrepreneurs.[154]

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

3.1.3 Scope of liability

Are there any liability provisions than those mentioned under harassment and instruction to discriminate? (e.g. employers, landlords, tenants, clients, customers, trade unions)

No.

[153] 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.
[154] See Section 5 Paragraph 2 (d) of the Anti-discrimination Act.

3.2 Material Scope

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?

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 enumerates the prohibited grounds of discrimination and, apart from 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[155] or other status),[156] it also lists trade union activity, unfavourable state of health and genetic features as prohibited grounds of discrimination. A person who alleges they have suffered discrimination can thus invoke the grounds both through the provision in the Anti-discrimination Act' and through the provision of the Labour Code.

The same principle (i.e. the possibility of invoking grounds both through the Anti-discrimination Act and through the acts regulating the relevant types of public service) applies to the legal relationships resulting from the Civil Service Act No. 400/2009 Coll. and from special acts on civil service in bodies with special roles in the public sphere – customs officers, soldiers performing military service, police officers, members of the Slovak intelligence service, the prison and court guard, railway police officers and members of the fire and rescue service performing civil service.

Similar to 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 of or activities in a political party or trade union or other association (See Chapter 2.1)

[155] The Slovak word *"rod"* can be translated as either "lineage" or "gender".
[156] Section 2 Paragraph 1 of the Anti-discrimination Act.

Act. No. 455/1991 Coll. on licensed trades (Small Business Act), which regulates the conditions for licensed trades for self-employed persons, states in Section 5a that the rights provided for in 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.

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. In accordance with 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 states that the obligation to observe the principle of equal treatment applies to “everybody” in the field of (*inter alia*) employment relationships and related legal relationships. Thus it covers the entire sphere of employment, self-employment and occupational relationships in the public and private spheres.

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 specifications, selection criteria, recruitment conditions and promotion. In other words, the Anti-discrimination Act refers to the existing laws in the area of employment, self-employment and occupation without making any distinction between legal relationships in the private and the public sector. At the same time, all laws regulating the public and the private sector are based on or supplement the rules set out 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 out the following rules to be applied to avoid discrimination in the field of access to employment: the employer must not request a natural person applying for a job for information regarding pregnancy, their family background, their 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 their political affiliation, trade union membership or religious affiliation. From a natural person applying for their first job, an employer can only require information related to the job to be performed.[157]

Act. No. 5/2004 Coll. on Employment Services, which introduces a system of institutions and instruments providing participants in the labour market with support and assistance in their search for employment, changing employment, filling job vacancies and the implementation of active measures within the labour market, stipulates the following in Section 14, Paragraph 1: "Citizen[s][158] shall have the right to access to employment without restriction, 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. In accordance with Section 62, Paragraph 1 of the Act on Employment Services, an employer can recruit the required number and configuration of staff using their own recruitment capacity or using the assistance of the labour offices located throughout Slovakia.

Simultaneously, employers are prohibited from "publishing job advertisements that impose any restriction or discrimination on the grounds of race, colour, sex, age,

[157] Section 41 Paragraph 5 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 a discriminatory basis. The provision has never yet been invoked in courts and it is likely to be in compliance with the Framework Directive.

[158] A legal position equal to the one guaranteed to the citizens of the Slovak Republic is also guaranteed to a national of a third country if they have been granted a work permit and temporary residence permit for employment purposes, if they are a holder of an EU "Blue Card" or if they are an asylum seeker who is entitled to enter the labour market pursuant to a special law (Section 21, Paragraph 1 of the Act. No. 5/2004 Coll. as amended). A citizen of a member State of the European Economic Area and a citizen of Switzerland and their relatives are guaranteed the same legal position as a citizen of the Slovak Republic, unless otherwise stated in the Act on Employment services (Section 2, par. 2 of the Act No. 5/2004 Coll. on employment services as amended).

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,[159] marital or family status".[160]

Although the grounds of "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 which stipulates the duty to observe the principle of equal treatment, including in the field of access to employment, the prohibition of publishing discriminatory job advertisements also applies to these grounds.

Further, based on Paragraph 3 of this section, an employer undertaking a recruitment procedure must not demand information related to nationality, racial or ethnic origin, political opinion, trade union membership, religion, sexual orientation, information which is 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 on the request of the citizen that it is necessary to provide the specific information requested.[161] The staff recruitment criteria must ensure equal opportunities for each individual.[162]

Other laws regulating different areas of employment or civil service also contain provisions concerning equal treatment in access to employment and selection procedures that are in compliance with the Anti-discrimination Act.[163]

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.

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.

[159] The Slovak word *"rod"* can be translated as either "lineage" or "gender".
[160] Section 62 Paragraph 2 of the Act No 5/2004 on Employment Services.
[161] Although there is a clear legal regulation concerning recruitment, these rules are very often breached by employers, especially during job interviews when personal questions are asked which do not relate to the work offered.
[162] Section 62, Paragraph 2 and 3 of the Act. No. 5/2004 Coll. on Employment Services, as amended.
[163] These are special acts on civil service in bodies with special roles in the public sphere and concern e.g. customs officers, professional soldiers, judges, police officers, members of the Slovak intelligence service, prison and court guards, railway police officers, members of the fire and rescue service etc.

The right to satisfactory working conditions, remuneration and protection against arbitrary dismissal, including discrimination at work, is basically guaranteed by Article 36 of the Constitution (See Chapter 1).

In Section 6, Paragraph 2(b), the Anti-discrimination Act expressly covers, for the whole area of employment relationships, similar relationships and related legal relationships and on all the grounds contained in the Anti-discrimination Act (see Chapter 2.1), "the performance of employment[164] and working conditions, including remuneration, promotion and dismissal".

In accordance with 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 in work, taking into account their physiological capacity and the social function of motherhood, as shall women and men with regard to their family obligations in the upbringing and care of children". In addition, 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".[165] 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".[166] Pursuant to Section 119a Paragraph 2, "women and men have the right to equal pay 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.[167]

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. Pursuant to the same provision, "generally the following items shall not[168] be deemed to be wages: wage compensation, severance allowances, discharge benefit, travel reimbursement including non-mandatory travel reimbursement, contributions from a social fund, contributions to supplementary pension saving funds, contributions to an employee's life insurance, revenues from

[164] The term "employment" includes occupation, other gainful activity or function.
[165] Paragraph 1.
[166] *Ibid*.
[167] See paragraph 4 of Section 119a of the Labour Code.
[168] Emphasis added by the author.

capital holdings (shares) or bonds, a tax bonus, income compensation for an employee's temporary incapacity for work, extra payments to sickness insurance benefits, compensation for work standby, monetary compensation under Paragraph 83a(4) and other payments provided to an employee in relation to employment pursuant to this act, other relevant regulations, a collective agreement or an employment contract which do not have the characteristics of wages". Section 118 Paragraph 3 states further that "also considered as a wage shall be the settlement provided by an employer to an employee for work upon the occasion of their employment anniversary or a personal anniversary, if such is not provided from net profit or from the social fund".

It is very clear from the above statutory enumeration of the settlements that do not constitute pay that some of the items are certainly or very likely to be in violation of EU legislation and/or CJEU case-law on equal pay – such as the severance allowances and discharge benefits, the contributions to the supplementary pension saving fund (which constitute occupational pensions, see also later in this chapter), the extra payments to sickness insurance benefits (which probably come under the concept of occupational pension schemes but are not defined or regulated as such regulated in Slovak legislation), the non-mandatory travel reimbursements, the contributions from a social fund etc.

In respect of occupational pension schemes, it should be noted that regular entitlements to old-age, sickness, disability, industrial accident and occupational disease and unemployment benefits do not generally come under the system of occupational pension schemes in Slovakia. Instead, they are covered by the state social security system. Only "supplementary pension insurance" could be identified as a legally regulated occupational pension. The purpose of supplementary pension saving is to enable a participant in the pension scheme to acquire a supplementary retirement income in old age and a supplementary retirement income after termination of a hazardous occupation (in accordance with the legal classifications) or after termination of work as a dance artist or a musician playing a wind instrument.[169] Within the framework of supplementary pension insurance, an employer pays, on the ground of a contract, a regular contribution for employees to a supplementary pension company.

Given the above-mentioned definition of what constitutes "pay" in the Labour Code, it is clear that employers' contributions to an supplementary pension insurance scheme do not constitute "pay" as understood by Slovak legislation. However, pursuant to Section 7 of the Act on Supplementary Pension Saving, discrimination in performance of supplementary pension saving is prohibited, pursuant to the Anti-discrimination Act, unless the Act on Supplementary Pension Saving states otherwise. Thus, the Labour Code provision on what constitutes pay is not only in

[169] § 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 Supplementary Pension Saving and on Amending and Supplementing Certain Laws].

conflict with EU law but also with national legislation, namely the Anti-discrimination Act.

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 within it (see Chapter 2.1) and in connection with the rights for which provisions is made in separate acts in the area of access to vocational training, further vocational training and participation in active labour market policy programmes, including access to guidance services regarding employment selection and change of employment.

By defining "further education" in Section 2 Paragraph 3, the Act on Lifelong Learning,[170] indirectly defines what is to be understood under the term "vocational training". Further education is defined as "education in educational institutions of further education which follows school education or other education following school education. Further education facilitates the acquisition of a partial or full qualification or the opportunity to complete, renew, expand or deepen the qualifications acquired through school education or to satisfy interests and acquire the capacity to participate in the life of society. The successful completion of further education does not confer a higher education degree". The Act on Lifelong Learning, although abolishing and building on Act No 386/1997 Coll. on Further Education which had contained a direct and explicit reference to the Anti-discrimination Act, does not contain any equality/anti-discrimination clause or any 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 makes provision for equal access to vocational training for both men and women. Article 7 declares the right of young people to be trained and to have working conditions that enable them to advance their physical and intellectual skills.

[170] 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 amending and supplementing certain laws, as amended].

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

The issue of overlaps between "vocational training" and "education" does not play an important practical role in Slovak anti-discrimination law since, according to the Anti-discrimination Act as well as 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 the case of some of the laws, on the ground of trade union activities as well).

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.

In addition to the general constitutional prohibition of discrimination, the Constitution specifically forbids (Article 37, Paragraph 2) a restriction of the number of trade unions as well as privileging some of them in a company or industry.

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 of and activity in employees' organisations, employers' organisations and organisations bringing together people of certain occupations, including the benefits that these organisations provide to their members.

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?

Section 5, Paragraphs 1 and 2 (a)(b) of the Anti-discrimination Act prohibit 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 as social services in the relevant

legislation),[171] social insurance, old-age pension insurance, supplementary pension insurance, state social support, social advantages and healthcare. The social insurance, old-age pension insurance and state social support schemes are 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). This means that national law does not rely on the exception in Article 3(3) of Directive 2000/78 and the principle of equal treatment is also guaranteed in the state social security and social protection schemes.

As there is a significant overlap between social advantages as defined by the Court of Justice and some benefits as established by the legislation on "state social support", the state is also a frequent provider of benefits which, 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 Social Insurance Act.[172] An integral part of the state social security system is also formed by the old-age pension scheme. The Social Insurance Act states that policy-holders shall have rights in the exercise of social insurance in compliance with the principle of equal treatment in social security established in the Anti-discrimination Act.

The same applies to police officers, professional soldiers and soldiers in preparatory service under the Act on Social Security for Police Officers and Soldiers.[173]

The Social Services Act[174] regulates legal relations in connection with the provision of social services. A social service is defined as "expert activity, service activity or other activity or activities aimed at a) the prevention of the development of an unfavourable social situation, resolving an unfavourable social situation or mitigating the unfavourable social situation of a natural person, family or community; b) sustaining, renewing or developing the capacity of a natural person to conduct an independent life and supporting their integration into society; c) maintaining the conditions necessary to satisfy the basic needs of a natural person; d) resolving a

[171] Zákon č. 448/2008 Z. z. o sociálnych službách a o zmene a doplnení zákona č. 455/1991 Z. z. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov [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].
[172] Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov [Act No. 461/2003 Coll. on Social Insurance as amended].
[173] 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 for Police Officers and Soldiers and on amending and supplementing certain acts as amended].
[174] Zákon č. 448/2008 Z. z. o sociálnych službách a o zmene a doplnení zákona č. 455/1991 Z. z. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov [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].

critical social situation affecting a natural person and their family; e) the prevention of social exclusion of a natural person and their family".[175]

The Social Services Act contains a principle of equal treatment clause and refers to the Anti-discrimination Act, as does the Act on Benefits for Compensation of Serious Disability,[176] which regulates legal relationships connected with providing financial contributions aimed at compensating for the social consequences of "serious disabilities".

The Act on Old-Age Pension Saving[177] contains separate definitions of direct and indirect discrimination, including unwanted conduct, which are not completely identical to the definitions contained in the Anti-discrimination Act and thus create confusions.

According to Section 7 of the Act on Supplementary Pension Saving No. 650/2004 Coll. discrimination in the performance of supplementary pension saving is prohibited in compliance with the Anti-discrimination Act. The purpose of supplementary pension saving is to enable a participant in this pension scheme to acquire a supplementary retirement income in old age or after the termination of a hazardous occupation (in accordance with the legal classifications) or after termination of work as a dance artist or a musician playing a wind instrument.[178] However, it should be noted that the Labour Code excludes employers' contributions to the supplementary pension saving fund from the concept of "pay", which is in violation of EU law. See Chapter 3.2.3 for more details.

The right to healthcare guaranteed under the Act on Healthcare, like the right to social security, goes beyond the scope of Directive 2000/43 in terms of the grounds covered. The Act contains a principle of equal treatment clause and refers to the Anti-discrimination Act (for grounds, see Chapter 2.1).[179]

[175] Section 2 Paragraph 1 of the act.
[176] 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].
[177] § 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 amending and supplementing certain laws, as amended].
[178] § 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 Supplementary Pension Saving and on amending and supplementing certain laws].
[179] § 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 Healthcare, Services Related to the Provision of Healthcare and on amending and supplementing certain acts].

Policy-holders (in the field of health insurance) have rights in the exercise of public health insurance in accordance with the principle of equal treatment in healthcare regulated in the Anti-discrimination Act.[180]

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.

Section 5, paragraph (a) (to be read in conjunction with paragraph 1) of the Anti-discrimination Act prohibits discrimination on all the grounds contained within it (see Chapter 2.1) in the area of access to 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 which was contained in the Anti-discrimination Act when it was adopted[181] was abolished by the last amendment of the Act, effective since September 2007.

Some of the categories within 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 Act also applies (see Chapter 3.2.6). This is the case, for example, for childbirth grants and funeral grants.

Within the context of state social support as defined by Slovak legislation and at the same time within the context of social advantages as defined by the Court of Justice, Act No. 235/1998 Coll. on the Childbirth Allowance and on Allowances for Parents who have Three or More Concurrently Born Children or Twins More than Once within

[180] § 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 amending and supplementing certain laws, as amended].
[181] „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."

Two Years appears to be very problematic as it is in breach of the 2000/43 Directive. In particular, it contains provisions on providing childbirth allowance and a supplement to this allowance which have discriminatory effects on Roma women.

Section 3 Paragraph 5 of the Act stipulates that a woman who leaves her child in the maternity hospital following his or her birth, without prior consent from her physician, has no right to childbirth allowance and to the supplement to this allowance which is paid for the three firstborn children (Section 3a, Paragraph 1a). Fact-finding activities, carried out through surveys in several hospitals in Eastern Slovakia, interviews with Roma women and people working with Roma communities and through the identification of localities where payments of the birth allowances were refused reveal that 100% of women leaving hospital following the birth of a child are of Roma origin.[182] In many cases case the Roma women (who usually come from segregated communities) leave the hospital because of caring responsibilities for other children and discrimination and hostility in the hospital, and in most cases they come back to collect their child.

Although the stated objective of the legislation – to motivate the mother to remain in hospital for a medically necessary period – may be relatively legitimate, the means, especially in the context of the legislatively declared aim of the provision of covering the costs associated with meeting the needs of new-borns, are disproportionate and unnecessary.

This was also confirmed by an expert opinion from the Slovak National Centre for Human Rights of 15 August 2007.[183] Although some of the Roma women affected by this measure have filed law suits and received their childbirth allowances, 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 to be indirectly discriminatory towards Roma women. For example, Section 3a Paragraph 4 on the birth allowance supplement (paid to compensate for the increased costs of the first three children born to one mother) states that entitlement to the supplement only exists if the woman has visited a gynaecologist once a month from the fourth month of her pregnancy until giving birth. For the reasons outlined above (discrimination against Roma women in healthcare facilities, caring responsibilities etc.), this provision is equally discriminatory and should be abolished.

Similarly, the Act contains a provision permitting the payment of the childbirth allowance supplement only if the new-born child lives to the age of at least 28

[182] The surveys were carried out by Poradňa pre občianske a ľudské práva and can be found at http://poradna-prava.sk/?cat=3. 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.
[183] Available on request from the Slovak National Centre for Human Rights.

days.[184] Although apparently neutral, this provision is also indirectly discriminatory, as unofficial data reveal that the infant death rate among Roma children is several times higher than the death rate among non-Roma children.[185] None of the indirectly discriminatory provisions on the childbirth allowance supplement has so far been the subject of a legal challenge.

Another problem related to social advantages is the statutory provision stipulating that the right to equal treatment only applies in connection with another substantive right provided for by law.[186] Given the fact that many of the benefits which come within the scope of social advantages would be provided by generally binding legal enactments other than laws (for example, governmental decrees, ministerial ordinances, generally binding ordinances of self-governing bodies or municipalities etc.), this legislative solution raises serious doubts as to whether the transposition of the Directives is correct.

By reducing the scope of rights to be applied in accordance with the principle of equal treatment to those 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 in the courts; see also Chapter 0.1).

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.

Section 5 Paragraphs 1 and 2 (c) of the Anti-discrimination Act stipulate the duty to observe the principle of equal treatment and prohibit discrimination on all the grounds

[184] See Section 1 Paragraph 3 of the Act No 235/1998 Coll. on Childbirth Allowance and on Allowances for Parents who have More than Three Concurrently Born Children or Twins More than Once within Two Years.
[185] For more details on the indirectly discriminatory nature of the Act on childbirth allowances, 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://archiv.aspekt.sk/kniha_det.php?IDkniha=131&kat=nov (last accessed 14 March 2011).
[186] See Section 3 Paragraph 2 of the Anti-Discrimination Act.

contained within the Act also in the area of education. The section refers (in its footnotes) to other acts which regulate legal relations in education.[187]

What can be inferred from the non-exhaustive enumeration of laws referred to through this provision,[188] and also from the very general and broad notion of the word "education" contained in the 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 (in the case of formal education it includes all levels) and vocational training. In this context, however, it should be noted that, although most of the acts regulating the field of education in Slovakia contain anti-discrimination clauses (such as the Schools Act and the Act on Higher Education), the recently adopted Act No 568/2009 Coll. on Lifelong Learning, which also abolished the previously existing Act on Further Education (which contained an anti-discrimination clause), does not contain an equality clause.

The relatively new Schools Act,[189] adopted in 2008, establishes "equal access to education, taking into account the special educational needs of the 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 should be based.

The act also defines "school integration" as "education of children and pupils with special educational needs in school classes and school facilities designed for children or pupils without special educational needs".[190]

In spite of this, the school legislation adopted in 2008 (the Schools Act and the Regulation of the Ministry of Education No 320/2008 Coll. on Primary School), as well as the widespread practice of schools (for example, with regard to segregation of Roma children), cast serious doubts on whether the principles listed above are being fulfilled.

Sections 94-102 of the Schools Act contain provisions on children and pupils with a "health disadvantage". A child or a pupil with a "health disadvantage" is defined, in Section 2 Paragraph k) of the Act, as a child or a pupil with a "disability", a child or a pupil who is "ill or their health is impaired", a child or a pupil with "developmental disorders", or a child or a pupil with a "behavioural disorder". Section 94 states that

[187] 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 which contains no anti-discrimination clause), as amended, (current) Act No 5/2004 on Employment Services, as amended. The enumeration of these acts is not exhaustive.
[188] *Ibid.*
[189] 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 (Schools Act) and on amending and supplementing certain laws, as amended].
[190] Section 2 (s) of the Schools Act. However, the Act does not define in more detail what this integration means.

education of children and pupils with health disadvantage should take place in schools for children with health disadvantages (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 and training institutions), either in special classes or in classes or educational groups together with other children/pupils of the school (in which case the child/pupil can have an individual educational programme).

The Act itself does not state on what criteria the choice between these three forms of schooling for children/pupils with health disadvantages should be made. Given the fact that many schools – in terms of premises, facilities and staff – are not adapted to the needs of children with health disadvantages, 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 data but only with anecdotal/empirical evidence).

Another matter of serious concern is diagnostics. One type of institution authorised to carry out diagnostics are the Centres for Special Pedagogical Counselling which are often attached to special schools or are staffed by employees of these special schools. This raises serious concerns about the possibility of a conflict of interests.[191]

Another issue with the school legislation adopted in 2008 relates to the education of pupils with “special educational needs”. Section 13 of the Ministry of Education Ordinance No 320/2008 Coll. on Primary School contains provisions on placing children in “special classes”. Paragraph 5 of this section states that pupils from “socially disadvantaged environments” should also 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 educational content in the first year of school, (2) are not managing the educational content of the first year of school or, depending on the child, based on a psychological examination, are assessed as unlikely to successfully manage the educational content in the first year of school, (3) have been educated in primary schools for pupils with health disadvantages but disability has not been proved in their case”.

There is no doubt that these provisions create a broad scope for legalising biased assessments of the 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. There is also no doubt that this provision departs from the concept of parallel mainstream “normal” and “other” classes, which is excluding and discriminatory.

[191] 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.

Although the concept of special classes is relatively recent (the Ministry ordinance has been in effect since 1 September 2008, when the Race Directive was already binding), 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 special classes are deliberately designed to separate them from pupils representing the majority population. Despite the fact that the curriculum is officially the same as the curriculum at mainstream schools, special schools often opt to reduce it by 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 "special schools" is the possibility of mixing pupils from different years,[192] which makes it possible for schools to put Roma children from different years into one class.

The segregation of Roma children in education is a very widespread problem. Children from Roma families are also often sent to special classes/special schools for children with intellectual disabilities (with reduced curricula and very limited opportunities for subsequent education).[193] One of the reasons for this is bad diagnostics (resulting, for example, from the relative inability of Roma people to speak the official language of Slovakia or from the fact that their social skills may not be adapted to the conventions of the majority population, from the general cultural bias of the diagnostic tests and from the lack of time the person conducting the diagnostic tests has for each child[194] etc.).[195] Due to various factors (fear of discrimination and stigmatisation and hence poor performance, distance from the mainstream school, etc.), the parents sometimes also support the education of their children in special schools. Now, given the legislative possibility of placing children from "socially disadvantaged environments" into "special classes" (see above), the segregation of Roma children is probably deepening.

However, school segregation is not only caused by biased diagnostics or racial hatred. Another factor leading to segregation is the system of subsidies for children in special schools or special classes which are higher than the subsidies for children in mainstream schools.[196]

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[192] Section 13 paragraph 3 of the Ministry of Education Ordinance No 320/2008 Coll. on Primary Schools.

[193] 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 within standard schools. See Friedman, E., Gallová Kriglerová, E., Kubánová, M., Slosiarik, M. (2009) *Škola ako geto: Systematické nadmerné zastúpenie Rómov v špeciálnom vzdelávaní na Slovensku [School as ghetto: A systemic over-representation of Roma in special education in Slovakia],* Roma Education Fund, p 22.

[194] Anecdotal evidence shows the person doing the diagnostic tests sometimes examines as many as 30 children per day.

[195] The law does not stipulate any clear rules for re-diagnosis.

[196] Whereas the subsidies per year per child at a mainstream primary school in 2013 range from €1,155.65 to €1,203.47, the subsidies per year per child at a special primary school range from €1,742.38 € to €1,790.20 (see http://www.minedu.sk/, last accessed 24 March 2013; information for 2012 was not available on the website of the Ministry of Education). Subsidies are always paid to schools.

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

This type of segregation also happens because school authorities are afraid, due to the racial bias/hatred which is omnipresent in society, of losing non-Roma children and thereby the subsidies from the state which are based on the numbers of children on school roles. It is also not unusual to find purely Roma schools.[197]

The first and so far the only case on the segregation of Roma children in education was decided by the District Court and the Regional Court in Prešov in December 2011 (district court)[198] and October 2012 (regional court).[199] In this case, Poradňa pre občianske a ľudské práva *(Centre for Civil and Human Rights)*, an NGO actively dealing with *inter alia* the protection of Roma people against discrimination, sued, in its own name and using the concept of *actio popularis*, the primary school in Šarišské Michaľany for the long-term and systematic application of segregation practices, in particular for having segregated Roma classes in each of Years 1-7 for several years. The segregated Roma classes and the non-Roma classes were even separated physically – for example, the classrooms were on different floors and so Roma and non-Roma children had minimal opportunity to encounter and communicate with each other even during breaks. The segregated Roma classes did not have any special legal status, i.e. these were regular classes, comparable to the non-Roma classes in terms of curriculum, number of pupils in a class etc.

The school alleged that the separate classes were set up to allow teachers to adopt a "more individualised approach" when teaching Roma children, as they came from "socially disadvantaged backgrounds" (the school even argued that it was not using discriminatory practices but measures that had an "equalising character").[200] The school also claimed that, by separating the children, they contributed to the Roma children not having to feel "handicapped", knowing that other children were doing

[197] For more information on the segregation of Roma children in education, see also Centre for Civil and Human Rights, People in Need Slovakia (2010): *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*, pp 4-7. Available online at: www.poradna-prava.sk/dok/NGO%20Written%20comments%20HRC%20ICCPR.pdf?PHPSESSID=9f624ec9594d58c6f4e77789c01b5965 (last accessed 12 March 2011). See also Rafael, V. (ed.); various authors: *(De)segregation of Roma pupils in Slovak educational system: Questions and answers*, Bratislava, Nadácia otvorenej spoločnosti 2011. The publication is available at http://www.osf.sk/kniznica_a_open_gallery/publikacie/2011/desegregation_of_roma_pupils_in_slovak_educational_system_questions_and_answers/ (last accessed 5 April 2012).

[198] The English translation of the decision of the court of first instance can be found at http://poradna-prava.sk/wp-content/uploads/2012/01/PDF-568-kB.pdf (last accessed 5 April 2011).

[199] See Section 0.3 of this report for reference details of this case.

[200] Referring to Section 8a of the Anti-discrimination Act that stipulates the possibility of adopting "temporary equalising measures" (positive action measures – see Chapter 5 for more details).

better at school. It also stated that one of the reasons for separating the children was the fact that 50 non-Roma children had left the school when the classes were mixed and moved to one in another municipality with only non-Roma children.

The court stated that none of the arguments of the school could serve as an excuse for the discriminatory treatment of the Roma children and that this discriminatory treatment happened solely on the ground of the ethnicity of the children. In addition to declaring that the principle of equal treatment had been violated and that the discrimination against Roma children was grounded in their ethnicity, the court ordered the school to publish full and anonymised version of its ruling in a special professional teaching periodical and to remedy the illegal situation by mixing the classes. In justification of its ruling, the court also emphasised that the school "failed to carry out its obligations in the process of education when it favoured illegal segregated education over the development of inclusive education".

After an appeal by the defendant, the Regional Court in Prešov gave its decision on 30 October 2012 and substantially upheld the decision by the court of first instance *inter alia* in relation to the declaration that the principle of equal treatment had been violated on the ground of ethnicity and that illegal and illegitimate segregation took place, and that the school in question was obliged to rectify the illegal situation. The decision also addressed the wider societal context and offered its views and arguments on why segregation is unacceptable, on the meaning of human dignity in the context of (non-)segregation, on the importance and benefits of inclusive education and on the importance of *actio popularis*.

Prior to the publication of the first instance decision, there had been hardly any serious public debate about the issue of the segregation of Roma children in school (apart from NGOs which were and continue to be active in the field and are pushing for changes using various means), although judgements from the European Court of Human Rights in the cases of *DH v. Czech Republic and Orsus v Croatia* would be fully applicable to the situation in the Slovak educational system. It is also symptomatic that no Slovak government has so far really acknowledged and/or challenged the problem in its complexity.[201] The segregation case decided in

[201] Although the Deputy Prime Minister for Human Rights and National Minorities, representing Iveta Radičová's administration (8 July 2010-4 April 2012), expressed a very clear human-rights-based standpoint against segregation and an urgent need for inclusive education. See, for example http://www.vicepremier.sk/stanovisko-vicepremiera-sr-rudolfa-chmela-k-zneuzivaniu-temy-socialneho-vylucenia-v-predvolebnej-kampani/ (last accessed 1 April 2012). See also the transcription of a very powerful speech by the Deputy Prime Minister for Human Rights and National Minorities on inclusive education which can be found at: http://www.vicepremier.sk/prihovor-vicepremiera-sr-rudolfa-chmela-na-medzinarodnej-konferencii-predpoklady-inkluzivneho-vzdelavania-na-slovensku/ (last accessed 1 April 2012). On the other hand, the highest political representatives of the government which was in power until 8 July 2010, including the Prime Minister and the Deputy Prime Minister for Knowledge Society, European Affairs, Human Rights and Minorities, and then again from 5 April 2012 onwards, talked about the need to place Roma children in "residential schools". See, for example: http://www.sme.sk/c/5275245/fico-internatne-skoly-su-pre-romov-jedinou-cestou.html (last accessed

December 2011 attracted a lot of media attention which not only publicised the case but also served as a forum for heated debate by many of the parties involved. Here are some of the main features of these discussions:

- The media did not present voices which would approve of segregation as such. However, many of the opinions presented excused segregation as "the only practical solution" in the situation concerned. Many actually even argued that the segregation in the case of Šarišské Michaľany as well as in many other cases is much better for Roma children and that it is "helping them". Many of the opinions presented in the media described the human rights activists who brought the case to court and/or condemned segregation in principle as "naïve dreamers with no clue about reality".
- Even representatives of the government with direct responsibility for the education and/or integration of Roma people expressed supportive views on the situation of the school and on the standpoints of its official representatives (who condemned the decision and were refusing to apply it).[202]
- No-one really (apart from NGOs constantly pushing the concept of inclusive and integrated education) contested the current design of mainstream education and the current discriminatory structures in school education (including those which go beyond this decision). Many people actually saw the ultimate solution as being simply to mix all children, without taking other steps which would help to achieve integration and inclusion in practice.

On 10 August 2011, the government adopted the Revised National Action Plan for the Decade of Roma Inclusion 2005-2015 for 2011-2015[203] (the Action Plan; see Chapter 5 for more details). Although the implementation of some of the measures could bring some positive results, there are many systemic shortcomings which cast serious doubt on the overall potential of the Action Plan to bring about significant changes in terms of Roma inclusion. For example, on education the document reiterates the oft-repeated need for the implementation of measures (e.g. increasing the numbers of teaching assistants, changing the diagnostic tests for admission to special schools etc.) which do not challenge the discriminatory, majoritarian structures (e.g. a school system based on the existence of "normal" and "special" schools, on the need to have assistance for Roma children, instead of simply including and integrating all children).[204]

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24 March 2013) or http://www.sme.sk/c/6708417/fico-navrhuje-extremne-opatrenia-romske-deti-by-dal-do-internatov.html (last accessed 24 March 2013).

[202] See, for example www.sme.sk/c/6214393/nicholsonova-oddelovanie-romskych-deti-chapem.html or http://ivanco.blog.sme.sk/c/286026/Michalany-ako-precedens-s-nechcenymi-nasledkami.html (last accessed 5 April 2012).

[203] Revidovaný akčný plán Dekády začleňovania rómskej populácie 2005-2015 na roky 2011-2015, adopted by governmental resolution No 522/2011. The document is available at: www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=19992 (last accessed 1 April 2012).

[204] See, for example, measures 2.1 and 2.2.

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.

Section 5, Paragraphs 1 and 2(d) of the Anti-discrimination Act prohibit 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 to and provision of "goods and services including housing which are provided to the public by legal entities and natural persons [who are] entrepreneurs".

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

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 results 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 reports appeared in 2009 that some insurance companies completely refuse to insure older people (over 70) 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.

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 in the Anti-discrimination Act (see Chapter 2.1), including in housing.

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

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

However, the issue is not properly documented (and no attempt has been made by the government to research it adequately). In 2007, the Centre for Housing Rights and Evictions (an international organisation) identified Slovakia 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 1,400 people losing their homes), in which municipalities were ostensibly were resolving cases of tenants not paying their rent, but were often also pursuing various non-transparent economic interests, with Roma being displaced from homes in town and city centres. For example, municipalities selling attractive municipal homes from town and city centres, in which the Roma used to live as tenants, to entrepreneurs who either sharply increased the rents of the Roma tenants or immediately displaced them. 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 improved in 2008 and 2009[205] (probably due to pressures exerted by NGOs and media interest), numerous instances of this practice still took place in Slovakia during this period (for example, the eviction of six families from Čierna nad Tisou in April 2008 or three families from Dubnica nad Váhom in September 2008).[206]

[205] See for example Hojsík, M. 'Rómovia' in: Kollár, M., Mesežnikov, G., Bútora, M. (2009) *Slovensko 2008: Súhrnná správa o stave spoločnosti*, Bratislava, Inštitút pre verejné otázky, p 228.
[206] *Ibid,* and see also Slovenské Národné Stredisko pre Ludské Práva (2010): *Správa o dodržiavaní ľudských práv vrátane zásady rovnakého zaobchádzania*, Bratislava, Slovenské národné stredisko pre ľudské práva, pp. 61-65.

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

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

Another problem is that municipalities and towns often develop their local planning policies in an ethnically segregating manner.

In March 2005, the Committee on the Elimination of Racial Discrimination issued its opinion,[207] following a case brought by 26 Roma living in Dobšiná. They claimed discrimination in the field of housing when the municipal assembly cancelled its resolution approving a programme to build low-cost homes for Roma inhabitants of the town.

The municipality's "cancelling resolution" referred directly to a petition signed by 2,700 people of non-Roma origin who expressed their objection to the plan because of "an influx of inadaptable citizens of Gypsy origin from 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 Centre for Human Rights stated that the Anti-discrimination Act was not applicable because housing applied only to the provision of services by hotels or provision of accommodation as part of business activities.

One case of precedential importance is currently subject to judicial proceedings. The case concerns moving Roma families who previously lived in the centre of the town of Sabinov (Eastern Slovakia) in commercially attractive houses (mainly from the perspective of their location) to a new location one kilometre from the town boundary. The new place chosen by the municipality was totally isolated from the town and had very poor infrastructure. At the beginning of 2008 the plaintiffs' representative submitted a legal action claiming discrimination in provision of housing based on the 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

[207] Communication No. 31/2003: Slovakia. 10/03/2005, CERD/C/66/D/31/2003.

and to the International Convention on the Elimination of All Forms of Racial Discrimination.

In June 2009, 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 of ethnicity, and the outdated concept of formal equality).

However, following an appeal by the defendants, the plaintiffs' case was fully dismissed by the Regional Court in Prešov in May 2010. The legal representative of the Roma plaintiffs referred the case to the Supreme Court of the Slovak Republic which (in February 2012) overturned the regional court decision and referred the case back to it for further proceedings. In October 2012, the court of first instance (the District Court in Prešov) issued a new decision (now relating only to the extent of the appeal and the complaint submitted to the Supreme Court) and confirmed its original decision, in which it basically reiterated all of its original argumentation. 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, Act No 448/2008 Coll. on Social Services is of relevance. It contains provisions for various types of social services, including housing of which people with disabilities and older people may be beneficiaries (although disability as such is, in most cases, not mentioned explicitly as a criterion constituting entitlement to these services but is instead contained implicitly in the eligibility conditions, mainly through the enumeration of criteria which reflect a need for various kinds of assistance from other people). Thus, Section 34 provides for "facilities of supported housing" to which natural persons who are reliant on assistance from third persons, in accordance with criteria set out in a supplement to the act, are entitled, provided that these natural persons are able to live an independent life if they receive the relevant assistance.

Section 35 provides for "facilities for senior citizens" which include housing and to which natural persons are entitled who have reached pensionable age and are reliant on assistance from other people, in accordance with criteria set out in a supplement to the act, or who need the social services provided in these facilities on other serious grounds. A "social services home", defined in Section 38, should provide social services to natural persons with a specific degree of reliance (the most severe) on assistance from other people or to natural persons who are blind or whose vision is severely impaired (and who also have a certain level of reliance on other people).

A "specialised facility", defined in Section 39, provides *inter alia* housing for natural persons with a very serious degree of reliance on assistance from other people, in accordance with the supplement to the law, and who have specific types of disability (e.g. Parkinson's disease, Alzheimer's disease, AIDS, schizophrenia, multiple sclerosis). In addition to housing, services provided in these facilities also include

social counselling, assistance with exercising rights and legitimate interests, nursing services, catering and others).

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 to the wording of the two Directives.

The Anti-discrimination Act defines "genuine and determining occupational requirements" in Section 8, Paragraph 1, stipulating that "a treatment that is justified by the nature of occupational activities or by the circumstances under which such activities are carried out, if the ground constitutes a genuine and determining occupational requirement, shall not constitute discrimination, provided that the objective is legitimate and the requirement is proportionate".

There is no explicit reference to which particular grounds this exception is applicable to, although it can be assumed that it will apply to all the grounds mentioned in the Anti-discrimination Act (see Chapter 2.1). Nevertheless, there has not yet been any case-law on this matter and it will be interesting to see whether the courts will impose a strict interpretation of the "grounds" context that would follow from the wording of the Act ("on the ground of") or will apply the wording of the 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, Slovakia 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 breached the framework set out by both Directives in terms of grounds for the permitted differential treatment and missing rules on the objective justification of different treatment.

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, different 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 person's religion or belief constitute a fundamental legitimate[208] 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 organisation.[209] However, internal orders of religious organisations cannot violate generally binding legal acts, and the activity of religious organisations cannot contravene the Constitution or endanger the safety of citizens, public order, health, morality or rights and freedoms of others. In practice, this means, for example, 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 one known case relating to the conflict between the rights (and rules) of churches, religious or similar organisations and the rights of individuals who enter into real or potential relationships with these organisations. The case, decided by the Constitutional Court in 2001,[210] concerned a petitioner, a priest of the Roman Catholic Church, who had made a claim related to his employment rights (right to remuneration; however, the decision of the Constitutional Court does not make it clear whether the original labour dispute was discrimination-related) before the regular courts against his church which was also his employer. The general courts (district and regional courts in Nitra) dismissed the case, stating that they could not deal with it and apply Slovak labour legislation, due to the fact that ecclesiastical law has priority in this case.

The Constitutional Court refused this argumentation, confirming that all citizens have the right to access courts which make rulings pursuant to the laws of Slovakia (and

[208] A comma is missing between the words "fundamental" and "legitimate" in the act.
[209] 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".
[210] Decision of the Constitutional Court of the Slovak Republic of 31 January 2001, No. III. ÚS 64/00-65.

not to, for example, religious rules),[211] and holding that the district and regional courts in Nitra violated the applicant's right to seek protection of his rights before an independent and impartial court without discrimination (in accordance with Article 46 Paragraph 1 of the Constitution). The ground of discrimination that the court identified in the case was the fact that the plaintiff was a minister of a church and the Constitutional Court explicitly subsumed it under the concept of "other status", contained in the Constitution as one of the prohibited grounds of discrimination.

Anecdotal and empirical evidence (although there is no set of comprehensive data collected, for example, 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 faiths (corresponding to the faiths of the school concerned) by allocating extra points in entrance exams solely for their faith.

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?*

In addition to a teaching qualification, teachers of religion in state schools must obtain authorisation from the church or a religious society, issued by the relevant church/religious authorities. This follows the Agreement between the Slovak Republic and the Holy See on Catholic Upbringing and Education.[212] 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.[213] Due to the strict rules for church and religious societies´ registration in Slovakia, only Christian and Jewish churches and organisations are currently registered. Students at state secondary schools have the right to choose between religious education and ethics. The privilege to authorise teachers of religious education is exercised mostly by the two biggest churches – the Roman Catholic Church and the Evangelical Church.

[211] The Constitutional Court stated that "...[i]f a spiritual activity is carried out in the framework of a legal relationship, this kind of employment relationship, similar or civil relationship is ruled by the respective laws of the legal order of the Slovak Republic and the internal rules of churches and religious societies can be applied only within its framework".
[212] Published in the Collection of Laws under No. 394/2004 Coll.
[213] Published in the Collection of Laws under No. 395/2004 Coll.

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)?

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 regulating the service of armed forces, armed security services, armed services, the National Security Office, the Slovak Information Service and the Fire and Rescue Service".

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

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 regulating the service of armed forces, armed security services, armed services, the National Security Office, the Slovak Information Service and the Fire and Rescue Service". The exception does not apply to employees who carry out activities for the above institutions within the framework of employment relationships regulated by the Labour Code (e.g. auxiliary staff).

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 Slovak legislation draw a distinction between citizenship, "nationality" and ethnicity. "Nationality", according to the available commentaries, means an individual's membership of 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 a person's nationality (meaning "citizenship" under Slovak legislation) is permitted under the Anti-discrimination Act, insofar as it results from the legal requirements for entry and stay of aliens in Slovakia, including the treatment of these aliens, provided for under separate legal regulations.[214] This is not applicable to citizens of the European Union, a state which is party to the European Economic Area Agreement, Swiss citizens and stateless persons and their family members.[215]

Separate legal conditions regarding aliens apply mostly to the fulfilment of special requirements for granting permission for business activity, employment or study in Slovakia. Restrictions also apply to access to certain occupational positions and social assistance services. However, in other areas discrimination on the ground of nationality ("citizenship" under Slovak legislation) is prohibited under the legal regime of the Anti-discrimination Act. This follows from the open-ended list of prohibited grounds of discrimination contained in the Act which implicitly 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 the nationality of a person (meaning "citizenship" under Slovak legislation) is allowed under the Anti-discrimination Act insofar as it results from the legal requirements for entry and stay of aliens in Slovakia, including the treatment of these aliens, provided for under separate legal regulations.[216] This is

[214] Zákon č. 404/2011 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov, Zákon č. 480/2000 Z. z. o azyle a o zmene a doplnení niektorých zákonov v znení neskorších predpisov [Act No. 404/2011 Coll. on the Stay of Aliens and on amending and supplementing certain laws, Act. No. 480/2002 Coll. on Asylum and on amending and supplementing certain 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.
[215] Section 4 paragraph 1(a) of the Anti-discrimination Act.
[216] Zákon č. 404/2011 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov, Zákon č. 480/2000 Z. z. o azyle a o zmene a doplnení niektorých zákonov v znení neskorších predpisov [Act No. 404/2011 Coll. on the Stay of Aliens and on amending and supplementing certain laws, Act. No. 480/2002 Coll. on Asylum and on amending and supplementing certain 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.

not applicable to citizens of the European Union, a state which is party to the European Economic Area Agreement, Swiss citizens and stateless persons and their family members.[217]

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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 spouses or life partners are concerned. However, it can be argued that work-related benefits in respect of spouses or life 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 limited to those employees who are married, this would constitute unlawful discrimination.

In addition, 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

[217] Section 4 Paragraph 1(a) of the Anti-discrimination Act.

duty of the employer to act in conformity with the principle of equal treatment and refers to the Anti-discrimination Act (which contains the above-mentioned grounds). This confirms the above interpretation (though it has not yet been confirmed by the 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 which are discriminatory (either directly or indirectly or both) in relation to family/marital/personal status. Pursuant to Section 141 Paragraph 2(d) of the Labour Code, an employee is entitled to paid leave of an overall duration of three days in the case of the death of their husband or wife. In the case of the death of a cohabiting opposite-sex partner, or a cohabiting same-sex partner, there is no entitlement to any leave.[218]

Work-related family benefits are usually not part of an employment contract. They are often incorporated into collective agreements or the internal rules of the employer and are known only to the employees concerned. Many employers provide benefits to "family members", who are usually considered to be the 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 from anecdotal evidence to be discriminatory, is not supported by any official data. The rules related to family benefits have never been challenged as 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 may 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 may be argued that, if an employer provided benefits limited to those employees with opposite-sex partners, this would constitute unlawful discrimination.

In addition, 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

[218] In Slovakia, there is no legislation on marriage, civil union or other types of cohabitation of same-sex partners. A bill submitted to the parliament in 2012 on registered partnerships for same-sex couples was rejected at the first reading.

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 a prohibited ground). This confirms the above interpretation (though it has not yet been confirmed by the 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 which are discriminatory (either directly or indirectly or both) with regard to sexual orientation.

Pursuant to Section 141 Paragraph 2(d) of the Labour Code, an employee is entitled to paid leave of an overall duration of three days in the case of the death of their husband or wife. In the case of the death of a cohabiting same-sex partner (where there is no possibility to officially register the partnership) there is no entitlement to any leave. Similarly, the Labour Code grants time off from work when a child is born to an employee – for the time necessary to transport the child's mother to hospital and back (but not for the time needed to attend the birth).[219] This practically covers only male employees whose partners (whether marital or not) go to maternity hospitals – since lesbian couples do not have the right to joint parenthood (or the right to register their partnership). This thus undoubtedly discriminates against non-married lesbian couples.

Work-related family benefits are usually not part of an employment contract. They are often incorporated into collective agreements or the internal rules of the employer and are known only to the employees concerned. Many employers provide benefits to "family members", who are usually considered to be the 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 from anecdotal evidence to be discriminatory, is not supported by any official data. The rules related to family benefits have never been challenged as 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 armed forces, armed security services, armed services, the National Security Office, the Slovak Information Service and the Fire and Rescue Service.[220] 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

[219] See Section 141 Paragraph 2(b) of the Labour Code.
[220] Section 4, Paragraph 1(b) of the Anti-discrimination Act.

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 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 a special law is required for the performance of work, the employer may only conclude an employment contract with a natural person who has the health or mental capacity to perform such work, or with a natural person meeting other preconditions 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)

The other exceptions regarding disability in relation to health and safety in national law have the form of positive action for people with disabilities (but at the same time also for women, parents and young people) 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 people with disabilities. This constitutional provision is also reflected in Article 8 of the Labour Code's Basic Principles, which stipulates 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 no case-law yet 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 national law.

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

4.7.1 Direct discrimination

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 Court of Justice of the European Union in the Case C-144/04, Mangold and Case C-555/07 *Kucukdeveci?*

a) 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 of:

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

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

Depending on the character of the relevant legislation, and also depending on the judicial practice that has developed on the issue over the course of time (although the courts have only ruled on one case decided on this matter, see below), it is more likely that the latter of the approaches (the introductory sentence simply provides a general context for the exceptions specified in the three points) will apply under the current wording of Section 8 Paragraph 3 of the Anti-discrimination Act. For example, pursuant to Section 5 Paragraph 1(a) 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 offer 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 outlined above is a judgement of the District Court Banská Bystrica of 20 November 2007[221] (upheld by a judgement of the Regional Court Banská Bystrica of 27 March 2008)[222] where the plaintiff sued a potential employer for discrimination on the ground of age. Following legislation allowing for subsidies for employers for the creation of workplaces for so-called "disadvantaged job applicants", in this case a citizen under the age of 25 who had completed their training for an occupation through a daily form of study less than two years ago and had not yet acquired his or her first regularly paid job,[223] and a subsequent contract with the labour office granting the subsidy, the potential employer issued an advertisement for a corresponding employee (i.e. someone under 25 years of age).

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 based on age) was in itself sufficient reason to state that "the defendant has therefore pursued a legitimate aim and acted in accordance with special regulations" (i.e. the court did not question the nature of the legislatively provided exception as such; 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,[224] although extension of the employment relationship is possible for one year (even repeatedly, but with no details on the criteria for doing so). It is very likely that the provision is in violation of CJEU case-law on exceptions relating to age (see Sections 4.7.4 c) and f) for more details). In addition, the provision also has the potential to be indirectly discriminatory on the ground of sex/gender, as the apparently neutral provision may have a greater impact on women, mainly due to their generally lower positions in academic hierarchies (because they tend to have more breaks in their careers than men during their working lives, due to caring responsibilities). Thus, forcing them to terminate their employment at a university at the age of 70 may reduce their overall chances to assert themselves through academic performance

[221] No 8C/119/2006 – 107.
[222] 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 as 27 March 2007. However, this would not have been possible as the district court issued its decision on 20 November 2007 and regional court decisions always follow district court ones.
[223] Pursuant to a then valid Section 8 Paragraph 3a of the act No 5/2004 Coll. on Employment Services.
[224] This age limit used to be 65 years prior to the adoption of an amendment to the Act on Higher Education of 27 April 2010, in effect from 1 October 2010. The reason for the amendment presented by its proponent (a coalition MP at the time the act was adopted) was a "lack of professionals guaranteeing study programmes who had ceased their function due to reaching the age of 65, which does not only significantly endanger future students but also students who are already enrolled in study programmes and areas of study". Almost no arguments related to discrimination appeared in the public debate of the amendment.

when compared to men. The unclear and basically arbitrary conditions for extending the contracts of university teachers over the age of 70 may, in fact, even strengthen the sex/gender discriminatory potential of the provision (and can also have other discriminatory impacts in relation to any other ground of discrimination, as they allow arbitrary decision-making about which employees have their contracts extended).

There are also other similar cases in the Slovak legal system where an employment relationship must be terminated on reaching the age of 65 (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 be disadvantaged compared with a full-time employee.[225] This provision has remained as an unconditional anti-discrimination provision relating to part-time work, following an amendment of the Labour Code effective from 1 March 2010[226] which abolished certain previously existing discriminatory provisions for part-time workers working less than 15 hours per week.[227]

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 two months). Since it is very likely that the most numerous group working part-time were (and still are) older employees over retirement age and women, the abolition of this legal rule certainly contributed to removing the potential for legalised indirect discrimination of workers on the ground of age, sex and possibly also other grounds (for example, disability, family status).

b) 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 of fixing age limits for entitlement to old age pensions and disability pensions, including the fixing of different age limits in such schemes for employees or groups of employees, and the use of different calculation methods for these pensions based on age criteria, provided that this does not result in discrimination on the ground of sex.[228] 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. Different treatment on the ground of age is permitted in areas regulating the service of members of the armed forces,

[225] Section 49 Paragraph 5 of the Labour Code.
[226] Amendment of the Labour Code No 574/2009 Coll.
[227] Section 49 Paragraph 6 of the Labour Code, as effective before 1 March 2010.
[228] Section 8, Paragraph 4 of the Anti-discrimination Act.

armed security services, armed services, the National Security Office, the Slovak Information Service and the Fire and Rescue Service.

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 is obliged to create favourable conditions for the overall development of the physical and mental capabilities of young employees (the Labour Code uses the term "juvenile employees"), including by adapting their working conditions. A young employee is, according to Section 40, Paragraph 3 of the Labour Code, defined as an employee under the age of 18. When dealing with significant matters concerning young employees, employers must closely co-operate with their legal guardians. Employers are obliged to keep records on young employees they employ.

Any notice given to a young employee, or termination of employment with immediate effect on 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 jobs which are appropriate to their physical and mental development and do not jeopardise their morality. In addition, they must provide them with enhanced care at work.[229]

The Labour Code, Sections 174-175, stipulates the prohibition of night work and standby duty for young employees. Young employees over the age of 16 may exceptionally perform night work not exceeding one hour if it is necessary for their vocational training. The employer must not apply a system of wages and benefits which could result in endangering the health and safety of young employees, due to increased work performance. If a young employee is prohibited from carrying out the work for which he or she is qualified, the employee is obliged to assign him or her to other work, preferably corresponding to their qualifications, until the young employee is permitted to carry out the work concerned.

[229] Sections 172 and 173 of the Labour Code.

A young employee must not be assigned to work which is inadequate, dangerous or harmful to their health, due to their age-related, specific anatomical, physiological and psychological features. Lists of the kinds of work and workplaces forbidden for young employees are set out by a government regulation.[230] Moreover, the employer is forbidden to assign young employees to work which exposes 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 contained in the Labour Code apply to the prohibition of the immediate dismissal of an employee on maternity or parental leave, a solitary employee[231] responsible for caring for a child under the age of three or an employee who personally cares for a relative or other close person with a severe disability (Section 68 Paragraph 3).

For an employee with a disability, a pregnant woman, a woman or man permanently caring for a child under three or a solitary employee who permanently cares for a child under 15, working time may only be arranged unevenly[232] 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 with a severe disability).

The employer is obliged to excuse the absence from work of an employee for periods of maternity leave and parental leave, periods for attending to a sick family member and periods for caring for a child under the age of ten 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 Paragraph 1). When designating employees to work shifts, the employer is obliged to take into account the needs of pregnant women and of women and men caring permanently for children. A pregnant woman, a woman or man caring permanently for a child under the age of three or a solitary man or woman caring permanently for a child under the age of fifteen may be employed for overtime work only with their consent. Standby work must be agreed upon with them (Section 164 Paragraphs 1 and 3; and note again the absence of this

[230] 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].

[231] 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 Paragraph 1) or a "solitary man or a woman for other substantive reasons" (Section 40 Paragraph 2).

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

benefit in relation to employees who personally care for relatives or close persons with a severe disability).

If a pregnant woman or a man or a woman caring permanently for a child under the age of 15 requests a reduction in working hours or other arrangement to the fixed weekly working hours, the employer is obliged to accommodate their request, if this is not prevented for substantive operational reasons (Section 164 Paragraph 2). This provision also applies to an employee who personally cares permanently 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 healthcare 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 still attending school or solitary citizens caring for children still attending school, people over the age of 50 and people under 25 who have completed their training for an occupation through a daily form of study less than two years ago and have not yet acquired their first regularly paid job.[233]

In accordance with this Act, the government may provide a job seeker under the age of 26 who has completed secondary school or university studies a so-called practical training allowance aimed at widening the opportunities for this person to find a job within the labour market. The practical training is carried out in the workplace of a particular employer and corresponding to the level of education attained for a period of no less than three months and no more than six months. During the practical training the young trainee receives a state-funded monthly allowance of the subsistence amount for one adult person set by a special regulation (€194.58 as of July 2012).[234] The authors have no statistical data available on the monitoring and evaluation of the utilisation of this type of support.

The Act also introduced a "subsidy for the employment of a disadvantaged job seeker".[235] An employer who creates a new workplace and employs a "disadvantaged job seeker" is entitled to a subsidy of up to 30% (depending on the region) of the monthly cost of labour of one employee, calculated on the basis of the average wage of an employee in the national economy.

As far as people with caring responsibilities are concerned, the Labour Code protects employees taking care of a close relative with a serious disability. Apart from the

[233] See Section 8 of the Act No 5/2004 Coll., as amended.
[234] See Section 51 of the act.
[235] 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].

prohibition of immediate dismissal (see above), rescheduling of working hours is permissible only upon agreement with the employee concerned.

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 the justification of direct discrimination in employment on the ground of minimum or maximum age requirements are set in Section 8 Paragraph 3(a) of the Anti-discrimination Act (See Chapter 4.7.1).

In practice, it quite often happens that one of the criteria listed in job advertisements published as part of recruitment procedures is an indirect determination of the acceptable age, by means, for example, of the length of professional work experience required or a note “we have a 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 legislative requirements are concerned, there are several laws stipulating minimum or maximum ages in employment relationships. None of the laws have been subject to specific public discussion as to whether they are compatible with Directive 2000/78. The Constitution of the Slovak Republic regulates the requirements applicable to the holders of high public office, including their age. This applies to the President of the State, for whom a minimum age of 40 has been set, to judges, judges of the Constitutional Court, the ombudsperson and members of parliament (the National Council of the Slovak Republic).[236]

Other laws regulate, for example, the minimum age limit for a work assistant for a person with a disability (18 years),[237] the minimum age of a prosecutor (25 years),[238] the general prosecutor (40 years)[239] and judges (30 years – see also Chapter 4.7.1).[240] The President may, upon a recommendation of the Judicial Council, withdraw a judge who has reached the age of 65.[241] Seventy is the 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

[236] See Articles 74, 103, 134, 145 and 151a of the Constitution of the Slovak Republic.
[237] Section 59 Paragraph 3 of the Act No 5/2004 Coll. on Employment Services.
[238] § 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 prosecutor candidates as amended].
[239] § 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].
[240] § 5 ods. 1 písm. a) zákona č. 385/2000 Z. z. o sudcoch a prísediacich 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 acts].
[241] Art. 147, paragraph 2 (b) of the Constitution of the Slovak Republic.

minimum age of 15 for a natural person to be subject to the rights and duties of an employee. However, the employer must not agree upon a starting day for work before the applicant has completed compulsory school education.[242] Civil servants must be at least 18 years old. The law also stipulates a minimum age for obtaining a permit to run a business (18 years).[243]

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 of entitlement to a state pension is fixed by law. Under the Social Insurance Act[244] (effective from January 2004), the pensionable age is fixed equally for men and women at the age 62 years. However, this provision will only be fully implemented from 2014. Due to changes in the retirement security scheme the Social Insurance Act simultaneously introduced transitional provisions, setting the retirement ages for men and women from 2004 differently and progressively, starting at 60 years for men and 53 to 57 years for women (depending on the number of children they have).[245]

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

[242] Section 11 of the Labour Code.
[243] Section 6 of Act No. 455/1991 Coll. on Licensed Trades (Small Business Act), as amended.
[244] Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov [Act No 461/2003 Coll. on Social Insurance, as amended].
[245] Section 65 of the Social Insurance Act. The law envisages the gradual unification of retirement ages for men and women; the retirement age for women in 2014 will be the same as for men - 62 years, without taking into account the number of children. The retirement age for men of 62 years has been in force since 2006.

In special circumstances an individual can start to collect their pension early.[246] However, as of 1 January 2011, an individual who wanted to start to collect their pension early could not do so if they were compulsorily insured, for the purposes of their pension, as an employee or a self-employed person[247] (i.e. if they worked under an employment contract or as a self-employed person; if, however, they worked on labour-related contracts outside an employment contract – which are limited in terms of the amount of time that can be spent with this type of work –[248] the collection of an early pension was allowed). As of January 2013, however, the simultaneous collection of an early pension and a wage (including payments for services carried out by people who are self-employed) which is subject to compulsory pension insurance, is no longer possible.[249]

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 should be noted 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 supplementary source based on a voluntary agreement between employers and employees. For this reason, an individual can collect a pension and still work.

The functioning of the occupational social security schemes in Slovakia is regulated by Act No 650/2004 Coll. on Accessory Pension Saving[250] (see Chapter 3.2.3 for more details on the Act).

Pursuant to Section 16 Paragraphs 1 and 2 of the Act on Supplementary Pension Saving, a participant in this supplementary pension saving scheme who requests to receive payments from a supplementary pension shall receive this supplementary pension in the event that their supplementary insurance lasted for at least the

[246] Section 67 of the Social Insurance Act. One of the conditions is that an individual was insured for at least 15 years.
[247] See Section 67 Paragraph 4 of the Act No 461/2003 Coll. on Social Insurance.
[248] Labour-related contracts outside employment contracts can be concluded by employers "in order to perform their tasks or to provide for their needs … for work that is limited in its results ("work performance agreement") or occasional activities limited by the type of work ("agreement on work activities", "agreement on temporary work for students")". Working under a "work performance agreement" is limited to a maximum of 350 hours a year per employee working for a particular employer, and working under an "agreement on work activities" is limited to a maximum of 10 hours per week. See Sections 223-228a of the Labour Code.
[249] See Section 67 Paragraph 4 of Act No 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov [Act No 461/2003 Coll. on Social Insurance], as amended by Act No 252/2012 Coll.
[250] 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 Supplementary Pension Saving and on Amending and Supplementing Certain Laws].

minimum period stipulated by the welfare plan (which cannot be shorter than 10 years) and provided they have 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, civil servants had to retire at the age of 65.[251] With the adoption of 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 Act No 131/2002 Coll. on Higher Education which stipulates that employment of university teachers terminates at the end of the academic year in which they reach the age of 70. Although this provision allows the employment relationship of university teachers aged over 70 to be extended for one year (even repeatedly, but with no details on the criteria for doing so), the university teacher whose contract is not extended has practically no other option than to retire. See Chapter 4.7.3 for more details.

The possibility of a state-imposed mandatory retirement age can, in certain circumstances, also apply to judges. Although there is no mandatory retirement age for judges, the President can, upon a proposal from the Judicial Council, remove a judge from office if they have reached the age of 65. It is unclear from the law whether the Judicial Council is obliged to propose to the President the removal from office of every judge who reaches the age of 65. There are no criteria in the Constitution or in law for the President to follow when deciding whether to remove from office a judge who has reached the age of 65.[252]

A similar situation emerges with prosecutors. The Prosecutor General can, pursuant to Section 15 Paragraph 3b) of Act No 154/2001 Coll. on Prosecutors and Legal Trainees of the Prosecutor's Office, remove a prosecutor from office if they have reached the age of 65. The law does not stipulate any further conditions for the Prosecutor General to decide whether or not to remove the prosecutor concerned from office.[253]

[251] Section 14 and 43 (both abolished) of Act No. 312/2001 Coll. on the Civil Service and amending and supplementing certain acts, as amended.
[252] See Article 147 Paragraph 2 b) of the Constitution of the Slovak Republic (Act No 460/1992 Coll.), Section 18 Paragraph 2b) and Section 18 Paragraph 3 of the Act No 385/2000 Coll. on Judges and Lay-judges and on amending and supplementing certain laws.
[253] See Sections 14-17 of the Act No 154/2001 Coll. on Prosecutors and Legal Trainees of the Prosecutor's Office for more detailed information.

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)?

The right to protection from unfair dismissal is not lost on reaching pensionable age. An employer may not therefore terminate a contract after an employee attains pensionable age on the ground of age alone. This means that anyone can continue in employment so long as they enjoy sufficient capacity (except for the age limitations mentioned above and in Chapter 4.7.3, the limitations connected to early pensions – see Chapter 4.7.4 (a) and, of course, except for cases such as incompetence or misconduct which are generally legally accepted grounds for job termination by an employer). Thus, the state pensionable ("retirement") age stipulated by Slovak legislation simply refers to pension entitlement 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 of fixing different retirement ages for men and women are not considered to be discriminatory.[254]

f) Is your national legislation in line with the CJEU case law on age (in particular Cases C-229/08 Wolf, C-499/08 Andersen, C-144/04 Mangold and C-555/07 Kücüdevici C-87/06 Pascual García [2006], and cases C-411/05 Palacios de la Villa [2007], C-488/05 The Incorporated Trustees of the National Council on Ageing (Age Concern England) v. Secretary of State for Business, Enterprise and Regulatory Reform [2009], C-45/09, Rosenbladt [2010], C-250/09 Georgiev, C-159/10 Fuchs, C-447/09, Prigge [2011] regarding compulsory retirement.

The national legislation seems to be in accordance with the CJEU case law, apart from the cases listed in section c) of this chapter. In the case of all the occupations listed in section c) (university teachers, judges, prosecutors), the law might be following a legitimate aim (quality of performance of public service, generational balance etc.). However, it does not require that the person affected by the

[254] Section 8, par. 7(a) of the Anti-discrimination Act.

compulsory dismissal be entitled to an old-age pension – which is in conflict with the case-law listed in the question (see e. g. case *Palacios*). In addition, the conditions for non-renewal of a labour contract (in the case of university teachers) or for removing a judge or prosecutor from office, are arbitrary and non-transparent – which certainly does not meet the requirement for reasonableness of the measures in question and the condition for proportionality of the means used.

4.7.5 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 Slovak law, constitute an aspect to be considered when reducing the number of employees through redundancy.

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

In principle, the redundancy payment does not depend on the age of the employee concerned. However, as the calculations of the redundancy payment depend on the length of employment with a particular employer, the age of the worker can indirectly influence the sum of the redundancy payment (the longer the employment relationship, the higher the redundancy payment).[255]

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, Paragraph 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 people's rights, freedoms and interests protected by the law. This provision, which did not strictly follow the criteria set up by Directive 2000/78, was abolished by 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.

[255] See Section 76 of the Labour Code, as amended by Act No 361/2012 Coll.

4.9 Any other exceptions

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

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

The Anti-discrimination Act also stipulates an objectively justified exception ("differential treatment") which lies in providing goods and services exclusively or in preference to representatives of one sex. The aim must be legitimate and the means must be proportionate and necessary.[256]

Section 161 Paragraph 1 of the Labour Code states that "pregnant women, mothers until the end of the ninth month after they have given birth and breastfeeding women must not be employed to do work which is physically inappropriate for them or may cause them physical harm. Lists of work and workplaces which are prohibited for pregnant women, mothers until the end of the ninth month after they have given birth and breastfeeding women shall be stipulated by the Regulation of the Government of the Slovak Republic."[257] The Labour Code further contains provisions ensuring in particular protection of pregnant women, parents caring for children and mothers caring for a child under the age of nine months. These provisions in fact justify differential treatment based on sex, motherhood and parenthood.

According to another provision of the Labour Code, an employer is obliged to establish, maintain and improve facilities for women as well as facilities for their personal hygiene. If a pregnant woman, a mother before the end of the ninth month following childbirth or a breastfeeding woman performs work that is prohibited to pregnant women, or which, according to medical opinion, threatens her health, the employer is 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 must be provided with a compensation benefit. If the transfer of such women to other

[256] Section 8 Paragraph 7 of the Anti-discrimination Act.
[257] 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 breastfeeding 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 breastfeeding women and setting certain obligations for employers when employing such women].

suitable work is not possible, the employer is obliged to provide her with time off and wage compensation.[258]

Section 166 of the Labour Code sets out the rules for maternity and parental leave entitlement. An employer is obliged to provide a woman and man with parental leave of an overall length of up to three years (which can be taken until the child reaches the age of five) or of an overall length of up to six years (which can be taken until a child with a long-term unfavourable state of health reaches the age of eight).

[258] See Sections 160-162 of the Labour Code on women or men caring for children for more details.

5 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 which explicitly derogate from the rules of rigid formal equality, permitting measures of positive action for women, pregnant women, young people and people with disabilities. These categories of people enjoy more extensive health protection and special working conditions.[259] Before the adoption of the Anti-discrimination Act (in 2004), the Constitutional Court ruled in one case related to equal treatment that it is forbidden to favour or to put at a disadvantage certain groups of citizens.[260] 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 the majority population) in constituencies in which ethnic Slovaks were a minority. The Constitutional Court abolished these provisions with reference to the general anti-discrimination principle (see Annex 3).

In another case the Constitutional Court, while examining the constitutionality of a legal provision regulating work by students working on a temporary basis, stressed: *"Legal provisions favouring certain groups 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 there are 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, with certain fundamental rights, directly anticipates preferential treatment for certain groups of natural persons (women, young people and people with disabilities) and gives a constitutional basis to this favouritism."*[261]

The debate on the constitutionality of positive action intensified after the adoption of the Anti-discrimination Act in 2004. Section 8 of the Anti-discrimination Act, entitled "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 equalising measures to prevent disadvantages linked to racial or ethnic origin may be adopted."*

[259] 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".
[260] See decision of the Constitutional Court PL US 19/1998 of 15 October 1998.
[261] See decision of the Constitutional Court PL 10/02 of 11 December 2003.

On 6 October 2004 (three months after the Anti-discrimination Act entered into effect), the Government of the Slovak Republic submitted a petition initiating proceedings before the Constitutional Court on the constitutional conformity of this provision.[262] The petition argued that only the Constitution can make an exception to the principle of equality, as Article 38 of the Constitution does for women, minors and people with disabilities in relation to 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 18 October 2005 that the former Section 8(8) of the Anti-discrimination Act is not in compliance with:

- Article 1 Paragraph 1 of the Constitution ("The Slovak Republic is a sovereign, democratic state governed by the rule of law. It is not linked to any ideology or religion.");
- Article 12, first sentence of 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 harmed, discriminated against or favoured on any of these grounds.").[263]

According to the decision of the Constitutional Court, the disputed provision was in contradiction with Article1 (1) (Principle of the rule of law) because:

- "The disputed provision of the Anti-discrimination Act, by taking positive measures, which are also specific equalising measures, constitutes more favourable treatment (positive discrimination) of persons linked to racial or ethnic origin."
- "It does not set out, even in outline, criteria for taking specific equalising measures [author's note: who can be subject to positive action and what kind of action can be taken]. Therefore it interferes in an unconstitutional manner with

[262] The submission was approved by 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 Article 1 Paragraph 1 of the Constitution and Article 12 Paragraphs 1 and 2 in conjunction with Article 35 Paragraphs 1-3; Article 36; Article 37 Paragraph 2; Article 39 Paragraphs 1 and 2; Article 40 and Article 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.

[263] Decision of the Constitutional Court, PL. ÚS 8/04, http://www.concourt.sk/.

legal certainty in legal relationships...” (risk of arbitrary, deliberate and diverse interpretations and applications of the equalising measures).

- There are no rules limiting measures in terms of duration, that is, it could become a basis for discrimination (so-called “reverse discrimination”) of other groups without there being a constitutional basis for it.

The Constitutional Court did not reject the application of equalising measures (positive action) in principle. However, it stated that taking such action must have a constitutional basis, which is not the case when speaking about racial and ethnic origin. The Constitutional Court was of the opinion that the only constitutional basis for positive action is in Article 38 (Paragraphs 1and 2) of the Constitution under which women, minors and persons with disabilities may enjoy more extensive health protection at work and special working conditions. In accordance with Article 38 of the Constitution, minors and people with disabilities also have the right to special assistance in training.[264]

The decision of the Constitutional Court was disputed, even within the plenary of the Constitutional Court itself. Five of the 11 judges expressed a dissenting opinion on 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 was there criticism of supportive measures e.g. for older workers within the labour market which was similarly not directly covered in the Slovak Constitution.

A new framework provision (Section 8a) for the adoption of positive action measures (entitled “temporary equalising 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,[265] also contained racial and ethnic origin, membership of a national or ethnic and sex among the grounds upon which positive action would have been allowed,[266] it was restricted in the Parliament (with the approval of the Deputy Prime Minister for Human Rights and Minorities) to the above-mentioned grounds.

[264] 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.
[265] A representative of NGO coalition was a member of the interdepartmental committee for drafting the amendment.
[266] 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 in its wording effective as of 1 April 2008, temporary equalising measures can only be adopted by state bodies. Their aim shall be "securing equal opportunities in practice". Such temporary equalising measures shall mainly be:

- measures consisting of supporting the interests of representatives of the disadvantaged groups in employment, education, culture, healthcare and services;
- aimed at generating equality in access to employment and education, chiefly through targeted preparatory programmes for representatives of the disadvantaged groups or through the dissemination of information about these programmes or through opportunities to apply for jobs or places in the education system.

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 which adopted them must stop them.

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

There has been a lot of criticism about the legislative concept of the temporary equalising measures as enshrined in the Anti-discrimination Act in its wording effective as of 1 April 2008. One of the main objections is the concept of the grounds for 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 implied by the unclear and misleading concept of "social and economic disadvantage" (which itself is the result of discrimination based on race/ethnicity, sex etc. and not its cause), it is difficult to draft and adopt properly tailored measures which would address and resolve the needs stemming from racial, ethnic (and other relevant) discrimination.

Secondly, there is an almost absolute lack of monitoring and evaluation policies (including collection of data – although this is not hindered legislatively and is even implicitly required – see Chapter 2.3.1) on the part of the state bodies. This basically excludes the possibility of adopting measures which 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 subsequently meet the monitoring and evaluation requirements (see the introductory section on positive action above).

Thirdly, only state bodies are entitled to adopt positive measures, which rather reflects a top-down approach and denies the possibility for bottom-up situationally and contextually knowledgeable and needs-based solutions (which could be adopted, for example, by municipalities, employers, educational institutions, NGOs etc.).

By the end of 2009, the Slovak National Centre for Human Rights had received no information about measures which would be adopted pursuant to Article 8a.[267] In 2010 and 2011, the Centre obtained some information about a few measures on request[268] (i.e. the state bodies did not inform the Centre of their measures on their own initiative, as required by law). However, it can be said in general that, of these few measures, only a small portion can be perceived as really falling under the ambit of Section 8a of the Anti-discrimination Act. Before the deadline for submitting this report (March 2013), the Centre stated that it did not have information on temporary special measures adopted by state bodies but that these would be included later (by 30 April 2013) in the Centre's annual report on human rights observance, including the principle of equal treatment.[269] Based on the Centre's report on human rights observance in 2010 and on the information provided by it to one of the authors of this report, the following main conclusions about the implementation of the provision enabling the adoption of temporary equalising measures in Slovakia can be made:

- Not all relevant state bodies have a clear understanding of the meaning of the legislative provisions enabling the temporary equalising measures and/or the values underpinning them.[270]

[267] Response to a request for information filed by a co-author of this paper with the Slovak National Centre for Human Rights.

[268] The request by the Centre came in connection with drafting reports on human rights observance, which the Centre publishes regularly at the end of April. The information about the actual measures allegedly taken by the individual state bodies came from the Report on the Observance of Human Rights, including the Principle of Equal Treatment, in the Slovak Republic (pp. 137-143; also available at www.snslp.sk/CCMS/files/SPR%C3%81VA_za_rok_2010.pdf – last accessed 27 March 2012) and from the Centre's response to a request for information (filed by one of the co-authors of this report) provided to one of the co-authors of this report on 23 March 2012.

[269] A decision by the Slovak National Centre for Human Rights of 11 March 2013 addressed to one of the authors of this report, following an official request for information on the temporary equalising measures reported to the Centre by the bodies adopting them.

[270] For example, the Ministry of Construction and Regional Development stated that it has not proposed or implemented any temporary equalising measures (see p. 5 of the response to a request for information, referred to in Footnote 268), although it has adopted a policy document which should enable the construction of rental apartments for marginalised groups, including marginalised Roma communities (see Chapter 5 b) for more information). Another example is the Ministry of Agriculture and Rural Development which stated that in its operational programmes, the Rural Development Programme 2007-2013 and Fishing Industry 2007-2013, "the principle of equality of opportunity is enshrined and the conditions are established so that no group of inhabitants will be disadvantaged or … advantaged, and therefore no equalising measures need to be designed" (*ibid*, p 3). On the other hand, the Ministry of Labour, Social Affairs and Family perceived as temporary equalising measures that are in no way to be perceived as such – such as support for women with multiple disadvantage under an action plan on violence against women (see the report on the state of human rights

- The adopted measures do not stem from data-based analyses (ethnicity, disability and other data connected to protected grounds are in general not collected in Slovakia – see Chapter 2.3.1 d) for more detail) but rather from general knowledge about the existing problems and/or from wider policy documents.
- Whether the statutorily required monitoring and evaluation of the adopted measures is carried out is questionable, as is the quality and reliability of this monitoring and evaluation.

On 5 February 2013 (and effective from 1 April 2013), an amendment to the Anti-discrimination Act was adopted which amended the provision on temporary equalising measures (Section 8a of the Act).[271] The differences from the wording of the provision in force until 31 March 2013 (see the wording described above) are as follows (with the rest of the provisions in force until 31 March 2013 remaining unchanged):

- The bodies entitled to adopt the measures are "public administration bodies" and "legal entities"[272] (instead of state bodies which were the only bodies authorised to adopt such measures until the amendment came into force).
- The list of grounds for adoption of these measures was widened to include racial and ethnic origin, belonging to a national minority or an ethnic group, and gender and sex. The misleading concept of "social and economic disadvantage" was removed as a ground for the adoption of such measures.
- One new type of measure representing the open-ended list of possible temporary equalising measures was added, in particular *"measures focused on removing social or economic disadvantage that disproportionately affects representatives of disadvantaged groups"*.[273]
- The provision which allowed for measures *"aimed at generating equality in access to employment and education mainly through targeted preparatory programmes for representatives of the disadvantaged groups or through the dissemination of information about these programmes or through opportunities to apply for jobs or places in the education system*" has been reformulated and widened to allow measures *"aimed at generating equality in access to employment, education, **healthcare and housing**, mainly through targeted*

observance in the Slovak Republic in 2010 quoted in FN 268), or state support to municipalities and higher regional units who were unable to financially cover all their statutory duties connected to providing social services for the general population.

[271] The amendment went through a so-called "shortened legislative procedure" *("skrátené legislatívne konanie")* with only seven working days for other ministries (the amendment was submitted by the Ministry of Justice – on 28 September 2012) and the public to comment (the regular period for providing comments is three weeks). Thus, in a case of a legislative change as important as positive action measures, the stakeholders concerned did not have a real chance to be involved in a discussion on this issue (and there was also no discussion with the actors concerned before the submission of the bill).

[272] See Section 9a Paragraph 1, as amended by law No 32/2013 Coll.

[273] See Section 9a Paragraph 1 a) of the Anti-discrimination Act, as amended by law No 32/2013 Coll.

training programmes for representatives of the disadvantaged groups or through the dissemination of information about these programmes or through opportunities to apply for jobs or places in the education system"[274] (i.e. healthcare and housing have been added as applicable fields).

It can be concluded from the provision adopted that it is much less restrictive and has a much greater chance of providing a basis for the adoption of efficient and meaningful measures than the provision in force until 1 April 2013. Racial and ethnic origin, sex and gender, as well as belonging to an ethnic minority, are now explicit grounds for the adoption of such measures. The measures can now be adopted by public administration bodies in general and not only by "state bodies". Legal entities in the broadest sense (such as employers) are also entitled to adopt measures.

A new form of these measures was added to include measures for "removing social and economic disadvantage" – which is not specified in more detail and could also include quotas. The training programmes and information about these programmes can now also be implemented in the field of healthcare and housing.

However, there are a number of negative aspects. The first disadvantage of the provision – and a point for justified criticism – is the inherent stereotype relating to the disadvantaged groups who should be the beneficiaries contained in the provisions (in the sense that "these groups are not interested in education/culture/healthcare" etc.).

The second grave weakness of the provision is that it preserves the majoritarian paradigm: the groups who will benefit from the positive measures are supposed to receive information and training in order to be "prepared" to benefit from majoritarian education, healthcare etc. In particular, with reference to point c) of Paragraph 1 of Section 8a, it can be seen that the legislators did not really take account of adjusting education, healthcare etc. to the needs of the groups in question, but instead rely on the disadvantaged groups adjusting to the majoritarian mainstream system. What is more, it is very questionable (referring again to Section 8a Paragraph 1 c) whether informing people about their employment, healthcare or housing "opportunities" will really equalise their chances of obtaining these social goods – especially if the main hindrance to access for the disadvantaged groups is not lack of information about them but discrimination in access to them.

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.

[274] See Section 9a Paragraph 1 c) of the Anti-discrimination Act, as amended by law No 32/2013 Coll.

There are various measures which can be perceived as positive action, although not all of them are perceived as such by those who introduced and/or implement them.

On a broad policy level (often also backed by corresponding legislation), there are/have been a few measures which could in principle be categorised as positive action (mainly with regard to ethnicity), although they are formulated rather neutrally (i.e. not referring specifically to ethnicity/Roma communities) and are based largely on 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 run for children "from socially disadvantaged backgrounds in whose case it can be assumed that their development will equalise by placing them in zero-grade classes"[275] and for children who "on reaching the age of six do not have the capacity for school attendance and come from socially disadvantaged backgrounds".[276] Although formulated seemingly neutrally, these measures appear to have been aimed particularly at Roma children, and it is almost exclusively Roma children who are placed in these classes.

The overall practical efficiency of these measures is 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 in special/specialised schools (see Chapter 3.2.8), but also because of the fact that the existing school system is unable to include Roma children properly later on and mainstream their equality. In addition, these measures are criticised as a tool of further segregation (it is almost exclusively Roma children who are placed in the zero-grade classes), labelling and stigmatisation of Roma children: Roma children are the "problem" and need to be "civilised" and made "normal" in order to be eligible for further education with non-Roma children and there is no reflection about the non-inclusive and culturally dominant majoritarian system of education.[277]

Another example of a "social-based" approach which transformed into a programme designed mainly for Roma communities or whose beneficiaries were mainly people of Roma ethnicity was the programme of special community social workers in existence from 2002 and later developed into the Programme to Support the Development of Community Social Work in Municipalities. The programme widened community social work in municipalities with marginalised Roma populations and about 200 social workers and 400 assistants were trained within its framework. The programme was

[275] Section 60 Paragraph 4 of the Act No 245/2008 Coll. on Education (Schools Act).
[276] Section 19 paragraph 4 of the Schools Act.
[277] This was also one of the main findings of a qualitative research study carried out by the Ethnicity and Culture Research Centre (Centrum pre výskum etnicity a kultúry – www.cvek.sk) in late 2011 and early 2012. The findings of the research were published in Gallová Kriglerová, E., Gažovičová, T. (eds.) (2012): *Škola pre všetkých? Inkluzívnosť opatrení vo vzťahu k rómskym deťom*, Bratislava, Centrum pre výskum etnicity a kultúry (the publication is also available online at: www.cvek.sk/uploaded/files/skola_pre_vsetkych_web.pdf (last accessed 18 March 2013).

subsidised by the governmental Social Development Fund[278] through municipalities which employed the social workers and their assistants. Although the programme seemed to have been a good investment,[279] it temporarily 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 from the municipalities). In 2011, 112 municipal proposals for support for (field-based) community social work were approved, with overall funding of €5,727,304.90. In the first quarter of 2012, a new call for project proposals for community social work was published by the Social Development Fund in Slovakia which allegedly removed the high co-financing requirement, and demand-oriented projects started to be implemented under this scheme.

Parallel to this, the National Project on Community Social Work, with an allocation of €30 million was approved at the end of 2011 and launched at the beginning of 2012. The whole concept of the national field-based project looks very promising, as it aspires to remove some of the barriers to the efficient performance of community social work under the previous (and still to some extent existing) scheme of demand-oriented projects. The main advantages of the national project foreseen by the Social Development Fund administering the whole scheme are:

- Increased quality of community social work (i.e. by providing supervision and training for community social workers, standardising the quality of community social work, renewing the positions of regional coordinators and increasing the professional requirements for community social workers etc.);
- Removal of the need for co-financing from the municipalities and reducing the administrative burden they were subject to;
- Increased numbers of community social workers;
- Safeguarding continuity of community social work, as the project should run until the end of 2015 (as compared to demand-oriented projects which were time-limited and did not have any guarantee of renewal after each project was finished.[280]

It is assumed that by 2015, community social work should be carried out by 860 community social workers and their assistants in at least 250 municipalities.

[278] The Social Development Fund (SDF; www.fsr.gov.sk) is the main body in Slovakia promoting social inclusion by supporting projects co-financed by the European Social Fund (ESF). The SDF acts as an intermediary body under the managing authority of the Slovak Ministry of Employment, Social Affairs and Family.

[279] See, for example, Fedačko, R., Bobáková, M., Rybárová, S. (2010) *Terénna sociálna práca v marginalizovaných rómskych komunitách z hľadiska aktivít terénnych sociálnych pracovníkov a ich asistentov*, available at www.fsr.gov.sk/ews3/files/1293/vyskum_tsp_kvantita.pdf (last accessed 20 December 2010); Ústav etnológie Slovenskej akadémie vied (2009): *Výkon terénnej sociálnej práce v marginalizovaných rómskych komunitách*, Bratislava, Ústav etnológie Slovenskej akadémie vied pre Fond sociálneho rozvoja. Available at: http://www.fsr.gov.sk/external/37/vykon-tsp-v-mrk_finalna-sprava.pdf (last accessed 20 December 2010).

[280] For more information about the national project, see www.fsr.gov.sk/sk/narodny-projekt-tsp-v-obciach (last accessed 27 March 2012).

Apart from the national project on community social work, the Social Development Fund developed the National Project to Standardise Services and Expand the Network of Community Centres for Marginalised Roma Communities. The goal is to support social inclusion of marginalised Roma communities through the creation of accessible services in community centres (it is assumed that between 60 and 80 community centres will be supported through this project). As a matter of sustainability, the premises costs and overheads of the community centres to be supported are to be provided/covered by the respective municipalities.

As of 2007, the Programme of Health Support for Disadvantaged Communities in Slovakia for 2007-2015 has been in place. The programme is implemented through regional public health offices and has covered the training and employment of 30 health assistants operating in Eastern Slovakia who work mainly with Roma communities. Given that the estimated number of Roma settlements is about 600, the programme is insufficient to achieve its main goal of improving healthcare for representatives of marginalised Roma communities. Apart from this under-resourced programme, there are no other specific measures implemented by the state, municipalities or other actors responsible for providing healthcare on a non-discriminatory basis which are targeted at making healthcare accessible to marginalised Roma communities.

As regards housing, the government has carried out a programme on housing development through which it distributed funding for low-cost, municipal rental apartments and technical infrastructure to various localities inhabited by Roma.[281] Although the project had some positive results (increased quality of life, increased school attendance), it contributed to a deepening segregation of Roma communities, because the new apartments were not built within municipalities but in distant localities, often with very poor infrastructure.[282] Often the construction quality of the newly-built housing was also very poor.

Another measure which could be perceived as a broad policy one is the horizontal priority, Marginalised Roma Communities, which forms part of the National Strategic

[281] Between 2001 and April 2010, 2,700 apartments were built within 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. These grants were worth €5.07 million in total, and another €407.780 was allocated for technical infrastructure. In the same year, the Office of the Plenipotentiary for Roma Communities contributed €390,000 for 33 housing projects and €305,557 to deal with emergency housing situations. See daily news site, SME: *Rómskych osád pribudlo, v mnohých chýba voda a elektrina*, 5 March 2010, available at: http://www.sme.sk/c/5272425/romskych-osad-pribudlo-v-mnohych-chyba-voda-a-elektrina.html (last accessed 12 March 2011).

[282] 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 SME, *Rómskych osád pribudlo, v mnohých chýba voda a elektrina*, 5 March 2010, available at www.sme.sk/c/5272425/romskych-osad-pribudlo-v-mnohych-chyba-voda-a-elektrina.html, last accessed 12 March 2011).

Referential Framework of the Slovak Republic for 2007-2013 (a basic document for obtaining aid from the Structural Funds). The horizontal priority should *inter alia* facilitate the implementation of so-called comprehensive projects, which would enable local partnerships to submit applications for support for Local Comprehensive Approach Strategies which would contain several project proposals in the form of strategic planning. Apart from being an attempt to implement a complex set of approaches and solutions, the original idea behind this scheme was to provide localities/municipalities with marginalised Roma communities with an opportunity to obtain professional assistance throughout the implementation of a complex project and to gain more simple access to financial resources (for example, localities with Local Comprehensive Approach Strategies were to be shortlisted for demand-oriented calls for proposals from different operational programmes).The government originally foresaw an allocation of €200 million to support the Local Comprehensive Approach Strategies.

It is questionable how effective the whole project will be and whether the impacts will be as foreseen. Here are a few examples to illustrate these doubts:

1. It is unclear how much money will ultimately actually benefit marginalised Roma communities, as the individual operation programmes designed to support projects forming the local Comprehensive Approach Strategies actually allow projects that benefit marginalised Roma communities only indirectly.[283] For example, on 30 May 2011, a call for proposals was announced in the field of healthcare,[284] focusing on reconstruction and modernisation of health infrastructure - health clinics focusing on prevention of and support around "Group No 5" diseases. However, "Group No 5" includes diseases which are very common across the whole population.[285]
2. The local Comprehensive Approach Strategies have been approved by localities/municipalities, not by the bodies implementing the project scheme. However, when applying for individual demand-oriented projects which are designed for the localities/municipalities with Comprehensive Approach Strategies, they are not required to attach the texts of the local strategies adopted by them to their project documentation. This leads to an absurd situation of the governing bodies supporting projects as part of local strategies they have not seen.

[283] See also p. 25 of the document *Systém koordinácie implementácie horizontálnej priority Marginalizované rómske komunity na roky 2007-2013, verzia 4.0 (Coordination System for the Implementation of the Horizontal Priority Marginalised Roma Communities for 2007-2013, Version 4.0)* effective from 18 April 2011. Also available at: http://www.romovia.vlada.gov.sk/18101/system-koordinacie-implementacie-horizontalnej-priority-marginalizovane-romske-komunity-20.php (last accessed 25 March 2012).
[284] OPZ 2011/2.1/02. The call was advertised under the Priority Axis 2: *Health support and preventing health risks,* Measure 2.1*: Reconstruction and modernisation of healthcare centres*.
[285] The diseases covered are, in particular: diseases of the blood circulation system, oncological diseases, external causes of diseases and dying, diseases of the respiratory system, diseases of the digestive system.

3. It turns out that the coordination and synchronisation of the scheme with regard to support for the local Comprehensive Approach Strategies through six relatively independent operational programmes represents a real challenge for the whole project and brings into question whether it can in fact be implemented. In addition, the Office of the Plenipotentiary for Roma Communities (the coordinator of the whole programme) articulated that the process is very complicated and demanding in terms of coordination,[286] and admitted that this way of accumulating resources was to some extent even "paralysing the whole process".[287] Furthermore, the Office commented that the allocations under the individual operational programmes "do not enable flexible use of resources".[288] In addition, representatives of civil society working on the integration of Roma people with policies in the field of racism and ethnic discrimination have been very critical of the implementation of this programme.[289]

On 15 June 2011, the Proposal on a Pilot Approach to Supporting Housing Infrastructure from Structural Funds of the EU was approved by the government.[290] For 2012-2013, this document foresaw an expenditure of €7 million to subsidise construction of rental apartments for marginalised communities (and although marginalised Roma communities are mentioned explicitly as the primary target of the programme, other marginalised groups are explicitly not excluded). The programme aspires to create a motivational tool for young families from marginalised groups to better and faster social inclusion. The document makes it clear that it is not directed at solving the problems of housing in segregated Roma settlements but rather at solving the problem of motivated young families (i.e. the programme does not seem to be focusing on individuals) with, for example, good references from social workers, employers and municipalities, with the number of household members corresponding to the capacity of the apartments built, children who attend school, no criminal record among the household members and at least one member having been employed for

[286] See *Stratégia Slovenskej republiky pre integráciu Rómov do roku 2020 (Strategy of the Slovak Republic for Roma Integration to 2020)*, p. 56. The document is also available at: http://www.ksuza.sk/doc/metodika/bozp/20012012.pdf (last accessed 25 March 2012).
[287] See *Stratégia Slovenskej republiky pre integráciu Rómov do roku 2020* (*Strategy of the Slovak Republic for Roma Integration to 2020*), p. 58. The document is also available at: www.ksuza.sk/doc/metodika/bozp/20012012.pdf (last accessed 25 March 2012).
[288] See *Stratégia Slovenskej republiky pre integráciu Rómov do roku 2020* (*Strategy of the Slovak Republic for Roma Integration to 2020*), p. 22. The document is also available at: www.ksuza.sk/doc/metodika/bozp/20012012.pdf (last accessed 25 March 2012).
[289] See, for example, the newsletter *Rómska verejná politika (Roma Public Policies),* published by Milan Šlmečka Foundation (Nadácia Milana Šimečku), issue 4/2011, available at: http://xa.yimg.com/kq/groups/12141162/1400495048/name/spravodaj+rvp+4_2011.pdf (last accessed 1 April 2012), p. 5. See also a special issue of this newsletter devoted to the topic of the contribution of EU funds to benefiting Roma communities, available at: http://www.nadaciamilanasimecku.sk/fileadmin/user_upload/dokumenty/RVP/spravodaj_RVP_maj_2011_final.pdf (last accessed 1 April 2012).
[290] Resolution of the government No 392/2011. The document is available at http://www.rokovania.sk/Rokovanie.aspx/RokovanieDetail/585 (last accessed 31 March 2012).

at least 15 months. In order to provide for effective social inclusion, the programme intends to build the rental apartments close to municipality/city centres or to distribute them evenly across cities/municipalities to avoid spatial exclusion and segregation.

The adopted measures described above have a few common features. First, the positive measures adopted are not monitored by the public bodies concerned, or the monitoring is insufficient, formal only, and/or uses inappropriate methodology. In addition, it is very questionable whether the measures adopted actually contribute to the aim of "equalising opportunities" and whether they really benefit those they are supposed to. For example, anecdotal evidence relating to the implementation of the horizontal priority, Marginalised Roma Communities, shows that financial support was granted even to municipalities which did not have specific projects targeted at the Roma or projects from which the Roma would benefit in some significant way (for example, one municipality received resources for the reconstruction of a hospital and the positive impact on the Roma community living in the town was justified by saying that "all the people living in the town will benefit from the reconstructed hospital, including the Roma").

An analysis published in 2012 by the United Nations Development Programme in Europe and the CIS, Bratislava Regional Centre, focused on the use of the Slovak European Social Fund in selected projects/programmes reported as having been "spent on behalf of the Roma" and tried to answer the question whether this money has actually been spent on the needs of marginalised Roma communities as claimed.[291] The report came to various conclusions which make it clear that the outcomes of the selected measures financed under the ESF are questionable at best. For example, it concluded that, "it is difficult to establish a clear link between inputs and outcomes, and even outputs in the case of most of the projects".[292] It also stated that the interventions under the two measures selected for the monitoring were clearly running in parallel with no clear link between them, which the authors of the report described as a "missed opportunity".[293] The report also came to the conclusion that the measures did not reach those most in need and that the interventions monitored had a marginal impact on improving Roma people's chances of finding employment. The authors identified various reasons for this and issued a number of recommendations, for example, simplifying procedures for applying for funding under the programmes and for their administration, introducing methods of smart reporting and monitoring and actively involving Roma communities in project implementation, monitoring and evaluation.[294]

[291] UNDP Europe and the CIS Bratislava Regional Centre (2012): *Uncertain impact: Have the Roma in Slovakia benefited from the European Social Fund? Findings from an analysis of ESF employment and social inclusion projects in the 2007-2013 programming period*. Bratislava, UNDP. The report is also available online at: http://europeandcis.undp.org/publications/#roma (last accessed 22 March 2013).
[292] See p. 96 of the report.
[293] See p. 96 of the report.
[294] See pp. 95-101 of the report.

In addition, the positive measures undertaken by the state often even perpetuate inequalities, for example by financing segregated housing.

It must also be said with regard to these measures that the way they are financed (usually EU funds) reflects the State's perception of its responsibilities with regard to equality and non-discrimination: the allocations of resources for positive measures do not represent a reflection, on the part of the State, of a comprehensive, integrated and mainstreamed non-discrimination approach applied with regard to all public budgets but instead represent an "add-on" in cases where extra money can be obtained from an outside source. This is, unfortunately, not true only for positive action measures but for measures in the field of non-discrimination in general.

On 10 August 2011, the government adopted the Revised National Action Plan for the Decade of Roma Inclusion 2005-2015 for 2011-2015[295] (the Action Plan).The Action Plan, based on Slovakia's obligations under the Decade of Roma Inclusion,[296] represents a set of 153 measures to be implemented mainly by state bodies but also by municipalities and NGOs in the fields of education, employment, health and housing. Although the implementation of some of the measures could bring some positive results in terms of improving the lives of some Roma people, there are many systemic shortcomings which cast serious doubts on the overall potential of the Action Plan to bring about significant shifts in terms of Roma inclusion. The main problematic aspects of the Action Plan can be listed as follows:

- Although marginalised Roma communities are mentioned in the Action Plan a couple of times, the document is not based on a concept of discrimination based on ethnicity reflected in an openly articulated target group of Roma, but on the concept of "social disadvantage". This situation is paradoxical and in many instances absurd, given that the goal of the Decade is to achieve Roma inclusion and that the current situation and state of affairs which needs to be challenged is ethnicity-based discrimination.
- The Action Plan relies on out-of-date data contained in the Roma Communities Atlas 2004 which no longer provides a realistic picture of the location of Roma communities. It also makes no attempt to contribute to resolving the problem of the non-existence of data collection based on ethnicity (as well as on other grounds) and relies only on the existing inadequate and insufficient data.

[295] Revidovaný akčný plán Dekády začleňovania rómskej populácie 2005-2015 na roky 2011-2015, adopted by governmental resolution No 522/2011. The document is available at www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=19992 (last accessed 1 April 2012).

[296] The Decade of Roma Inclusion is an international initiative of governments, international governmental and non-governmental organisations, including Roma NGOs, with the aim of improving the inclusion of the Roma population. It represents a political obligation for governments to implement measures to advance the social inclusion of Roma people in the fields of education, employment, housing and health, and with the requirement to address three issues: poverty, discrimination and gender inequality.

- Many of the targets and measures are vaguely formulated and do not provide clear guidelines or understanding of what should be done and how.
- The document is non-reflective in relation to the current mainstream structures which perpetuate ethnic discrimination and inequalities. For example, the document reiterates the oft-repeated need for the implementation of measures in education (e.g. increasing the numbers of teaching assistants, changing the diagnostic tests for admission to special schools etc.) which do not challenge the discriminatory, majoritarian structures (e.g. a school system based on the existence of "normal" and "special" schools, on the need to have assistance for Roma children, instead of simply including and integrating all children).[297]
- The document only uses quantitative indicators, with no mention of the need to monitor and evaluate qualitative shifts.
- There is insufficient institutional capacity for coordination of the Action Plan and there are no resources allocated for coordination.
- Many of the measures do not have financial resources. In some cases, the authors of the material did not even foresee a need for financial resources, although measures for the implementation of which high financial inputs would be inevitable were at stake (such as the case of measure 4.4.2 on awareness-raising and campaigns on sexual and reproductive health or measure 4.4.3 which is supposed to provide non-discriminatory access to contraception and other services of sexual and reproductive health).[298]

Later on, in late 2011 and early 2012, the Action Plan became a part of the Strategy of the Slovak Republic for Roma Integration to 2020, adopted on 11 January 2012[299] (the Strategy). The Strategy builds on the EU Framework for National Roma Integration Strategies up to 2020 and declares itself to be a "conceptual framework defining the orientation of public policies in the field of the social inclusion of Roma communities, irrespective of the extent of their marginalisation".[300] The document contains a theoretical framework where it describes the theoretical, historical, social and legal context of the situation of Roma communities in Slovakia, the principles upon which the whole document is based, and a policy section where it describes the main problems and global goals to be achieved by the strategy in the fields of education, employment, health, housing, financial inclusion, non-discrimination and in relation to approaches towards the majority population. The Strategy also contains a section on its implementation where it deals with key partners, plans of activities, the funding and budgetary implications of the Strategy, legislative implications, the

[297] See, for example, measures 2.1 and 2.2.
[298] See also Lajčáková, J.: 'Revidovaný národný akčný plán k Dekáde rómskej inklúzie: Ďalšia bezzubá stratégia?' in: *Menšinová politika na Slovensku,* Bratislava, Centrum pre výskum etnicity a kultúry, 03/2011, pp. 1-3. Also available at www.cvek.sk/uploaded/files/2011_10_mensinova_english_web.pdf (last accessed 1 April 2011).
[299] The document was adopted by Government Resolution No 1/2012 and can be accessed at www.rokovania.sk/Rokovanie.aspx/GetUznesenia/?idRokovanie=622 (last accessed 1 April 2012).
[300] Stratégia Slovenskej republiky pre integráciu Rómov do roku 2020 (Strategy of the Slovak Republic for Roma Integration to 2020), p. 58. The document is also available at: www.ksuza.sk/doc/metodika/bozp/20012012.pdf (last accessed 25 March 2012), p. 2.

monitoring and evaluation framework and indicators of success. The Strategy is an "open document" to be supplemented by, for example, action plans (in fields which fall outside the Decade of Roma Inclusion Action Plan mentioned in the previous paragraphs), new goals etc.[301] The document explicitly targets Roma as a national minority, Roma communities and marginalised Roma communities.[302]

Although the Strategy is probably the most complex policy document adopted in the field of Roma inclusion so far, is based on values and principles and provides a rich context on the issues, it also contains a number of shortcomings which reduce its chance of being a successful tool of Roma inclusion. Some of the shortcomings are as follows:

- The fields not covered by the Action Plans for the Decade of Roma Inclusion do not have any action plans and do not even make it clear who will be responsible for their implementation, how this implementation will take place and what should be the actual content of the implementation. Given that representatives of ministries were not present during the process of drafting some parts of the material, it is unclear whether some of the implementing bodies will be "on the same page" with the authors of the strategy.
- Although the document allocates some resources for its implementation, given the fact that the division of responsibilities and tasks is not clear, it is equally unclear where the rest of the resources will come from and whether and how they will be guaranteed.
- As with the Action Plan for the Decade of Roma Inclusion, the document does not aspire to change many of the mainstream structures which lead to discrimination and Roma exclusion.
- There are no special resources for coordination at the general level and it is completely unclear whether, how and with what resources the Strategy will be coordinated at the level of ministries and other public bodies.
- Although the Strategy repeatedly mentions the problem of the unsatisfactory state of affairs with ethnicity data collection and with positive action measures related to ethnicity, it does not seem to have any particular ambition to resolve this issue.

None of the broad policy measures outlined above have been publicly challenged as potentially violating the principle of equality enshrined in the legal system or exceeding the scope of statutory provisions regulating the conditions for the adoption of positive action measures. At a legislative level, and with explicit reference to prohibited grounds of discrimination, it is 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 older people) in the area of employment and social services which can be considered as

[301] See p. 2 of the Strategy.
[302] See p. 2 of the Strategy.

positive action measures. They are generally of a compensatory nature (people with disabilities, older people) and to advance equal opportunities. Below are some examples.

According to Article 8 of the Labour Code, "employees with disabilities are ensured working conditions which enable them to apply and develop their working skills, taking account of their health condition". This principle is embodied in the above-mentioned provisions of Sections 158-59 of the Labour Code (see Chapter 2.6) and the Act on Employment Services. The latter act guarantees, *inter alia*, the right to special working conditions, advisory services, vocational training and guidance, the 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 for people under the age of 25, financial support for work assistants etc.[303] Pursuant to Section 59 of the Act on Employment Services, an office of labour, social affairs and family may provide an employee with a disability or a self-employed person with a disability an allowance for the work done by their work assistant on a monthly basis of up to 90% of the overall cost of the work, calculated on the basis of the average wage of an employee in the national economy.

People with disabilities also enjoy special protection against dismissal – a person with a disability can only be given notice after prior endorsement from the responsible labour office.[304] Pursuant to Sections 63-65 of Act No 5/2004 Coll. on Employment Services, any employer who employs at least 20 employees is obliged to employ at least 3.2% of people with disabilities, provided that the local labour office has job seekers with disabilities on its register.[305] 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 they are obliged to pay to a labour office a levy equivalent to 0.9 times the amount of the overall price of the work calculated on the basis of the average wage of an employee in the national economy for each person whom they failed to employ during the previous year.[306]

[303] Sections 50, 50a, 50b-50c, 50i, 51, 53c, 55 -60 of the Act on Employment Services No. 5/2004 Coll. The state bodies responsible for providing this type of support are the offices of labour, social affairs and family.
[304] Section 66 of the Labour Code. However, the endorsement requirement does not apply in the case of employees with disabilities who have attained pensionable age.
[305] According to the response from the Central Office of Labour, Social Affairs and Family of 9 March 2012 to a request for information filed by a co-author of this report, in 2010 11,446 employers were subject to this obligation under the quota law.
[306] The number of employees with disabilities who should have been employed based on the quota but for whom the respective employers paid the levies instead was 9,329 in 2008, 7,393 in 2009 and 6,207 in 2011.

The Social Services Act[307] 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".

The Act on Benefits for Compensation of Serious Disability[308] regulates legal relationships related to providing financial contributions aimed at compensating for the social consequences of "serious disabilities".

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

The Schools Act contains special provisions designed to accommodate the needs of children and pupils with disabilities in kindergartens, primary and secondary schools and in school facilities.[309]

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

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

[307] Zákon č. 448/2008 Z. z. o sociálnych službách a o zmene a doplnení zákona č. 455/1991 Z. z. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov [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].
[308] 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].
[309] 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 (Schools Act), as amended].

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.

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 by public authorities.[310] The Labour Code sets out in Section 13 the right of employees to submit a complaint to their employer against the infringement of the principle of equal treatment. The employer is obliged to respond to such a complaint without undue delay, provide redress, abstain from such conduct and eliminate the consequences thereof. The importance of this provision is in setting the obligation of a private employer to deal with complaints of discrimination in employment relationships (however, the effect of this particular remedy is questionable and it is not much used in practice).

A similar regulation is contained in the Act on Employment Services,[311] pursuant to which a citizen has the right to submit a complaint to the authorities (office of labour, social affairs and family) if their rights in relation to the provision of services in seeking employment, education and training for the labour market are violated. The authorities have the obligation to respond without undue delay, provide redress, abstain from such conduct and eliminate the consequences thereof. The Act on the Civil Service[312] also contains a provision enabling a civil servant who considers themselves to have been 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 relevant 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.

Pursuant to the Anti-discrimination Act, a natural person and/or legal entity who consider themselves wronged in relation to their rights and interests protected by law because the principle of equal treatment has not been applied to them may pursue

[310] 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.
[311] Act No 5/2004 Coll., as amended.
[312] Act No 400/2009 Coll.

their claim through judicial proceeding before the civil court of the first instance. There are no special labour courts for discrimination cases in the area of employment. Victims of discrimination have the right to sue the perpetrator – be it a natural person or a legal entity, a public or private body – and request a number of remedies, including (the list is not exhaustive) that they be made to refrain from such conduct and, where possible, rectify the illegal situation or provide adequate satisfaction. If the adequate satisfaction is insufficient, generally if the violation of the principle of equal treatment has considerably impaired the dignity, social status or social achievement of the victim, they may also seek non-pecuniary damages in cash. The amount of the non-pecuniary damages is determined by the court, which must take into account the seriousness of the non-pecuniary damage and all underlying circumstances. Material damages resulting from such treatment may also be claimed.[313] There is no difference in the procedure, whether a public or private entity is being sued.

Even though invalidity of job termination can, in principle, also be claimed 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 may divide cases which involve a claim of invalid job termination, 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 and the type of representation needed).[314]

The physical accessibility of the court is not fully guaranteed for people with disabilities in old court buildings. Newly constructed or reconstructed court buildings, as well as all other public buildings, must be accessible for people with disabilities. Information provided in Braille script is only prescribed for the service panels in lifts. This regulation is applicable as of 1 December 2002. It does not deal with the accessibility of older buildings and does not impose any obligations as far as concerns the reconstruction of older buildings. The Constitution guarantees the right to an interpreter if an individual is unable to speak the official state 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 themselves comprehensibly.

[313] Section 9 of the Anti-discrimination Act.
[314] 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 the shift in the burden of proof in these proceedings.

Another serious barrier is a lack of qualified legal assistance in the field of anti-discrimination (as well as lack of accessibility to legal aid in general, in terms of financial accessibility).[315] A relevant factor in this regard relates to NGOs. Following an amendment of the Civil Procedure Act in 2011,[316] NGOs (which have high-profile expertise in the field of non-discrimination) can claim the expenses they incur connected to the proceedings. However, they cannot receive reimbursement for work they do but which is not paid for by the plaintiffs (and it is not even clear from the law whether NGOs can charge for legal representation of this kind) or from their own resources (which are generally insufficient, especially in the field of human rights and non-discrimination). When comparing this situation with that of, for example, attorneys for whom the calculated costs of legal representation can be reimbursed in the event of success, regardless of whether the costs have actually been paid by the plaintiff, it creates discriminatory situations for NGOs and ultimately the plaintiffs. Furthermore, it even generates absurd situations where NGOs are either pushed into doing the expert work of legal representation for free or have to refuse people affected by discrimination simply because of a lack of capacities and resources and the fact that there is no chance of the costs of legal representation being reimbursed later.

A further absurd situation is generated whereby those (potentially) successfully invoking their rights (victims of discrimination) and/or those representing them (NGOs) end up paying for someone else's discriminatory behaviour. Thus NGOs must select very carefully the cases they take on. This is also the reason why there are still only a very few examples of NGOs representing plaintiffs before the courts in cases of breaches of the principle of equal treatment (according to the knowledge of a co-author of this report, there have so far been three instances of representation by NGOs since the adoption of the Anti-discrimination Act in 2004). 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 resources for the legal assistance, judicial fees etc.).

An amendment of the Anti-discrimination Act which has been in effect since 1 April 2008 has also made an explicit reference to the right of people suffering breaches of the principle of equal treatment to mediation.

[315] Access to free legal representation for those whose income is very low is provided by the State (although there are also many systemic barriers to receiving good quality legal aid under the framework of free/symbolically paid legal aid provided by the State). The threshold for entitlement to free legal aid or for legal aid with a symbolic financial contribution from the person affected is quite low and there is still a relatively significant group of people who would not be able to pay for legal services. In cases of breaches of the principle of equal treatment, the Slovak National Centre for Human Rights should arrange legal assistance for victims of discrimination (no matter what income) but the Centre is not fulfilling this task very efficiently. The law makes no provisions concerning the obligatory legal representation in proceedings dealing with breaches of the principle of equal treatment.

[316] Act No 332/2011 Coll.

The process of mediation is regulated by the Act on Mediation[317] (in effect since 1 September 2004)[318] which does not cover discrimination-specific mediation. Although the possibility of mediation undoubtedly extends (at least theoretically) the scope of remedial options for victims of discrimination, it is highly questionable whether the concept is suitable for some types of discrimination or cases of discriminatory behaviour (mainly harassment and sexual harassment, but also any kind of intentional discrimination etc.) and whether it would not, in some cases, even perpetuate the inequality.

People whose right to equal treatment has been violated can, in principle, also refer to inspectorates in the fields covered by the material scope of the Anti-discrimination Act (e.g. labour inspectorates and offices of the Slovak Trade Inspectorate) which oversee the observance of the relevant legislation within their sphere of competence. However, no shift of the burden of proof applies to 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 ultimately found no breaches of this principle.[319] In cases where breaches of the principle were identified, the labour inspectorates did not impose fines but ordered the entities responsible for the breach to remove the shortcomings identified.[320] It is also becoming increasingly apparent that the inspectorates do not have sufficient or appropriate methodology for the identification of breaches of the principle of equal treatment and/or for investigating them.[321]

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 must 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?

[317] Zákon č. 420/2004 Z. z. o mediácii a o doplnení niektorých zákonov [Act No. 420/2004 Coll. on Mediation and supplementing certain acts].
[318] Thus mediation was effectively possible in anti-discrimination cases from the beginning of the existence of the Anti-discrimination Act.
[319] For example, labour inspectorates have dealt with 96 submissions relating to discrimination, but only one (!) was found to be substantiated. See www.nip.sk/?t=46&s=133&ins=nip (last accessed 12 March 2013).
[320] See for example Debrecéniová, J., Pufflerová, Š. (2011): *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, pp. 1-2, available at: http://www.oad.sk/node/587 (last accessed 14 March 2011).
[321] *Ibid,* pp. 8-9.

There is no time limit for initiating a complaint or other administrative procedure. Neither is there a time limit for initiating judicial proceedings. However, claiming invalidity of an employment termination can only be done within a period of two months from the due day of the employment relationship termination.[322]

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

As far as initiating judicial proceedings is concerned, the injured party may also bring a case to court after the employment relationship has ended. In addition, the law does not prohibit the initiation of proceedings other than judicial ones after the employment relationship has ended.

e) 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).

In 2012, Poradňa pre občianske a ľudské práva, an NGO active in the field of non-discrimination, published a study of barriers in access to efficient legal protection against discrimination.[323] Part of the study presented a nationwide survey on the barriers encountered by people who subjectively feel they have been discriminated against but do not seek legal aid or use legal means to defend themselves against discrimination. The survey showed that just a tiny percentage (4.7%) of respondents who subjectively feel they have been discriminated against have sought legal assistance or sought to lodge a claim against discrimination by legal means. Over 92% have not taken any steps to defend themselves.

The reasons why those discriminated against decided not to challenge discrimination by legal means and not to seek legal assistance were relatively evenly distributed in the population of Slovakia. They included lack of trust in the institutions which might successfully resolve discrimination (13.1% of responses), lack of evidence (11.8% of responses), the fact that people who felt discriminated against did not consider it important to resolve their case (11.6%), lack of information as to where and who to turn to for legal assistance (over 10%). As Poradňa concluded, "[t]he nationwide research results indicated an overall scepticism and even resignation with regard to any solution, as well as the conviction that discrimination in Slovakia is so normal and widespread that it makes no sense to oppose it and that it is not possible to obtain justice in Slovakia".[324]

[322] I.e. two months after the (invalidly terminated) employment relationship would have ended (as a consequence of the invalid termination). See Section 77 of the Labour Code.
[323] Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012): *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, Košice, Poradňa pre občianske a ľudské práva. The publication is also available at: http://poradna-prava.sk/wp-content/uploads/2012/11/Publikáciu-si-môžete-stiahnuť-tu-105-MB.pdf (in Slovak), last accessed 20 March 2013.
[324] See pp. 27-49 and p. 129 of the study.

Another potential barrier to initiating anti-discrimination judicial proceedings may be the court fees (the above-mentioned survey did not deal with this explicitly), especially when seeking non-pecuniary damages in cash. This fee derives from the amount requested (3%; and is always paid in addition to the judicial fees for the other claims made) and, in the opinion of the authors of this report, is a barrier to seeking amounts that would be really effective, proportionate and dissuasive.

Socially disadvantaged applicants can be exempted from payment of court fees on the decision of the judge. However, the criteria for exempting a plaintiff from judicial fees are not fixed – the relevant provision states 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 manifestly unsuccessful". [325]

f) Are there available statistics on the number of cases related to discrimination brought to justice? If so, please provide recent data.

Part of the study by Poradňa described in the previous section presented results of the organisation's monitoring of judicial decisions in the field of (non-)discrimination.[326] Poradňa found that there had only been about 120 proceedings relating to discrimination which had been concluded.[327] This includes proceedings in all levels of courts, which means that the number of actual cases brought to the courts is even lower. The monitoring also found that this type of proceedings was not conducted at all by 18 courts in Slovakia (29% of all courts). This number is desperately low, especially given that the Anti-discrimination Act has been in existence since 2004 (and some anti-discrimination provisions were contained in Slovak legislation even earlier), and also that discrimination is a very widespread phenomenon in Slovakia.

[325] See Section 138 of the Civil Procedure Act.
[326] See pp. 69-104 and pp. 131-133 of the study.
[327] The number may not be very accurate, as not all the courts approached with a request for information on the proceedings provided this information, and the Ministry of Justice does not collect the corresponding statistics properly. In response to a request for information filed by a co-author of this report with the Ministry of Justice on 1 March 2013 on the numbers of cases of discrimination decided by Slovak courts and any corresponding statistics, the Ministry only presented data (on 12 March 2013) about 11 judicial decisions (albeit all of them final, as compared to those collected by Poradňa, some of which still had proceedings pending at higher instance courts). The information provided by the Ministry included the name of the court, the file number and the sum awarded (with it being unclear what kind of damages were compensated for by the sums awarded). This may mean the Ministry of Justice does not have an appropriate methodology for collecting information about judicial decisions issued in the field of (non-)discrimination.

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, organisation, trade union, etc.).

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 must have this authority in accordance with a separate law,[328] or must concerned with and active in protection against discrimination[329] (in practice, this usually means NGOs; the law does not stipulate any more detail about these organisations). If the legal entity takes up the representation, it authorises one of its members or employees to act on its behalf.[330]

In all civil judicial proceedings in general (i.e. including proceedings concerning breaches of the principle of equal treatment), an individual can be represented by an attorney or by any natural person of their choice.[331] This natural person must have full capacity to act legally and the court must decide that it will not admit representation if the selected natural person is "apparently not capable of a proper representation" or if they "perform representation on an ongoing basis in several cases".[332]

In all civil proceedings related to employment relations, a party to these proceedings who is a member of a trade union organisation can be represented by this organisation.[333]

In administrative proceedings, parties to the proceedings, their legal representatives and their guardians can be represented by an attorney or by "another representative of their choice".[334] This means people affected by discrimination can in principle select any natural or legal person to represent them, including NGOs or the Slovak National Centre for Human Rights. However, if an administrative decision against which there is no regular legal remedy is examined by a civil court in special civil proceedings,[335] the plaintiff must be represented by an attorney, unless they, or their

[328] See Section 10 Paragraph 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 proceedings concerning violation of the principle of equal treatment.
[329] Section 10 Paragraph 1 (b) of the Anti-discrimination Act.
[330] *Ibid*, Section 10 Paragraph 2.
[331] See Section 25 and 27 of the Civil Procedure Act.
[332] *Ibid*, Section 27.
[333] Section 26 Paragraph 2 of the Civil Procedure Act.
[334] Section 17 Paragraph 1 of the Administrative Code.
[335] Pursuant to Sections 244-250k of the Civil Procedure Act.

legal representative, are legally qualified.[336]

As far as criminal law is concerned, the victim in criminal proceedings can be represented by a proxy. Any person whose capacity to act legally is not limited can become a proxy, including an authorised representative of an organisation which helps those affected by crimes.[337] "An organisation with the remit of helping those affected by crimes" is, pursuant to Section 10 Paragraph 23 of the Criminal Procedure Act, an NGO which provides free legal assistance to those affected by crimes.

Regarding a complaint dealt with by a public body, although there is no specific provision as to the legal standing of associations, the law does not prohibit other natural persons or legal entities from acting (submitting a complaint) on behalf of a complainant.

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 since 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 concerned with and active in 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. As far as the authors are aware, this provision has so far only been used once by an NGO and has not yet been used by the Slovak National Centre for Human Rights (see also Chapter 7 f) of this report).

Even though it is not explicitly prohibited, it is not particularly common to use other forms of support (e.g. a written legal opinion from an NGO or other entity in the form of an amicus brief). However, expert opinions issued by the Slovak National Centre for Human Rights[338] at the request of a plaintiff are sometimes submitted to the courts (by the plaintiffs, if they decide to submit the opinions requested from the Centre).

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

[336] *Ibid*, Section 250a.
[337] Section 53 of the Criminal Proceeding Code.
[338] Under Section 1, Paragraph 2 (f) of the Act on the Slovak National Centre for Human Rights, the Centre is granted the competence to prepare expert opinions concerning compliance with the principle of equal treatment upon a request or its own initiative.

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 must be concerned with or active in protection against discrimination".[339] From the fact that they must be legal entities, it can be inferred that they must be registered (otherwise they would not be eligible to exist legally), either as civil society organisations,[340] as foundations[341] or as non-profit organisations providing pro bono services.[342] Civil society organisations, including trade unions, and foundations register at the Ministry of Interior and non-profit organisations providing pro bono services register at district offices in regional centres (although the central register of these non-profit organisations is also administered by the Ministry of Interior).[343]

The law does not 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 in accordance with the Anti-discrimination Act) that the court will look at the statutes of the organisation, in which its mission statement 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?*

Where entities act on behalf of victims, they need an authorisation which must be provided by the party to the proceedings, either in writing or dictated into the court or administrative body's minutes.[344] In case of victims/complainants who do not have full legal capacity to act and thus need a statutory representative or a legal guardian,

[339] See Section 10 Paragraph 1 (b) of the Anti-discrimination Act.
[340] Pursuant to Zákon č. 83/1990 Zb. o združovaní občanov v znení neskorších predpisov [Act No 83/1990 Coll. on Association of Citizens, as amended].
[341] Pursuant to Zákon č. 34/2002 Z. z. o nadáciách a o zmene Občianskeho zákonníka v znení neskorších predpisov [Act No 34/2002 on Foundations and on Changing the Civil Code, as amended].
[342] Pursuant to Zákon č. 213/1997 Z. z. o neziskových organizáciách poskytujúcich všeobecne prospešné služby v znení neskorších predpisov [Act No 213/1997 Coll. on Non-Profit Organisations Providing Pro Bono Services, as amended].
[343] *ibid*, Section 9.
[344] See Section 28 of the Civil Procedure Act and Section 17 Paragraph 3 of the Administrative Code.

the authorisation can be given by these legal representatives. In these cases the consent of the victims is not required.

If entities wish 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 victim is not required (although the entity may join the proceedings on the initiative of one of the parties to the proceedings, in addition to joining it on its own initiative, which presupposes the implicit consent from the victim).[345]

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. In practice their decision as to whether they will represent a particular plaintiff is influenced by the environment they operate in – mainly the lack of resources for human rights NGOs in general and the difficulties with recovering the costs of legal representation when representing plaintiffs in court (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 law to represent every person affected by discrimination physically but to "provide legal aid to victims of discrimination and manifestations of intolerance".[346]

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 and administrative as well as in criminal proceedings. However, if associations represent victims in civil proceedings, they can only do so before "regular courts" (i.e. courts of first and second instance). Legal representation is not possible before the Supreme Court or the Constitutional Court, or even before regular courts in proceedings concerning judicial review of decisions by administrative bodies. In addition, there are some types of administrative proceedings where NGOs cannot legally represent a victim of discrimination.

The fact that NGOs cannot represent victims of discrimination at all stages of judicial proceedings (i.e. before the Supreme Court and the Constitutional Court) brings a lot of problems, both for the NGOs and their clients, and ultimately makes the representation inadequate and inefficient. First, it makes the whole proceedings much more expensive. The need to involve an attorney who must familiarise themselves with the case at quite a late stage increases the costs of legal

[345] See Section 93 Paragraph 3 of the Civil Procedure Act.
[346] See Section 1 Paragraph 2 (e) of the Act No 308/1993 Coll. on Establishing the Slovak National Centre for Human Rights, in conjunction with Section 10 Paragraph 1 (a) of the Anti-discrimination Act.

representation enormously, whether or not this is actually paid for by the plaintiff. Secondly, it leads to NGOs losing control over cases (which may be very harmful especially in strategic litigation cases, but can harm the client in any case) and, in principle, it also forces them to "transfer" the credit for litigating the case and obtaining a satisfactory result to an attorney who has not necessarily made a significant contribution to this result.

As the Slovak National Centre for Human Rights is authorised to represent parties to proceedings in matters of breaches of the principle equal treatment under the same conditions as associations, the same also applies to the Centre (see also Section 6.2 f) of this report).

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

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 determination by the court that the principle of equal treatment has been breached, that the entity having breached the principle of equal treatment refrains from such conduct and, where possible, rectifies the illegal situation. The list of these two options is non-exhaustive. See Chapter 6.2 (h) of this report for more details.

In civil proceedings, when associations act as accessory parties pursuant to Section 93 Paragraph 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,[347] acting on their own behalf only. However, if their actions contradict the actions of the party to the proceedings whom they support in the proceedings, the court "will judge these actions after consideration of all the circumstances".[348]

See also Section 6.1 a) of this report for a description of problems with invoking the costs of legal representation when the legal representation has been provided by associations.

[347] Section 93 Paragraph 4 of the Civil Procedure Act.
[348] *Ibid.*

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

No. The rules for the burden of proof apply according to the type of proceedings, irrespective of 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). In 2011, the provision was amended[349] to remove some of the limitations in the original wording of the provision. The amended version stipulates that, if a breach of the principle of equal treatment could violate rights or interests protected by law or freedoms of a greater or non-specified number of persons, or if the public interest could be otherwise seriously endangered by such a violation, the right to invoke the protection of the right to equal treatment is also vested in the Slovak National Centre for Human Rights or a legal entity which is "concerned with or active in protection against discrimination" (usually NGOs active in the field of anti-discrimination).

These entities can request that the court determines that the principle of equal treatment has been breached, that the entity breaching the principle of equal treatment refrains from such conduct and, where possible, rectifies the illegal situation. The list of these two options is non-exhaustive.

Although this provision is quite progressive, only one NGO (Poradňa pre občianske a ľudské práva – see Chapters 0.3 and 2.3.1 (c) of this report) has filed *actio popularis* so far. One of the reasons may be the very limited scope of invokable remedies which applied until recently (end of 2011), in particular the lack of the possibility to request 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 act, such as a discriminatory advertisement, and so no refraining or rectifying of the illegal situation is possible). Other reasons may be the very limited resources with which NGOs operate and also a complete lack of statistical data collected by the state. 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 approach on the part of the Centre and a lack of professional capacity (see Chapter 7 e) of this report for more details).

[349] By Act No 332/2011 Coll.

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 treatment 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). Class actions are also possible in Slovak civil judicial proceedings, meaning that a group of citizens can lodge an action based on the same facts, where each victim must stand as a plaintiff. If an NGO takes up the representation of a person affected by discrimination (or several people affected by discrimination in the case of a class action), it must assign one of its members and/or employees to act on behalf of the person(s) represented. If an NGO or the Slovak National Centre for Human Rights takes up legal representation in civil proceedings under the Anti-discrimination Act, all conditions applicable for the legal representation of individuals mentioned above (i.e. on the type of conditions the legal entity must fulfil, the types of remedies it can request on behalf of the plaintiff, 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,[350] the relevant law places the burden of proof on the party which files a particular claim. The Civil Procedure Code states that “parties are obliged to bring evidence to prove their claims”.[351] Parties to the proceedings have a procedural evidential duty, i.e. they have to provide evidence proving their claims.

The Anti-discrimination Act 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

[350] Article 47 Paragraph 3 of the Constitution.
[351] Section 120 Paragraph 1 of the Civil Procedure Code.

that a violation of the principle of equal treatment occurred, the defendant has the obligation to prove that there was no violation of the principle". The shifting of the burden of proof is applicable in all civil judicial proceedings filed on the basis of the Anti-discrimination Act and "in proceedings in matters connected to a breach of the principle of equal treatment" (part of the official title of the relevant section of the Act dealing with procedural issues). However, it is not clear yet how the 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, for example, victimisation, instruction to discriminate, incitement to discrimination, breach of the duty to adopt measures to prevent discrimination etc.), the concept of shifting the burden of proof should apply to all the components of the equal treatment principle.

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, they must allege that their race or ethnic affiliation (origin) is the inducement for the discriminatory action. It is only thereafter that the burden of proof is shifted on to the defendant, who has the right to prove their allegations that they have not breached the principle of equal treatment."*[352]

The Regional Court in Košice held that "[t]he principle of shifting 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 – a certain degree of probability is sufficient (obvious or apparent discrimination at first sight – *prima facie case of discrimination*) (…). Then the burden of proof shifts on to the defendant who must prove that they did not breach the principle of equal treatment".[353]

With regard to administrative proceedings, regulated under the Administrative Code,[354] the law does not provide for a shift in the burden of proof. Instead, the Administrative Code stipulates that "an administrative body is obliged to precisely and entirely discover the real state of matters and procure all the necessary materials

[352] Finding of the Constitutional Court No IV. ÚS 16/09 of 30 April 2009, available at: www.concourt.sk/rozhod.do?urlpage=dokument&id_spisu=300198.
[353] Ruling of 18 March 2010, reference No 1Co/334/2008-238.
[354] Zákon č. 71/1967 Zb. o správnom konaní (Správny poriadok) v znení neskorších predpisov [Act No 71/1967 Coll. on Administrative proceedings (Administrative Code), as amended].

for this purpose. When doing so, it is not bound only by the proposals of the parties to the proceedings".[355]

The Act on Labour Inspection[356] does not contain any explicit and clear provisions on the burden of proof in relation to identifying breaches of the principle of equal treatment. It only contains a list of the rights of labour inspectors when carrying out a labour inspection, such as the right to enter the premises of the natural or legal person subject to the inspection, the right to request information and explanations from persons present on the employer's premises, the right to request documentation etc.,[357] and a very vague provision stating that "a labour inspectorate is independent when carrying out labour inspection".[358] Statutory rules for establishing evidence are only available for the stages when labour inspectorates are imposing fines for breaches of the principle of equal treatment (the Administrative Code applies here, see the paragraph above),[359] but it is in any case unclear what rules of procedure the labour inspectorates should apply when identifying and proving breaches of the principle of equal treatment. This has undoubtedly contributed to the very low number of cases where labour inspectorates have 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 to the traditional concept of burden of proof in criminal proceedings.

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 to the person concerned and is directly connected to a) seeking legal protection against discrimination for oneself or on behalf of

[355] Section 32 Paragraph 1 of the Administrative Code.
[356] 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 [Act No 125/2006 Coll. on Labour Inspection and changing and supplementing Act No 82/2005 Coll. on Illegal Work and Illegal Employment and changing and supplementing certain laws, as amended].
[357] See Section 12 Paragraph 1 of the Act on Labour Inspection for more details.
[358] See Section 7 Paragraph 10 of the Act on Labour Inspection.
[359] See Section 19 of the Act on Labour Inspection, in conjunction with Section 7 Paragraph 3 (i) and Section 25 Paragraph 2 of this act.

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.[360] Thus, it is not only a complainant directly affected by discrimination but anybody else who acts as a witness or a general complainant who is protected against adverse treatment.

In addition to this provision, several other laws regulate protection against victimisation. 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 their identity not be disclosed.[361] The other law is the Labour Code, Section 13 Paragraph 3 of which states that no person shall be persecuted or otherwise adversely treated in the workplace as a reaction to a complaint, action or a petition to start criminal proceedings against another employee or the employer. Similar provisions are enshrined in other acts, for example the Act on the State Service of Customs Officers, Act on the State Service of Members of the Police Force, Act on the Fire and Rescue Service, Act on Employment Services, Act on Higher Education, the Schools Act and the Act on Healthcare. The only procedural guarantee against victimisation is included in the Anti-discrimination Act. To the best of the authors' knowledge no judgement has yet been 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.

As mentioned above, victims of discrimination have the right to sue the perpetrator – be it a natural person or a legal entity, a public or private body – and request a number of remedies, including (the list is not exhaustive) that they be made to refrain from such conduct and, where possible, rectify the illegal situation or provide adequate satisfaction. If the adequate satisfaction is insufficient, generally if the violation of the principle of equal treatment has considerably impaired the dignity, social status or social achievement of the victim, they may also seek financial compensation for non-pecuniary damage. The amount of this financial compensation is determined by the court, which must take into account the seriousness of the non-pecuniary damage and all underlying circumstances. Material damages resulting from such treatment may also be claimed.[362] There is no difference in the procedure, whether a public or private entity is being sued.

[360] Section 2a, Paragraph 8 of the Anti-discrimination Act.
[361] Sections 7 and 8 of the Act No 9/2010 Coll. on Complaints.
[362] Section 9 of the Anti-discrimination Act.

If the principle of equal treatment is breached during the application process for a job, the injured party is entitled to "appropriate pecuniary compensation".[363] 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 employment legislation (including appointment, dismissal, pay and working conditions) have the authority to impose a fine of up to €100,000 on the entities which fall under their jurisdiction and which have breached their duties under provisions of the employment legislation. The manager whose conduct breaches their statutory duties in the field of employment and obligations under collective agreements may be fined an amount between three times and 12 times their average monthly salary. Despite the existing regulation of inspection mechanisms, these are not used in practice by the inspectorates in relation to supervising the observance of the anti-discrimination principle (no single case is known in which such a fine was 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 Inspectorate.[364]

In the area of access to goods and services the monitoring authorities (offices of the Slovak Trade Inspectorate) may punish discriminatory conduct with a fine of up to €16,600. In the case of multiple violations of a legal obligation within one year, it may impose a fine up to €33,000.[365] In a few cases, fines were imposed after using the methodology of situation testing in cooperation with the NGO Poradňa pre občianske a ľudské práva.

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

The amount of financial compensation for non-pecuniary damage is not limited and depends primarily on the seriousness of the damage caused and the circumstances under which it occurred.

The amount of compensation for pecuniary damage is not limited – the plaintiff must prove the real material damage which they have suffered and the causal link between the damage suffered and the unlawful act of the defendant.

c) Is there any information available concerning:
i) the average amount of compensation available to victims?

[363] See Section 41 Paragraph 9 of the Labour Code.
[364] If the subject under inspection fails to remove the deficiencies disclosed by the inspection, it can be fined between €330 and €3,300. Section 37 of Act No. 596/2003 Coll. on State Administration of the School System and School Self-Governance.
[365] The Slovak Trade Inspectorate is the entity responsible for the implementation of these provisions.

There is no official or other information available on the average amount of compensation available to victims.

Although the Ministry of Justice does collect some statistics (see Chapter 6.1 f) of this report), the data provided by the Ministry[366] does not contain reliable data on the cases decided by Slovak courts in the field of (non-)discrimination. However, a recent study, published in 2012 by the NGO Poradňa pre občianske a ľudské práva,[367] offers some information on the amounts of compensation for non-pecuniary damage which have been granted by courts in cases of discrimination to date. The study presents the finding that, of 22 cases where courts found violations of the principle of equal treatment and where plaintiffs also sought financial compensation for their non-pecuniary damage, this compensation was only granted in 12 cases.[368] The number of cases in which compensation for non-pecuniary damage was awarded at all is already indicative of the willingness of Slovak courts to grant this type of compensation. Indeed, as the authors of the study note, after analysing all the decisions available, courts often consider the fact that the declaration of a violation of the principle of equal treatment has been made to represent sufficient satisfaction for the person discriminated against.[369]

In cases where financial compensation for non-pecuniary damage was granted, this was usually in the field of employment or access to it (eight cases). Two remaining cases in which financial compensation for non-pecuniary damage was granted were in the fields of access to services and housing. The amounts awarded were most frequently around €1,000 or slightly over (up to €1,327.75) – six cases. In one case (relating to ethnicity) the compensation was €165.96 for each plaintiff (the case concerned several plaintiffs), in another it was €3,983.75, in another €3,3198.39 and in the remaining case €66,387.83. In the latter case the ground for discrimination was not given in the proceedings, so it is unclear how the case relates to the Anti-discrimination Act and the EU Directives in general. In addition, the decision is apparently not yet final.[370]

ii) 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?

It is already clear that the courts are fairly reluctant to award financial compensation at all for non-pecuniary damage in cases of discrimination and when such

[366] A response from the Ministry of 12 March 2013 to a request for information filed by one of the authors of this report.
[367] Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012): *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*. Košice: Poradňa pre občianske a ľudské práva. The publication is also available at http://poradna-prava.sk/wp-content/uploads/2012/11/Publikáciu-si-môžete-stiahnuť-tu-105-MB.pdf, last accessed 20 March 2013.
[368] See p. 98 of the study. Not all of these cases were final at the time of publication.
[369] See p. 98 of the study.
[370] See p. 97-98 of the study.

compensation is granted, the amounts tend to be symbolic (only slightly exceeding the average monthly salary in Slovakia). These amounts of compensation are hardly effective, proportionate and dissuasive (and even unofficial sources from the business sector confirm that fear of serious sanctions in discrimination-related claims has not so far become a part of their risk-assessment in management).

One of the reasons for this inadequate implementation of the requirements of the Directives may be the wording of the corresponding provision of the Anti-discrimination Act (Section9 Paragraph 3) which requires a finding of a "considerable impairment of the dignity, social status or social achievement of the person injured" in order for financial compensation for non-pecuniary damage to be awarded.[371]

Although this enumeration of conditions is not exhaustive and courts are supposed to take into account "the seriousness of the non-pecuniary damage and all underlying circumstances", the most frequent practice is that persons affected by discrimination have to "prove" how their dignity has been "considerably impaired", instead of the perpetrators' behaviour being judged as inherently humiliating and impairing a person's dignity. Thus, instead of bringing the perpetrators to justice, the individuals affected by discrimination often have to go through their trauma again, including during the judicial proceedings, and remain disillusioned after the judicial decision is announced. A change in legislation reflecting the need for a paradigm shift (judging the behaviour and treatment of the perpetrator instead of burdening and re-traumatising the victim) would be more than welcome.

As regards financial compensation for non-pecuniary damage, there is another problematic issue, namely the judicial fees. According to Slovak legislation, the plaintiff is supposed to pay three per cent of any sum claimed as financial compensation for non-pecuniary damage. This means that the higher the amount claimed as compensation for non-pecuniary damage, the higher the judicial fee – which hinders plaintiffs from even requesting amounts which would be effective, proportionate and dissuasive.

Given the fact that labour inspectorates are currently not generally finding any breaches of the principle of equal treatment, the answer to the question about the effectiveness, proportionality and dissuasiveness of their sanctions is obvious. The same can be said of school inspectorates.

[371] See Section 6.1 a) for the full wording of the relevant provision.

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).*

In July 2004 the Slovak National Centre for Human Rights became the specialised body for the promotion of equal treatment for all grounds of discrimination covered by the Anti-discrimination Act. With the adoption of the Anti-discrimination Act, the Act on the Slovak National Centre for Human Rights (the Centre) 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. 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.*

According to Act No. 308/1993 Coll., the Centre is an independent, non-judicial body, subsidised by the State.[372] The governing body of the Centre is the executive director as a statutory position and the Board consisting of nine independent members.[373] The executive director is elected and dismissed by the Board upon nomination by the Board members. The staff are appointed and dismissed by the executive director who is the statutory representative of the Centre.

The formal guarantee of independence of the Centre is stipulated by Article 2 Paragraph 1 of the Act on the Centre which states that "the Centre is an independent legal person".

[372] 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 9 March 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 by the Voluntary Fund, subsidised by the Government of the Netherlands and by contribution from the Slovak Government. A commitment to the further maintenance of the Centre was undertaken by the Slovak Government.

[373] One member is appointed by the President of the Slovak Republic, one member by the Chair of the National Parliament, one member by the Ombudsperson, one member by the Prime Minister of the Government of the Slovak Republic in response to a proposal from NGOs, one member is appointed by the Minister of Labour, Social Affairs and Family and the other four members are appointed by deans of the four law faculties.

As far as the formal independence of the Centre is concerned, Article 3 of the Treaty on the Establishment of the Slovak National Centre for Human Rights between the Government of the Slovak Republic and United Nations of 9 March 1994 is also relevant. According to this provision, 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 the 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 should be noted that the purpose of the treaty was not to establish an equality body but rather a more general human rights institution.

The Act on the Centre does not deal with the question of whom the Centre is accountable to (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).[374] Given the fact that the Centre is a public institution set up by law, it can be argued that it is accountable to the public (although there is no particular mechanism contained in the act on the Centre that would set up mechanisms for implementing 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. To these ends, the Centre does the following:

- monitors and evaluates the observance of human rights and the observance of the principle of equal treatment, in accordance with the Anti-discrimination Act;
- gathers information on racism, xenophobia and anti-Semitism in Slovakia and provides this information on request;
- conducts research and surveys for the purpose of providing data in the field of human rights, gathers and on request provides information in this field;
- prepares educational activities and takes part in information campaigns with the aim of increasing tolerance in society;
- secures legal aid for victims of discrimination and intolerance;[375]

[374] See Section 3b Paragraph 4 of the Act No 308/1993 Coll. on Establishing the Slovak National Centre for Human Rights for more details.
[375] The act on the Centre does not specify how the legal aid is to be secured, nor what is meant by legal aid for the purposes of the act.

- issues, on request of natural persons or legal entities or on its own initiative, expert opinions in matters of observance of the principle of equal treatment in accordance with the Anti-discrimination Act;
- carries out independent inquiries concerning discrimination;
- drafts and publishes reports and recommendations on issues connected to discrimination;
- provides library services;
- provides services in the field of human rights.[376]

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; but see also Chapter 7 f) for more details on the Centre's limitations in representing parties in proceedings relating to breaches of the principle of equal treatment). Pursuant to Section 2 Paragraph 3, the Centre is obliged (by 30 April each year) to 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.

Due to various problems with the functioning and overall effectiveness of the Centre, there are signs that the government currently in power[377] may initiate institutional changes relating to it. The Minister of Justice has been tasked by the government to draft an analysis of the legal impacts of the transfer of powers and tasks of the Centre as a human rights institution to the ombudsperson, while at the same time preserving the Centre as an equality body, and submit the corresponding legislative bills to the government.[378] Although both of these tasks were supposed to have been finalised by the end of July 2013, at the time of completion of this report (end of March 2013), there was no public indication that the government had implemented any of the steps regarding this task. See point e) below for more information.

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. The Centre has a statutory duty to carry out the activities in question (see answer to previous question).

The expert opinions or recommendation issued by the Centre are not binding on 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 for the victims of discrimination". Following a logical interpretation of the respective

[376] Section 2 Paragraph 2 of the Act on the Centre.
[377] The present government has been in power since 4 April 2012. The preceding government was openly ambitious about carrying out institutional and systemic changes regarding the Centre but did not implement any of them due to an early election.
[378] See the Resolution of the Government of the Slovak Republic of 19 September 2012, available at www.rokovania.sk/Rokovanie.aspx/GetUznesenia/?idRokovanie=656 (last accessed 20 March 2013).

provision, it can be argued that it covers a broad range of options including providing legal consultations, representing plaintiffs (but also defendants) in court proceedings and also cooperating with attorneys or NGOs providing legal aid in the field of 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 alleged victims of discrimination. This is very problematic because, if the Centre provides legal representation to a person in court and the case is lost, the individual concerned may be obliged to pay the judicial costs of the defendant (costs of legal representation plus actual costs incurred), something which has, in fact, already happened. This puts victims of discrimination at great risk and also questions the public interest element of having an equality body, in particular its role as an instigator of systemic changes through e.g. strategic litigation.

e) *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).*

One of the main problems with regard to the independence or potential dependence of the Centre is the way it is financed.

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 stipulates 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 does not guarantee any minimum threshold for the actual annual financing or a method for calculating it (and neither do the Act on the Centre nor the Constitution).

As it is the government which proposes the act on the state budget on an annual basis (and, in particular, it is the Ministry of Finance which submits the bill on the state budget every year) and the parliament which approves the act (predominantly represented by the same political parties which represent the government), this mechanism casts doubts on whether the Centre can in principle be independent from the political powers in office.

However, there are many other problems when it comes to the independence of the Centre and its overall functioning and effectiveness. On 1 June 2011, the Government of the Slovak Republic approved the *Analytical report on the functioning and status of the Slovak National Centre for Human Rights in the context of*

institutional protection of human rights in the Slovak Republic[379] (the Report). The Report was drafted by the Section for Human Rights and Equal Treatment of the Office of the Government of the Slovak Republic (the Section for Human Rights and Equal Treatment"). This report was the first of its kind ever produced by the Slovak government and, more generally, the first attempt which has ever been made to monitor and evaluate the functioning of the Centre in a relatively complex manner.

The Report presented various findings which the Section for Human Rights and Equal Treatment generated on the basis of an analysis which followed a relatively complex (albeit not exhaustive) data gathering process, analysis of the current state of affairs at the Centre which involved *inter alia* an analysis of the Centre's annual reports and other documentation, the available research on the perception of the Centre by the public, the Centre's by-laws, its historic and personnel development, its budgetary documentation, results of inspections of its financial management carried out by external bodies and a survey of the employees of the Centre, relevant NGOs and members of the Board. The most relevant findings were *inter alia* the following:

- the Centre's lack of powers/unclear powers and consequently weak position as a human rights institution (this includes, for example, the absence of any competence to initiate laws/changes of laws or to be compulsorily heard as a body commenting on laws, lack of power to decide cases of breaches of the principle of equal treatment or other human rights cases, lack of sanctions for bodies which ignore the Centre's attempts to carry out its statutory duties and rights, such as the right to conduct independent inquiries concerning discrimination, unclear definition and content of the duty to secure legal aid for victims of discrimination and intolerance, unresolved issues regarding bearing the costs of judicial proceedings other than the costs of legal representation by the Centre);
- the Centre's lack of professional and personal capacities;
- inefficient management of public resources allocated to the Centre;
- inappropriate structure creating the governing and controlling bodies of the Centre and their inactivity;
- the Centre's lack of preventive approaches in the field of equal treatment (and in the field of human rights in general), as well as lack of strategic planning and conceptual approaches;
- the Centre's lack of independence and lack of mechanisms to protect it against abuse by particular interests including political ones;
- lack of visibility of the Centre's activities and their limited impact on resolving the problems in the field of human rights and equal treatment;
- the very low number of cases of discrimination which have been brought to court by the Centre and have been resolved by the Centre in general;

[379] The report can be found at www.rokovania.sk/File.aspx/ViewDocumentHtml/Mater-Dokum-133077?prefixFile=m_ (last accessed 28 March 2012).

- the abolition of the Centre's Department of Monitoring and Research and its substitution with a Department of Research and Rights of the Child (leaving monitoring out completely).

Based on the findings of the Report, the Section for Human Rights and Equal Treatment proposed changing the way the institution functions, in particular through changes in how the Centre's governing and controlling bodies are structured, by redefining the Centre's powers, through changes in its financing and through other changes which would make the Centre (or other relevant institutions, either newly-defined or already existing) work efficiently towards effective protection of human rights, including the principle of equal treatment.

For the Section for Human Rights and Equal Treatment, the most appropriate solution, among a number outlined in the Report, would have been to transform the Centre solely into an equality body and to transfer its powers as the national human rights institution to the Public Defender of Rights (i.e. the ombudsperson). In a government resolution adopting the Report,[380] the government tasked the Deputy Prime Minister for Human Rights and National Minorities[381] and the Minister of Justice to analyse the possible financial and legal impacts of this and, at the same time, to analyse the possible financial and legal impacts of abolishing the Centre altogether and transferring its tasks and powers to the Public Defender of Rights and the Legal Aid Centre.[382]

The new government which came into power on 4 April 2012 cancelled part of this task and asked the Minister of Justice to draft an analysis of the legal impacts of the transfer of the Centre's powers and tasks as a human rights institution to the ombudsperson, while preserving the Centre as an equality body. At the same time, it asked the Minister of Justice to submit the corresponding legislative bills to the government.[383]

Although both of these tasks were supposed to have been finalised by the end of July 2013, at the time of completion of this report (end of March 2013), there was no public indication that the government had implemented any of the steps regarding this task. The only thing which seems to have been done so far is the adoption of a

[380] Resolution No 347 of 1 June 2011, available at www.rokovania.sk/File.aspx/ViewDocumentHtml/Uznesenie-11761?prefixFile=u .
[381] The position of the Deputy Prime Minister for Human Rights and National Minorities was abolished by a law which came into effect on 1 October 2012 (see Chapter 9 of this report for more details).
[382] The Legal Aid Centre, established by zákon č. 327/2005 Z. z. o poskytovaní právnej pomoci osobám v materiálnej núdzi a o zmene a doplnení zákona č. 586/2003 Z.z. o advokácii a o zmene a doplnení zákona č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov v znení zákona č. 8/2005 Z.z. [Act No 327/2005 Coll. on Providing Legal Aid to Persons in Material Need, as amended], is a state budgetary body providing legal aid in selected areas to people who are in "material need" as defined by the Act.
[383] See Resolution of the Government of the Slovak Republic of 19 September 2012, available at: www.rokovania.sk/Rokovanie.aspx/GetUznesenia/?idRokovanie=656 (last accessed 20 March 2013).

resolution by the Council of the Government of the Slovak Republic for Human Rights, National Minorities and Gender Equality (see Chapter 8.1 b) of this report for more detail) on 17 October 2012[384] in which it tasked the Minister of Justice with initiating and coordinating a complex audit of the Centre by 17 December 2012 (which had also not happened by the time this report was finalised).

However, there are also other serious concerns in connection with the Centre and its independence. By the cut-off date for this report (and also at the time of writing – March 2013), the Director of the Centre was a former MP, who (from 2006 to 2010) represented a political party which is now the only political party in government (Smer - sociálna demokracia). The President of the Board of the Centre – one of its governing bodies (see above) – is an MP for the same political party, which currently has a majority in the Parliament (with no need for a coalition partner). The names of the members of the Board are, however, not published on the Centre's website.

f) Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?

In accordance with 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 people represented by the Centre do not pay for the legal representation it provides. However, the Centre can only represent parties in proceedings in "regular courts" (i.e. courts of first and second instance), and legal representation is not possible before the Supreme Court or the Constitutional Court, or even in regular courts in proceedings concerning judicial review of decisions by administrative bodies. This basically means that the Centre's power to represent victims of discrimination in court is insufficient and ineffective. In addition, there are some types of administrative proceedings where the Centre cannot legally represent a victim of discrimination.

In 2009, the Centre dealt with 1,571 complaints (of which 38% could be classified as concerning discrimination). Of these, 912 were resolved by the Centre's regional offices.[385] In 2010, the Centre dealt with 1,418 complaints, of which 781 were resolved by the Centre's regional offices.[386] In 2011, the Centre dealt with 2,335 complaints (of which 40% concerned breaches of the principle of equal treatment).

[384] Resolution of the Council of the Government No 54, available at: www.radavladylp.gov.sk/data/att/9726_subor.pdf (last accessed 18 March 2013).
[385] *Annual report on the activities of the Slovak National Centre for Human Rights in 2009*.
[386] Response from the Centre of 31 March 2011 to a request for information of 18 February 2011.

Of these, 844 were resolved by regional offices. In 2012, the Centre received 2,497 complaints, of which 907 were classified by the Centre as concerning discrimination (it is unclear how many of the complaints were dealt with by the regional offices, as the situation with regional offices is unclear – see Chapter 7 i) of this report).[387]

In the discrimination-related complaints, the most frequent themes were labour relations, in particular bullying, job termination, collective redundancies due to the economic crisis, job termination during the probation period on the ground of pregnancy,[388] discrimination in access to employment due to age, gender and nationality,[389] sexual harassment and harassment in employment, unequal remuneration of women and men, non-admission to employment due to Roma ethnic origin, not adjusting working conditions for a person with a disability and inappropriate working conditions in general, breaches of labour standards connected to promotion and working time and victimisation.

In other fields, the discrimination alleged by the complainants occurred in the denial of goods and services to people of Roma ethnicity, healthcare for the elderly, the Roma and persons with disabilities, as well as in social services and education where unequal treatment was claimed by people with disabilities.

In 2009, the Centre filed three lawsuits with the courts. In 2010, the Centre did not file any new lawsuits but continued with four pending cases. In 2011, the Centre represented six clients in court who were claiming unequal treatment in employment. By the end of 2011, it had been (partly) successful in just one of the cases (and only at the first-instance level).[390] In 2012, the Centre represented victims of discrimination in court in only six cases (these concerned gender combined with

[387] The numbers of complaints dealt with by the Centre in the years specified in this paragraph represent all complaints received by the Centre in each particular year (including discrimination-related complaints). As can be see from the text below, the Centre went on to provide legal representation to the people submitting these complaints in a negligible number of cases. Details about these cases (i.e. cases where the Centre provided legal representation) and their outcomes are, however, not known publicly.

[388] This problem was not mentioned by the Centre as appearing in 2011, probably due to changes in the Labour Code, which, in response to pressure from NGOs, incorporated the relevant provision of the Pregnancy Directive and to the media campaign which accompanied the adoption of the changes.

[389] Although the Centre may have meant ethnicity (as these concepts are formally intertwined in Slovak law), as the Centre has also used the term “nationality” when referring to Roma people, for example, in its response to a request for information of 19 March 2012,.

[390] Response from the Centre of 19 March 2012 to a request for information of 5 March 2012. Case No 10C 110/09, submitted to the District Court in Humenné.

parental status in two cases,[391] ethnicity in one,[392] political opinion in one[393] and "other status" in the remaining two cases).[394] [395]

Of these cases, only one was won partially (the one referred to for 2011;[396] this time the partial victory was before the second instance court, which upheld part of the decision by the court of first instance). One case was lost and the Centre submitted an appeal,[397] in two instances the plaintiffs withdrew their lawsuits,[398] and in the remaining two instances the plaintiffs withdrew the powers granted to the Centre to represent them before the court).[399] [400]

As of 15 October 2008, the Slovak National Centre for Human Rights has been authorised to join judicial proceedings related to breaches of the principle of equal treatment, either on the side of the plaintiff or on the side of the defendant.[401] By the end of 2012, the Centre had not used this statutory right.[402]

In addition, in cases in which breaches of the principle of equal treatment could violate rights, interests protected by the law or freedoms of a larger or non-specified number of people, or if the public interest could be seriously endangered in some other manner by such a violation, the Centre can invoke the protection of the right to equal treatment in its own name[403] (see Chapter 6.2 for more details). By the end of 2012, the Centre had not filed an *actio popularis* in its own name.[404]

In 2009, the Centre received 18 requests for mediation (of which 16 were submitted by women and two by men). One mediation agreement was concluded in 2009. No mediation proceedings initiated/carried out by the Centre took place in 2010.[405] In

[391] Case No 10C 110/09 submitted to the District Court in Humenné, case No 10C 137/09 submitted to the District Court in Humenné.
[392] Case No 11C 137/2011 submitted to the District Court in Spišská Nová Ves.
[393] Case No 9C 263/2011 submitted to the District Court in Banská Bystrica.
[394] Case No 13C 8/2011 submitted to the District Court in Čadca and case No 5C 105/2011 submitted to the District Court in Ružomberok.
[395] Response from the Centre of 11 March 2013 to a request for information of 1 March 2013.
[396] Case No 10C 110/09, originally submitted to the District Court in Humenné.
[397] Case No 10C 137/09 originally submitted to the District Court in Humenné.
[398] Case No 5C 105/2011 submitted to the District Court in Ružomberok and case No 13C 8/2011 submitted to the District Court in Čadca.
[399] Case No 11C 137/2011 submitted to the District Court in Spišská Nová Ves and case No 9C 263/2011 submitted to the District Court in Banská Bystrica.
[400] Response from the Centre of 11 March 2013 to a request for information of 1 March 2013.
[401] Section 93 Paragraph 2 of the Civil Procedure Act.
[402] Response from the Centre of 31 March 2011 to a request for information of 18 February 2011, of19 March 2012 to a request for information of 5 March 2012, and of 11 March 2013.
[403] Section 9a of the Anti-discrimination Act.
[404] Response from the Centre of 31 March 2011 to a request for information of 18 February 2011 and of 19 March 2012 to a request for information of 5 March 2012 and of 11 March 2013.
[405] Ibid. According to the information provided by the Centre, although it constantly offers mediation and five of its clients agreed to it in 2010, the respondent employers did not.

2011, the Centre attempted to resolve four disputes by mediation.[406] In 2012, the Centre did not resolve any of its cases through mediation,[407] although as it notes in its written response to a request for information by one of the co-authors of this report, it promotes mediation but "[the Centre's] offers of it did not lead to positive feedback from employers and service providers".[408] In the same written response, the Centre also noted that in many instances, cases of discrimination were resolved by extrajudicial means (through agreements with the violators of the principle of equal treatment in which the Centre participated). However, the Centre does not provide any information to the public about these "successfully resolved cases" (as they are described in the written response to the request for information) and so it is very difficult to assess the quality, effectiveness and impact of this particular aspect of the Centre's work.

In 2009, the Centre issued 13 expert opinions. Some expert opinions were also issued in 2010 (although the exact number is not known)[409] and in 2011, the Centre issued 23 expert opinions.[410] In 2012, 17 expert opinions were issued.[411] However, in its response to a request for information, the Centre said that every response to a complaint is a "form of expert opinion" and the number of these is "incalculably high".[412] This is debatable, as the law on the Centre already indicates that these two forms of the Centre's activities are totally distinct. Of the 17 expert opinions in 2012, five concerned the same case, seven were at the request of the media and none seem to have been issued on the Centre's own initiative.[413]

It seems from this and also from the information received from the Centre that it does not usually represent victims in court proceedings (in 2009 only three cases were submitted to court, no cases were submitted to court in 2010[414] and six cases were submitted in 2011) and instead takes on 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,[415] and there are even doubts as to whether the Centre is familiar with the concept.[416]

[406] Response from the Centre of 19 March 2012 to a request for information of 5 March 2012.
[407] Paradoxically, and in sharp contrast to the information received from the Centre on 11 March 2013, the President of the Board of the Centre, at a conference organised by the Office of the Government on 15-16 November 2012 (see http://diskriminacia.sk/pozyvame-na-sympozium-rovnake-zaobchadzanie-v-slovenskej-realite/#more-368), stated that the Centre conducts "hundreds" of mediation proceedings.
[408] Response from the Centre of 11 March 2013.
[409] Response from the Centre of 31 March 2011 to request for information of 18 February 2011.
[410] Response from the Centre of 19 March 2012 to a request for information of 5 March 2012.
[411] Response from the Centre of 11 March 2013 to a request for information of 1 March 2013.
[412] Response from the Centre of 11 March 2013 to a request for information of 1 March 2013.
[413] Response from the Centre of 11 March 2013 to a request for information of 1 March 2013.
[414] Response from the Centre of 31 March 2011 to a request for information of 18 February 2011.
[415] Response from the Centre of 31 March 2011 to a request for information of 18 February 2011.
[416] See the response from the Centre of 11 March 2013 to a request for information of 1 March 2013.

Although it may seem from the outside and from the official information provided by the Centre, that it is, at least partially, carrying out its statutory tasks (the number of victims of discrimination being represented by the Centre is very low and the number of cases which are abandoned before the decision-making stage on their merits is even reached is extremely concerning – actually four cases out of the six which the Centre dealt with in 2012). The Centre is, in fact, fulfilling its statutory tasks and those given to it by the Directives more on paper than in reality.

Apart from the above indications of ineffective and insufficient action and the concerns relating to the Centre's lack of independence, there are also other reasons for unease. The Centre clearly has no strategy for exercising its statutory tasks and does not exercise them on a systemic and systematic basis. It apparently lacks high-quality experts in the field of non-discrimination (and there has even been a significant exodus of staff over the last few years; some former employees even issued an open letter arguing wrongful termination of employment).[417] It is not an active player in the field of non-discrimination, acting as a strong public voice in cases of breaches of the principle of equality and actively promoting positive change in the field. Finally, it is not independent politically or economically (see above).

The institution is apparently not transparent (the public knows very little about the Centre's activities as its website is very uninformative) and there are also very serious concerns about breaches of certain legal provisions connected to the economic management of the Centre.[418]

The Centre appears to be carrying out its activities more on a quantitative than a qualitative basis. This can clearly be seen, for example, in the very high number of cases dealt with by the Centre on an annual basis, many of which are irrelevant – as contrasted to the very low number of cases where the Centre actually represents the plaintiffs in the courts and even lower number of cases where the Centre has achieved a positive result. It also focuses excessively on educating school pupils about discrimination (which is not negative and unnecessary per se) instead of concentrating on systematic training for people with strong decision-making potential and/or decision-making powers.

[417] See also http://spravy.pravda.sk/stredisko-pre-ludske-prava-tvrdi-ze-byvala-vlada-ho-atakovala-pth-/sk_domace.asp?c=A120515_102519_sk_domace_p09 (last accessed 20 March 2013).
[418] See the *Analytical report on the functioning and status of the Slovak National Centre for Human Rights in the context of institutional protection of human rights in the Slovak Republic*, published by the Slovak Government on 1 July 2011, available at: http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Mater-Dokum-133077?prefixFile=m_.

On a long-term and constant basis, the Centre is subject to criticism by NGOs, international human rights bodies and other actors active in the field of human rights.[419]

g) *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).*

The Centre is neither a judicial nor a quasi-judicial institution and does not have the power to impose sanctions of any kind.

i) *Does the body treat Roma and Travellers as a priority issue? If so, please summarise its approach relating to Roma and Travellers.*

There is no visible sign that Roma and Traveller issues are given priority, 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 increasingly frequent.

A similar answer was received to a request for information in 2012. When asked, in March 2012, 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".[420] When the same question was asked in

[419] See, for example, Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012): *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*. Košice: Poradňa pre občianske a ľudské práva, pp. 110-112 (the publication is also available at: http://poradna-prava.sk/wp-content/uploads/2012/11/Publikáciu-si-môžete-stiahnuť-tu-105-MB.pdf, last accessed 20 March 2013); see also Centre for Civil and Human Rights – People in Need Slovak Republic: *Written comments concerning the Ninth and Tenth Periodic Reports of the Slovak Republic under the International Convention on the Elimination of All Forms of Racial Discrimination*, January 2013, pp. 2, 13, 16 (also available at: http://poradna-prava.sk/wp-content/uploads/2013/03/PDF-236-KB1.pdf, last accessed 14 March 2013); see also Roma Institute – Centre for the Research of Ethnicity and Culture (CVEK), Quo Vadis, Cultural Association of Roma in Slovakia (2013): *Implementation of the Strategy of the Slovak Republic for Roma Integration to 2020 and of the Revised Decade of Roma Inclusion in Slovakia for 2011-2015*, 7 January 2013, pp. 17-19. See also the Concluding Observations of the Committee on the Elimination of Racial Discrimination from 2010 (available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/413/66/PDF/G1041366.pdf?OpenElement) and the Concluding observations of the Committee on Economic, Social and Cultural Rights from 2012 (available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/433/84/PDF/G1243384.pdf?OpenElement). See also the transcript of the 7th meeting of the Council for Human Rights and National Minorities of 17 October 2012, available at: www.radavladylp.gov.sk/data/att/10161_subor.pdf (last accessed 20 March 2013).

[420] Response from the Centre of 31 March 2011 to a request for information of 18 February 2011 and response from the Centre of 19 March 2012 to a request for information of 5 March 2012.

March 2013, the Centre provided an evasive answer (by generally referring the co-author of the report to its annual reports instead of providing a direct and unequivocal answer).[421] At the same time, however, it responded that "the Centre provides information about the issues of prohibition of discrimination based on race and ethnicity, citizenship and nationality mainly through its educational and information activities. At a general level, in the light of the interpretation of anti-discrimination legislation, this issue is encompassed in each educational activity concerning non-discrimination, promoting the principle of equal treatment and diversity".

However, looking at the website of the Centre and its presentation in the media and elsewhere, it is difficult to believe that discrimination relating to race and ethnicity is a priority for the Centre, since it does not seem to place any emphasis on the issue whatsoever. This allegation is also supported by the fact that, between 2010 and 2012, the Centre provided legal representation only in one single case of racial/ethnic discrimination[422] (and even in this case, the plaintiff withdrew the Centre's powers to act on her behalf).[423]

In 2007, when the regional offices of the Centre were being established, their locations were chosen after an analysis of the situation in different regions of Slovakia, which included the presence of marginalised populations such as Roma as a criterion. In 2011, however, the situation with the regional offices became very serious. Allegedly due to financial cuts,[424] the Centre had to reduce the working hours of the regional office staff by half (each regional office had one full-time employee) and it is even possible that, for some time in 2012, the regional offices were not functioning at all (although it is difficult to verify this information as the Centre was very non-transparent on the issue and its website was not even functioning for a time in 2012). In any case, by the cut-off date for this report, the Centre only had three regional offices – in Banská Bystrica, Košice and Žilina.

[421] Response from the Centre of 11 March 2013 to a request for information of 1 March 2013.
[422] See Centre for Civil and Human Rights and People in Need Slovak Republic (2013): *Written comments concerning the Ninth and Tenth Periodic Reports of the Slovak Republic under the International Convention on the Elimination of All Forms of Racial Discrimination*, January 2013, p. 13. The Comments are available at: http://poradna-prava.sk/wp-content/uploads/2013/03/PDF-236-KB1.pdf (last accessed 14 March 2013).
[423] Response from the Centre of 11 March 2013 to a request for information of 1 March 2013.
[424] Response from the Centre of 19 March 2012 to a request for information from 5 March 2012.

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)

Since 2000, the Section for Human Rights and Equal Treatment of the Office of the Government[425] has been continuously preparing and coordinating the realisation of an action plan to prevent all forms of discrimination, racism, xenophobia, anti-Semitism and other forms of intolerance.[426] 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 was updated roughly every second year.

In 2008 (within the framework of the 2006-2008 Action Plan), the government supported 39 projects run by NGOs and the Slovak National Centre for Human Rights, providing total funding of €296,894. In 2009 this sum was €236,630, supporting 27 projects run by NGOs, a few public institutions and the Slovak National Centre for Human Rights (with the smallest amount of funding allocated for one project being €2,000 and the highest amount €24,000).[427] In 2010 the sum allocated was €299,252.01 which supported 32 projects, mainly run by NGOs and a few public institutions (with the financial support ranging from €1,650 to €19,986 per project).[428]

In 2011 the government did not support discrimination-related projects through the anti-discrimination action plan scheme but through a new scheme for support and protection of human rights into which the former action plan scheme was integrated. A total of 130 projects were supported with a total sum of €2,257,000. A large majority of the projects supported were apparently, directly or indirectly, focused on the anti-discrimination action plan goals. In 2012 the Office of the Government supported 80 projects, mainly run by NGOs but also a few public bodies through the wider human rights grant scheme established in 2011, allocating a total of €1,625,984.90 (note the declining trend in the overall sum allocated for the projects when compared to the sum available in 2011). As the Office of the Government

[425] The Section, as well as the position of Deputy Prime Minister for Human Rights and National Minorities, was abolished in 2012. See Chapter 9 of this report for more detail.
[426] For more information about the action plans, see www.mensiny.vlada.gov.sk/index.php?ID=1113.
[427] See www.mensiny.vlada.gov.sk/data/files/5209.xls (last accessed 15 February 2011).
[428] See the response from the Office of the Government of the Slovak Republic of 8 March 2011 in response to a request for information of 19 February 2011.

explained, 70 out of the 80 grantees declared that their projects relate to "preventing all forms of discrimination".[429] See also Chapter 8.1 (b) and Chapter 9 of this report.

Within the framework of the European Year of Equal Opportunities for All in 2007, the Office of the Government supported various NGO projects which dealt with awareness-raising, information campaigns, surveys and monitoring, data collection etc. An anti-discrimination awareness-raising media campaign was organised by the Office of the Government in September and October 2007 on TV, Slovak radio, newspapers and some public transport.[430]

In 2008 the Office of the Government supported a project run by four NGOs active in the field of anti-discrimination[431] within the framework of the Europe-wide Progress programme.

The project included publishing the first comprehensive commentary on the Anti-discrimination Act, supporting the website www.diskriminacia.sk on anti-discrimination (administered by the civil society organisation, Citizen, Democracy and Accountability; the website was launched within the framework of the European Year of Equal opportunities – see above), publishing brochures about discrimination for non-experts, an anti-discrimination campaign launched on TV, radio and on billboards, research activities, anti-discrimination training and assistance with policy-making in local communities.[432]

Between December 2009 and December 2010, the Slovak National Centre for Human Rights implemented a project entitled Equality of Opportunities Pays Off,[433] supported under the Progress scheme (though without a contribution from the Office of the Government), which also included some information activities aimed at awareness-building. These included 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 in accordance with the law, dissemination of information and awareness-raising

[429] A response from the Office of the Government of the Slovak Republic of 11 March 2013 to a request for information filed by a co-author of this report.
[430] Although the campaign was rather confusing, as it was based on a concept of the criminalisation of discrimination, which does not apply in most of cases of discrimination.
[431] 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).
[432] For more information about the project, On the Way to Equality, supported by the EU Progress scheme and the Slovak Government, see www.oad.sk/?q=sk/projects/progress (last accessed 28 March 2009).
[433] 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.

campaigns in the area of human rights form part of the remit of the Slovak National Centre for Human Rights.

Both the anti-discrimination campaigns which have taken place so far were rather small scale.

Although the government originally allocated €75,000 in 2010 to support the Progress programme at the national level in 2011, in the end it did not support any project. For the Progress Programme in 2012, the government allocated €75,000. The one-year project[434] ran from 1 December 2011 to 30 November 2012 as a joint initiative of the Office of the Government (coordinating the whole project and carrying out some of its activities) and two NGOs active in the field of anti-discrimination. The project activities included (but were not limited to):

- analysis of the practical application of anti-discrimination legislation as an instrument for identifying and overcoming institutional barriers in this area;[435]
- contribution to the creation of consensus in the understanding of the principles of equality and equal treatment among legal professionals and creation of a platform for expert discussion with all relevant stakeholders;
- developing tools and platforms for dissemination of information on European and national policies and legislation in the area of non-discrimination and facilitating discussion on their implementation, including awareness-raising among future leaders and opinion-makers;
- increasing awareness of vulnerable groups, in particular the Roma, as to the basic concept of discrimination and instruments for overcoming discrimination;
- needs analysis in collection of equality data and identification of measures enabling improved monitoring of equal treatment;
- creation of an information platform and communication instruments for the European Year of Active Ageing and Solidarity between Generations 2012.

No government website or the website of the Slovak National Centre for Human Rights provides access to the Anti-discrimination Act (or to other relevant national-level information on (anti-)discrimination) in any other language than 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.

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

[434] More information about the project can be found at: www.oad.sk.
[435] The analysis was published by Poradňa pre občianske a ľudské práva and is also available online at: http://poradna-prava.sk/wp-content/uploads/2012/11/Publik%C3%A1ciu-si-m%C3%B4%C5%BEete-stiahnu%C5%A5-tu-105-MB.pdf.

Before 2011, various "Councils of the Government" (Council of the Government for National Minorities and Ethnic Groups, Council of the Government for Non-Governmental Organisations, Council of the Government for Persons with Disabilities, Council of the Government for Older People and Council of the Government for Gender Equality) were set up by the government to be advisory, coordinating and initiative bodies for the government in their fields. Although all of them had some relevance in the (anti-)discrimination context, they were not established with the primary goal to eliminate discrimination (and the Council of the Government for Non-governmental Organisations and the Council of the Government for National Minorities and Ethnic Groups, for example, do not focus on issues related to discrimination at all).

They are composed (in various ratios) of representatives of the central, local and regional governments, of representatives of other public bodies (e.g. the Slovak National Centre for Human Rights and the ombudsperson) and of NGOs and other representatives of the groups addressed by the councils. They have not proved to be efficient fora for dialogue between government and NGOs. Some of the reasons for this are the formalism under which they operate, the unclear rules for the appointment of their members, the poor representation of non-governmental members as well as the general lack of mainstreaming approaches 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 on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration, which came into effect on 1 November 2010,[436] the Council of the Government of the Slovak Republic for Human Rights, National Minorities and Gender Equality was set up as a permanent advisory body to the Government of the Slovak Republic.[437] Its statutes were adopted on 2 March 2011.[438] Based on these statutes, many important systemic changes were introduced which improved the functioning of the official forum for communication by the government with NGOs in the field of human rights and non-discrimination.

According to its statutes, the Council became a permanent expert, advisory, coordinating and consultative body to the government in the field of human rights,

[436] The amendment was contained in 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 [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].

[437] See Section 2 Paragraph 3 of 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 Act No 403/2010 Coll. The website of the Council of the Government: www.radavladylp.gov.sk/.

[438] The latest version of the statutes is available at: www.radavladylp.gov.sk/data/files/2940_statut-rady-vlady-sr-podpisany.pdf (last accessed 21 March 2013).

including the rights of national minorities and ethnic groups and in the field of pursuing the principle of equal treatment and the principle of gender equality.[439] Among its tasks are presenting opinions on national observance of international obligations in the field of human rights, ensuring coordination of ministerial policies in the field of human rights, cooperating with ministries and other central state administration bodies, local bodies, NGOs, academic institutions etc., submitting proposals related to human rights policies to the government, taking standpoints and commenting on bills and on topical issues in the field of human rights. The Council of the Government has 40 members and unites representatives of the government, regional and local bodies, public human rights institutions, NGOs, academic institutions and vice-chairpersons of the Council's committees (see below). The Council is supposed to meet at least four times a year.

The Council has eight committees, of which six correspond to the transformed "Councils of the Government" described at the beginning of this chapter (the committees cover issues of national minorities and ethnic groups, non-governmental non-profit organisations, older people, people with disabilities, gender equality, children and youth, research and education in the field of human rights and development education and preventing and eliminating racism, xenophobia, anti-Semitism and other forms of intolerance).[440] The committees can refer to the Council with proposals, cooperate with ministries and with other bodies and institutions, comment on laws and other binding or non-binding documents etc. If they adopt an opinion with an at least two-thirds majority of all of their members, this opinion becomes binding for the Council.

Although the body and its mechanisms are rather complicated and "all-encompassing", it turns out to be a good forum for expert discussion, networking and facilitated exchange of opinions from all stakeholders involved in the field of human rights. The abolition of the previous fragmented councils not only brought the discussion onto a central level, but also interconnected the various topics and aspects of human rights including anti-discrimination. Since a more proportionate representation of governmental and non-governmental members was introduced, it has become a promising forum for democratic discussion and bottom-up approaches. On the other hand, there is no mechanism for monitoring the compliance of the government and its ministries with the recommendations of the Council and its committees. The implementation became even more problematic after the abolition of the position of Deputy Prime Minister for Human Rights and National Minorities, which resulted in the situation that, on the governmental level, there is practically no-one officially responsible for breaches of human rights in general (see Chapter 9 for more details).

[439] Aricle 2 of the statutes.
[440] See Article 6 Paragraphs 1 and 2 of the statutes.

A positive example of cooperation between the government and NGOs was the processes of amending the Anti-discrimination Act which resulted in the comprehensive amendment of the Act in spring 2008.[441] Based on comments from the public (represented by NGOs) on a governmental amendment of the Anti-discrimination Act drafted in spring 2007, an NGO representative was invited to become a member of the inter-governmental body on another more elaborate amendment of the Act which resulted in the Act adopted in spring 2008. The process was transparent, democratic and led to a relatively satisfactory result, which can also be considered as a value per se. This process nevertheless still represents a rare exception of NGO participation in law-making in the field of anti-discrimination. Although NGOs often participate in law-making in relation to anti-discrimination, it is usually on their own initiative and dependent on the pressure they can bring to bear on the government and individual ministries. Unfortunately, this process is a one-off example of constructive and productive dialogue between government and civil society in relation to the legislative process, instead of leading to a further follow-up or standardisation of processes relating to legislation and policy-making in the field of non-discrimination.

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 which could be seen as aimed at increasing dialogue between social partners or monitoring workplace practices or internal rules of employers have mainly been focused on gender equality and gender mainstreaming and are of a rather formal and to a large extent random and non-systematic character. The Department of Gender Equality and Equal Opportunities of the Ministry of Labour, Social Affairs and Family informed a co-author of this report in April 2010[442] that it "co-operates with the Commission on Equal Opportunities for Women and Men at the Confederation of Trade Unions of the Slovak Republic and regularly twice a year organises an expert seminar focusing on issues of equal treatment together" and that "social partners are represented in the Council of the Government of the Slovak Republic for Gender Equality and in its executive and consultative committee and are invited to all educational and conference activities".

Something similar was stated by the Department of Gender Equality and Equal Opportunities of the Ministry of Labour, Social Affairs and in March 2011,[443] when it informed the co-author of this report that, in addition to regular working meetings which take place between the Department of Gender Equality and Equal Opportunities of the Ministry of Labour, Social Affairs and Family and the Confederation of Trade Unions of the Slovak Republic, two seminars took place in

[441] By amendment No 85/2008 Coll., approved by the Parliament on 14 February 2008 and in effect from 1 April 2008.
[442] Response from the Department of 7 April 2010 to a request for information.
[443] Response from the Department of 16 March 2011 to a request for information.

2010, one on sharing experiences between the Confederation of Trade Unions of the Slovak Republic and its Austrian partner and the other on "support for new paternity and the role of the father in the family".[444]

The Department of Gender Equality and Equal Opportunities of 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[445] which was later "implemented into practice through the adoption of the Action Plan on Gender Equality for 2010-2013" (which has, however, been constantly and heavily criticised by civil society). The Department of Gender Equality and Equal Opportunities of the Ministry of Labour also noted that social partners are represented on advisory bodies of the Ministry of Labour, Social Affairs and Family.

However, it is not clear whether any activities took place in 2011. The Office of the Government, responsible for the human rights and anti-discrimination agendas at the governmental level, responded to a request for information filed by one of the authors of this report to find out whether the government is carrying out any activities regarding (anti-)discrimination targeted at social partners, that it "does not have the requested information at its disposal".[446]

In a response to a request for information of March 2013,[447] the Ministry reiterated that it initiated, processed and coordinated the process of the adoption of the Memorandum on Cooperation between the Government of the Slovak Republic and the Confederation of Trade Unions of the Slovak Republic (adopted in 2009, see above). Apart from this, the Ministry only mentioned "cooperation when carrying out common activities", namely an event called "A Meeting of Three Generations" which took place on 19 June 2012 and a conference on removing differences in men and women's pay (within the framework of the Network for Actors in the Field of Healthcare and Social Services) which took place on 6 September 2009.[448]

Neither the Office of the Government, nor the individual ministries or the Slovak National Centre for Human Rights has an equality code of practice.

d) to specifically address the situation of Roma and Travellers. Is there any specific body or organ appointed on the national level to address Roma issues?

[444] *Ibid*, p 3.
[445] Adopted by Government Resolution No 670/2009.
[446] Response from the Office of the Government of the Slovak Republic of 26 March 2012 to a request for information filed by one of the authors of this report, p 3.
[447] Response from the Ministry of Labour, Social Affairs and Family of 13 March 2013 on a request for information.
[448] Response from the Ministry of Labour, Social Affairs and Family of 13 March 2013 on a request for information, pp. 2-3.

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.[449] It was heavily criticised by civil society, mainly because it was based on a national instead of a social approach and also because it did not contain clearly defined targets and tasks nor any specific financial allocation.[450]

In April 2008, the government approved the Concept of Education for Roma Children and Pupils including the Development of Secondary and Tertiary Education. It was also subject to criticism, *inter alia* because it did not contain any specific measures, because it mixed up the "national minority" approach and the social approach, and also because it perpetuated stereotypes about the Roma (the Concept for example proposed "introducing educational courses in which Roma pupils could also assert themselves", where the examples given were only manual works and these were also gender stereotypical).[451]

See also Chapter 5 b) of this report.

In 2001, the Office of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities was established. The Plenipotentiary was directly subordinate to the Prime Minister and her/his tasks were to "propose, coordinate and control activities aiming at solving problems of the Roma minority and, following approval from the government, to carry out systemic solutions to achieve equal status in society for citizens belonging to the Roma minority".[452] In June 2012 the Plenipotentiary, albeit still remaining an advisory body of the government and remaining officially accountable to it, became de facto subordinate to the Minister of Interior with whom the Plenipotentiary is supposed to "coordinate her/his activities".[453] At the same time, the Office of the Plenipotentiary moved to the Ministry of Interior too.[454] The subsuming of the office into the Ministry of Interior, apart from being unprincipled and non-systemic (the situation of Roma communities requires systemic solutions in all fields of life including employment, housing, infrastructure,

[449] The document is available at: www.romovia.vlada.gov.sk/data/files/8895.pdf (last accessed 15 March 2013).
[450] For a description of the process for the adoption of this document and some remarks on its content, see, for example, Hojsík, M.: 'Rómovia', in: Kollár, M., Mesežnikov, G. and Bútora, M. (2009): *Slovensko 2008: Súhrnná správa o stave spoločnosti*, Bratislava, Inštitút pre verejné otázky, pp. 213-215.
[451] For more information, see, for example, Hojsík, M.: 'Rómovia', in: Kollár, M., Mesežnikov, G. and Bútora, M. (2009): *Slovensko 2008: Súhrnná správa o stave spoločnosti*, Bratislava, Inštitút pre verejné otázky, p. 224.
[452] See www.minv.sk/?vznik_uradu (last accessed 22 March 2013). The original statutes are not available.
[453] See Article 2 Paragraph 3 of the Statutes of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities, approved by a resolution of the Government of the Slovak Republic No 308 of 27 June 2012, available at: www.minv.sk/?statut_rk (last accessed 15 March 2013).
[454] See Article 3 Paragraph 4 of the Statutes. The link to the website of the current Plenipotentiary is www.minv.sk/?romske-komunity-uvod.

education, health etc. where the Ministry of Interior has no powers), also has a very negative and dangerous flavour, as part of the Ministry of Interior's remit is to deal with "security", criminal proceedings and generally with the repressive side of the exercise of state power.

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 out in its transitory provisions a general clause which states that employers and relevant trade union bodies which conclude collective agreements are obliged to bring the provisions of collective agreements into compliance with the principle of equal treatment by 1 January 2005. Employers have the same obligation to adopt the provisions into their internal rules. This means that after January 2005 no collective agreements and internal rules of employment contrary to the Anti-discrimination Act may be legally applied. This provision of the Anti-discrimination Act does not mention statutes or internal rules of other professions or independent occupations, but 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 (internal regulations of associations, of independent professions, workers' and employers' organisations and 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 bylaw underlying a 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 which are discriminatory, for example, the Act No. 235/1998 Coll. on Childbirth Allowance and on Allowances for Parents who have Three or More Concurrently Born Children or Twins More than Once within Two Years (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). In addition, the provision of the Labour Code which defines "pay" (Section 118 Paragraph 2) is in violation of EU law.

There is no specific mechanism to control or abolish discriminatory provisions of existing internal rules. The only reliable way to challenge such a provision of the

internal rules of a self-governing body would be a discrimination case brought to the court by an aggrieved individual or group of individuals.

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.

Until 1 October 2012, the Section for Human Rights and Equal Treatment of the Office of the Government was an expert department of the Office of the Government of the Slovak Republic which dealt with issues of human rights and equal opportunities, as well as with issues of cooperation with non-governmental non-profit organisations. It provided the Deputy Prime Minister for Human Rights and National Minorities with expert, advisory and initiative support in the field of human rights and equal treatment. In the international context, the Section for Human Rights and Equal Treatment provided expert communication with foreign and international institutions in the field of human rights protection and participated in the preparation of regular reports of the Government of the Slovak Republic arising from international documents on human rights. It also co-authored anti-discrimination legislation and was supposed to fulfil a number of other implementation tasks related to the Directives. The Section also fulfilled the tasks of the Secretariat of the Council of the Government of the Slovak Republic for Human Rights, National Minorities and Gender Equality which was established by law in 2010[455] and which is supposed to ensure the coordination of the policies of ministries and of the activities of central state administration bodies in the field of human rights (for more information on the Council of the Government, see Chapter 8.1 b) of this report).

Between 2000 and 2010, the Section prepared and coordinated the implementation of an action plan to prevent all forms of discrimination, racism, xenophobia, anti-Semitism and other forms of intolerance.[456] The activities carried out under the action plan by public bodies as well as by NGOs included education and training, dissemination of information, advocacy, monitoring and research etc. The document was updated roughly every second year. In 2008 (within the framework of the 2006-2008 Action Plan), the government supported 39 projects run by NGOs and the Slovak National Centre for Human Rights, providing total funding of €296,894. In 2009, this sum was €236,630, supporting 27 projects run by NGOs, a few public

[455] This Council of the Government was established by 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 [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 amending and supplementing certain laws] which came into effect on 1 November 2010.

[456] For more information about the action plans, see http://www.mensiny.vlada.gov.sk/index.php?ID=488.

institutions and the Slovak National Centre for Human Rights (with the smallest amount of funding allocated for one project being €2,000 and the highest amount being €24,000). In 2010 the sum allocated was €299,252.01 which supported 32 projects, mainly run by NGOs and a few public institutions (with the financial support ranging from €1,650 to €19,986 per project).[457]

In 2011 the government did not support discrimination-related projects through the anti-discrimination action plan scheme but through a new scheme for support and protection of human rights into which the former action plan scheme was integrated. A total of 130 projects were supported with a total sum of €2,257,000. According to the government, a large majority of the projects supported focused, directly or indirectly, on the anti-discrimination action plan goals. In its response of 26 March 2012 to a request for information filed by one of the authors of this report, the Office of the Government explained that the anti-discrimination action plan scheme was abolished by a new concept being prepared by a government, in particular the anticipated nationwide strategy for protection and support of human rights in the Slovak Republic, into which the issues covered by the previous anti-discrimination action plans are meant to be incorporated. Although the government approved the plan for the adoption of such a strategy and its design on 16 November 2011,[458] by the cut-off date for this report, the strategy had not been adopted and there has been no serious public discussion about it (although, officially the strategy was supposed to be adopted by September 2013). Nevertheless, in 2012, the Office of the Government supported 80 projects run mainly by NGOs but also a few public bodies through the wider human rights grant scheme established in 2011 (also containing explicit references to preventing all forms of discrimination, racism, xenophobia, homophobia, anti-Semitism, the rights of national minorities, the rights of persons with disabilities, gender equality, etc.).[459] A total of €1,625,984.90 was allocated (note the declining trend in the overall sum allocated for the projects when compared to the sum available in 2011). As the Office of the Government explained, 70 of the 80 grantees declared that their projects relate to “preventing all forms of discrimination”.[460]

On 11 September 2012, the Slovak Parliament adopted an amendment to the Act on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration and to some other laws which severely limit, at the national level, the institutional coverage of human rights in general and of issues

[457] See the response from the Office of the Government of the Slovak Republic of 8 March 2011 to a request for information of 19 February 2011.
[458] See Government Resolution No 717/2011, also available at: http://www.rokovania.sk/Rokovanie.aspx/RokovanieDetail/609 (last accessed 2 April 2012).
[459] The call for proposals and the accompanying documents can be found at: http://www.mensiny.vlada.gov.sk/26163/vyzva-lp-2012.php.
[460] A response from the Office of the Government of the Slovak Republic of 11 March 2013 to a request for information filed by a co-author of this report.

relating to equality and non-discrimination. The legislative changes came into effect on 1 October 2012.

The amendment abolished the position of the Deputy Prime Minister for Human Rights and National Minorities (see above).

The amendment did not transfer the tasks of the abolished deputy prime minister role in a complex and comprehensive manner. Instead, some fragments were transferred to the Ministry of Labour, Social Affairs and Family (the Ministry of Labour has become a central state administration body for "gender equality and equal opportunities and for the coordination of state policies in this field"). Some tasks were also transferred to the Minister of Foreign and European Affairs, although this was only de facto, since the statutory remit of the Minister of Foreign Affairs does not explicitly comprise protection of human rights at the national level.

The government did not allocate adequate financial and human resources to the ministries to which new tasks related to human rights and equality and non-discrimination were transferred.[461] For example, the Ministry of Labour, which has officially become responsible for the agenda of "gender equality and equal opportunities", has not increased the number of staff at the Department of Gender Equality and Equal Opportunities (the department at the ministry responsible for the agenda) and, by the cut-off date for this report, the department did not have a lawyer.

The amendment also abolished the legislative provisions (contained in Act No. 524/2010 Coll. on Providing Grants in the Sphere of the Activity of the Office of the Government of the Slovak Republic) which enabled the Office of the Government (and, effectively, the Section for Human Rights and Equal Treatment of the Office of the Government which represented the staff of the former Deputy Prime Minister for Human Rights) to provide grants to NGOs and other public and private bodies in the field of human rights, equality and non-discrimination (including gender equality, support for the social and cultural needs of Roma communities and grants to solve the extremely unfavourable situations they find themselves in).

The authority to allocate grants in the field of human rights and non-discrimination was transferred to the Ministry of Foreign and European Affairs, although this ministry has no official statutory remit related to human rights in general and to non-discrimination in particular (and despite the fact that tasks related to "equal opportunities" were transferred onto the Ministry of Labour). The statutory entitlement to provide grants designed to support Roma communities was passed to the Ministry of Interior (which did not receive any other human rights or equality-related tasks). The right of the government to provide grants to NGOs and public and private bodies in the field of gender equality was transferred to the Ministry of Labour.

[461] Instead, the 15 staff positions which previously provided support to the former Deputy Prime Minister for Human Rights were transferred to the newly-appointed Deputy Prime Minister for Investments (whose post was also newly-designed).

In 2011, the government adopted the Revised National Action Plan for the Decade of Roma Inclusion 2005-2015 for 2011-2015[462] which later became part of the Strategy of the Slovak Republic for the Integration of Roma to 2020, adopted on 11 January 2012.[463] Although the coordination of both of these documents (which were integrated into one) should be carried out by the Office of the Plenipotentiary for Roma Communities, there are no special resources allocated for this coordination. It is equally unclear how the policy documents will be coordinated at the level of individual ministries and at regional level. For more information about the documents, see Chapter 5 b).

See also Chapters 8.1 (a) and 8.1 (b) of this report.

[462] *Revidovaný akčný plán Dekády začleňovania rómskej populácie 2005-2015 na roky 2011-2015*, adopted by Government Resolution No 522/2011. The document is available at: http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=19992 (last accessed 1 April 2012).

[463] The document was adopted by Government Resolution No 1/2012 and is available at http://www.rokovania.sk/Rokovanie.aspx/GetUznesenia/?idRokovanie=622 (last accessed 1 April 2012).

ANNEX

1. **Table of key national anti-discrimination legislation**
2. **Table of international instruments**
3. **Previous case-law**

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Please list below the main transposition and Anti-discrimination legislation at both Federal and federated/provincial level

Name of Country: Slovakia Date: 1 January 2013[464]

Title of Legislation (including amending legislation)	Date of adoption: Day/month/ year	Date of entry in force from: Day/month /year	Grounds covered	Civil/Administrative/ Criminal Law	Material Scope	Principal content
Title of the law: Abbreviation: Date of adoption: Latest amendments; Entry into force: Where the legislation is available electronically, provide the webpage address.			Please specify	Please specify	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 discriminatio n, harassment, instruction to discriminate or creation of a specialised body

[464] With the exception of the amendment of the Anti-discrimination Act No 32/2013 Coll. of 5 February 2013.

Title of the Law: Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection Against Discrimination (Anti-discrimination Act) Abbreviation: ADZ (Antidiskriminačný zákon) Date of adoption: 20/5/2004 Latest amendments: 05/02/2013 (No 32/2013 Coll.) Entry into force: 1/7/2004	20/5/2004	1/7/2004	As of April 2008: 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	Civil law	Identical to Directives 2000/43/EC and 2000/78/EC (i.e. employment and occupation, social security, including social advantages, healthcare, provision of goods and services, including housing, and education) – for all grounds covered by the Anti-discrimination Act (i.e. no differences in material scope with regard to individual grounds)	The Act regulates the principle of equal treatment which includes prohibition of all forms of discrimination as stipulated by the Directives in the fields that represent the material scope of the Act, and a specific form of civil proceedings in cases when the principle of equal treatment is

						violated.
Title of the Law: Act No. 308/1993 Coll. on establishing the Slovak National Centre for Human Rights Abbreviation: Date of adoption: 15/12/1993 Latest amendments: 14/2/2008 (No 85/2008 Coll.) Entry into force: 1/1/1994	15/12/1993	1/1/1994	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, trade union involvement, unfavourable state of health, duties to family, membership of or involvement	Administrative law	Human rights including anti-discrimination: monitoring and evaluation, gathering information, conducting research and surveys, preparing educational activities and taking part in campaigns; securing legal aid to persons affected by discrimination; issuing expert opinions in matters of observance of the principle of equal	The Act established the Slovak National Centre for Human Rights and regulates its status, governance, remit and responsibilities.

			in a political party or a political movement, a trade union or other association, other status		treatment; carrying out independent inquiries concerning discrimination; drafting and publishing reports and recommendations on issues connected to discrimination; publishing annual reports	
Title of the Law: Labour Code No. 311/2001 Coll. Abbreviation: ZP (Zákonník práce) Date of adoption: 2/7/2001 Latest amendments: 10/8/2012 (No 252/2012) Entry into force: 1/4/2002	2/7/2001	1/4/2002	All grounds contained in the Anti-discrimination Act (sex, religion or belief, race, affiliation with nationality or an ethnic group, disability, age, sexual	Civil law	Employment	"The Code regulates individual labour relations connected to dependent work of natural persons for legal persons or

			orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status) + trade union involvement, unfavourable state of health and genetic features			for natural persons, and collective labour relations" (Section 1 Paragraph 1 of the Act). In practice, many of the provisions of the Labour Code apply also to public services.

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country: Slovakia Date: 01 January 2013

Instrument	Date of signature (if not signed please indicate)) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	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 Paragraph 3, Article 18 Paragraph 3, Article 19 Paragraph 2, 3, 4c, 8, 10, 12, Article 31	Ratified collective complaints protocol? No	Yes
International Covenant on Civil and Political Rights	Signed 7/10/1968	Ratified 28/5/1993	No	Yes	Yes

Instrument	Date of signature (if not signed please indicate)) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	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	N/A	Yes
International Convention on Economic, Social and Cultural Rights	Signed 7/10/1968	Ratified 28/5/1993	No	Yes	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
ILO Convention No. 111 on Discrimination	Signed 25/6/1958	Ratified 1/1/1993	No	N/A	Yes

Instrument	Date of signature (if not signed please indicate)) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
Convention on the Rights of the Child	Signed 30/9/1990	Ratified 28/5/1993	No	No	Yes
Convention on the Rights of Persons with Disabilities	Signed 26/9/2007	Ratified 26/5/2010	No	Yes	Yes

ANNEX 3: PREVIOUS CASE-LAW

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)
Brief summary of the key points of law and of the actual facts (no more than several sentences).

Name of the court: The Constitutional Court of the Slovak Republic
Date of decision: 15 October 1998
Reference number: PL ÚS 19/1998
Address of the webpage: 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 the majority population) in constituencies in which ethnic Slovaks are a minority.

The Constitutional Court abolished these provisions with reference to the general anti-discrimination principle (Article. 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:
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 the constitutionality of a legal provision regulating work by students working on a temporary basis and stated that preferential treatment for certain groups of people (women, young people and people with disabilities) can be justified under Article 38 of the Constitution: *"Legal provisions favouring certain groups 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 there are 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, with certain fundamental rights, directly anticipates preferential treatment for certain groups of natural persons (women, young people, people with disabilities) and gives a constitutional basis to this favouritism."

Name of the court: District Court of Zvolen
Date of decision: 11 June 2003
Reference number: No. 7C 190/02-309
Brief summary: The 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)[465] was a research worker with more than 20 years' experience working in the field of forestry who filed an action against her employer to the court because she had been excluded from the position of coordinator of a project, even though she drew up the project proposal and was mentioned as the coordinator of the project in the project documentation. The employer decided on her exclusion without consulting her and appointed another employee, a less experienced man with lower qualifications, as the coordinator.

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

Section 13 of the Labour Code guarantees employees all rights in employment relationships without direct or indirect discrimination on the grounds 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 cases stipulated by law or when there is a factual reason for carrying out work based on the prerequisites or requirements and nature of the 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 female employee who, while on maternity leave, was notified of the termination of her employment (as a nurse in a public hospital). The reason for the job termination was her failure to take an oath of office, in accordance with the new law on public service. The employer informed the employees of their obligation through a noticeboard in the work place. The dismissed employee did not receive

[465] A copy of the decision was handed to the author with the names of the participants deleted.

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.

The Supreme Court, examining the Regional Court's 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, Paragraph 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 were on maternity leave or extended maternity leave, when it did not inform them, as it informed the other employees, about the date for taking the oath and about changes in their employment. Therefore it acted in contradiction to the prohibition of discrimination, which is regulated by Article 13 of the Labour Code."*

Name of the court: The District Court of Michalovce, the Regional Court of Košice, the Constitutional Court of the Slovak Republic
Date of decision: 31 August 2006 (District Court of Michalovce), 25 October 2007 (Regional Court of Košice), 29 January 2008 (District Court of Michalovce), 15 July 2010 (Regional Court of Košice); the date of decision of the Constitutional Court is not known)
Reference number: No. 12C/139/2005 (District Court of Michalovce), 2Co/430/2006-148 (Regional Court of Košice – first decision on appeal), 2Co/115/2008-192 (Regional Court of Košice – second decision on appeal); the reference number of the Constitutional Court is not known)
Name of the parties: Not published
Brief summary: Three Roma activists lodged a petition with the Michalovce District Court against the owner of a café. They claimed discriminatory treatment on the ground of their ethnicity and requested that the owner of the café 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 café and to test it in its policies towards customers of Roma ethnic origin.

They were refused access to the café as they were not able to prove "club membership" (i.e. they were not in possession of "membership cards"). They made a sound recording of their encounter with the café personnel.

The non-Roma activists from Poradňa who followed them a few minutes later had no problem entering the café. The court ordered the owner to issue a written apology but it did not grant the financial compensation which was requested 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 that 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 applicants' 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 overturned the decision and returned it to the court of first instance 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[466] applies where the party being sued by the injured party must prove that the principle of equal treatment was not breached".

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

On 15 July 2010, Košice Regional Court, as an appeal court, upheld the decision of Michalovce District Court. The injured Roma activists referred the case to the Constitutional Court which rejected the case. The case is now (at the beginning of 2013) pending before the Committee on the Elimination of Racial Discrimination.

Name of the court: The District Court of 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 sweet shop. The court decided that direct discrimination 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 compensation. The petitioners lodged an appeal against the decision. According to information provided by the Regional Court in Prešov in

[466] The court used the term "reverse burden of proof", although the Slovak language does have a word for "shift in burden of proof".

February 2011 on the request of a co-author of this report, the plaintiffs eventually withdrew 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
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 equalising 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:

- Article 1, Paragraph 1 of the Constitution ("The Slovak Republic is a sovereign, democratic state governed by the rule of law. It is not linked to any ideology or religion.");
- Article 12, first sentence of 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 harmed, discriminated against or favoured on any of these grounds.").[467] (see more in Chapter 5)

Name of the court: District Court of Košice, Regional Court of Košice
Date of decision: 28 March 2007
Reference number: Not known[468]
Name of the parties: Not published
Brief summary: The case was initiated by a Roma 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 club members.

The court declared that there was 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 displayed at the entrance of

[467] Decision of the Constitutional Court, PL. ÚS 8/04, http://www.concourt.sk/.
[468] This decision has not been made public, hence no further details can be provided.

the pub for 30 days. In addition, the court awarded the Roma man non-pecuniary damages to be paid by the defendant of the amount of SKK 20,000 (approx. €600). It was the first case based on the Anti-discrimination Act in which the court awarded damages for discrimination on the ground of ethnic origin. It was also the first case of direct discrimination against a Roma person in access to services which did not rely on situation testing to prove the discrimination.

The defendant appealed against the decision and the court of higher instance abolished the decision and returned it to the court of first instance for a new decision. When the case returned to the first instance level, the parties in the dispute resolved the case amicably.

Name of the court: District Court of Banská Bystrica, Regional Court of Banská Bystrica
Date of decision: 20 November 2007
Reference number: No 8C/119/2006 – 107 District Court of Banská Bystrica
Address of the webpage:
http://jaspi.justice.gov.sk/jaspiw1/htm_sudr/jaspiw_maxi_sudr_fr0.htm27
March 2008 (The Regional Court Banská Bystrica), No 12 Co/6/08[469] (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 the publication of a job advertisement by the defendant in which the defendant sought 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 under the age of 25". This was pursuant to the defendant's contract with an office of labour, social affairs and family (concluded under the Act on Employment Services)[470] under which the defendant had committed to create four jobs for "disadvantaged applicants" (i.e. for applicants under the age of 25 who have completed their training for an occupation through a daily form of study less than two years ago and have not yet acquired their first regularly paid job) and the labour office 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 which had deterred him from applying for the job.

The District Court of 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

[469] The Court probably made a mistake in the official judgement, as it states the date of issue of the judgement of the regional court as 27 March 2007. However, this would not have been possible, as the district court issued its decision on 20 November 2007 and regional court decisions always follow district court ones.
[470] Act No 5/2004 Coll.

accordance with Section 8 Paragraph 3a of Act No 5/2004 Coll.[471] *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 Paragraph 3a of Act No 5/2004 Coll., i.e. a citizen under the age of 25 who has completed their training for an occupation through a daily form of study less than two years ago and has not yet acquired their first regularly paid job (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 therefore pursued a legitimate aim and acted in accordance with special regulations (…).*"[472]

Although the applicant appealed, the appellate court (the Regional Court of 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. (initiator of a constitutional complaint against a judgement of Trnava District Court)
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 of 26 April 2007 on the 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 Paragraph 1 of the Constitution of the Slovak Republic. One of the reasons given 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 the shift in the burden of proof was as follows:

"[B]urden of proof does not only and exclusively burden the defendant but 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.

[471] 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].
[472] The District Court of Banská Bystrica, decision No 8C/119/2006 – 107 from 20 November 2007.

"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 of and sanctioned by the defendant for breaching employment discipline. [I]t is important that the complainant substantiates his allegations by additional facts establishing unequal treatment."

Name of the court: District Court of Prievidza
Date of decision: 14 November 2007; the decision is final as of 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 ward-care services and a crisis centre. She sought compensation for non-pecuniary damages of the amount of SKK 500,000 (€16,597) for alleged discriminatory treatment by her employer, comprising, *inter alia*, depriving her of her powers, excessive control of her work performance, requirements for her to carry out work not contained in her labour contract, accusing her of shortcomings in work-related documentation which, however, proved not to have been checked by her employer – none of which proved to have been applied against other employees. She did not seek moral satisfaction from the defendant. She did not invoke any grounds on which she had been allegedly discriminated against.

The District Court of Prievidza, deciding that the treatment of the applicant was indeed discriminatory, ordered the defendant to pay the applicant SKK 120,000 (€3,983.27)as non-pecuniary damages.

With regard to the fact that the court awarded financial compensation of non-pecuniary damages, it argued as follows:

"(…) [T]he employment relationship between the parties has already been terminated, and hence awarding non-pecuniary damages – 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, given the facts listed, the possibility of awarding pecuniary satisfaction."

The court also added that *"[n]on-pecuniary satisfaction in no way serves 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 did it identify, 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: 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 childbirth allowance was not in accordance with the law.

The refusal to pay the subsidy followed an indirectly discriminatory provision (Section 3 Paragraph 5) of the Act No. 235/1998 Coll. on Childbirth Allowance and on Allowances for Parents who have Three or More Concurrently Born Children or Twins More than Once within Two Years which prohibits the allowance from being paid to "a woman who leaves her child in the maternity hospital following his or her birth, 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 had not examined the facts of the case sufficiently (regarding whether the plaintiff had the intention to "leave the child" or not).

Persuaded that the Supreme Court had not adequately dealt with the most relevant points of law (mainly from the point of view of discrimination based on ethnicity), the NGO Poradňa pre občianske a ľudské práva initiated new proceedings before a court of first instance, this time using the concept of *actio popularis*. It sued the Slovak Republic, represented by the National Council of the Slovak Republic (the parliament), for introducing ethnically discriminatory law. The case is now still pending before the court of first instance, with the court resolving the issue of who should be the defendant/who should represent the defendant.

Name of the court: District Court of Spišská Nová Ves, Regional Court of Košice
Date of decision: 18 March 2010 (Regional Court of Košice; the district court's dates of decision are not known)
Reference number: 5C 226/05 (District Court of Spišská Nová Ves), 1Co/334/2008-238 (Regional Court of Košice)
Name of the parties: Not available
Brief summary: The case was initiated by a Roma man who was refused a contract with a mobile operator because he only had a fixed-term employment contract instead of a permanent contract. 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 and no employment contract was required from them. Both the plaintiff and the non-Roma activists recorded their communication with the mobile operator and submitted 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 find that the defendant breached the principle of equal treatment, order them to issue a written apology and to pay financial compensation amounting to SKK 100,000 (€3,319.40) 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 (arguing, for example, that the plaintiff and the NGO activists were not asking the same questions and the information was not provided by the same staff members of the mobile phone operator) and that there was no discrimination on the basis of the Roma man's 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 court of first instance for a new decision. The court of appeal argued, *inter alia*, that given the fact that the recording was made in the publicly accessible premises of the defendants and did not affect the privacy of any of the persons present, the use of the recording as a form of evidence was not conditional on the defendant's consent. The court also rejected the suggestion that the fact that the plaintiff prepared his evidence in order to prove discriminatory treatment renders this type of evidence as inadmissible. The appeal court also held that if a plaintiff also submits a transcription of a sound recording, the court should compare it with the recording itself so its credibility can be verified. The regional court also reminded the lower court of the requirements of EU directives regarding sanctions, i.e. that they must be effective, proportionate and dissuasive. The court of appeal said that these requirements are also met if several forms of remedies are combined.

The District Court in Spišská Nová Ves ruled on the case again and held that the plaintiff had been discriminated against on the ground of his ethnicity, and ordered the defendant to apologise. However, the court did not grant non-pecuniary compensation to the plaintiff. The plaintiff appealed again to the Regional Court in Košice.

Name of the court: Regional Court of Banská Bystrica
Date of decision: 28 April 2011
Reference number: 14Co/82/2011; 6710201619
Name of the parties: Not available
Brief summary: The case concerned a female plaintiff claiming gender-based discrimination in the field of employment. During proceedings before the District Court in Zvolen a court of first instance (the case is still pending, now at the second instance), she submitted evidence in the form of an audio recording from a meeting with her employer in which she was given notice (two representatives of the

employer, one representative of a trade union organisation, and the plaintiff were present at the meeting). Following submission of this evidence, the defendant initiated criminal proceedings against the plaintiff, alleging that she had committed a crime of "breaching the confidentiality of oral expression and of other expression of a personal nature" (Section 377 of the Criminal Code) and asked that the court of first instance suspend the pending anti-discrimination proceedings until a decision on the criminal proceedings had been made. One of the main arguments of the plaintiff was that evidence obtained illegally cannot be used in civil proceedings, and hence the proceeding should be suspended.

The court of first instance decided not to suspend the proceedings, arguing that the criminal proceedings in question are not relevant to the decision of the court in the case concerning an alleged violation of the principle of equal treatment. It also stated that the aim of the evidence submitted was to prove that the plaintiff had been discriminated against in the field of employment. It added that it is up to the court of first instance to decide whether the evidence submitted will be used or not and further noted that, by suspending the pending proceeding, the question of whether this type of evidence can be used in civil proceedings will not be resolved, as the subject of criminal proceedings is to decide about crime and punishment and not about legality of evidence submitted in civil proceedings. Therefore the court of first instance concluded that the criminal proceeding did not have any relevance for its decision. The defendant appealed and the case went to a court of second instance, the Regional Court in Banská Bystrica.

On 28 April 2011 the Regional Court in Banská Bystrica upheld the decision of the court of first instance and stated that it identified with the grounds for the decision of the court of first instance. It further stated that, "if a plaintiff submitted a sound recording as evidence in [civil] proceedings, with which she is proving a breach of the principle of equal treatment in an employment relationship, the district court [i.e. the court of first instance] must evaluate this evidence with regard to the subject matter of the given proceeding. In addition, with regard to other evidence submitted, the district court will therefore evaluate and judge whether it will use this evidence further in the proceeding. Not even a regional court can intervene in the evaluation by the court of first instance at this stage of proceedings."

There had already been earlier decisions by higher instance courts (regional courts) on the admissibility of audio recordings as evidence in civil proceedings concerning breaches of the principle of equal treatment. These earlier cases confirmed that the lower instance courts must deal with audio recordings as with any other type of evidence submitted. This particular decision, however, is very important because it adds the context of criminal proceedings following initiated civil proceedings in the field of equal treatment, which the discriminating defendants may use to intimidate and disqualify the plaintiffs. Therefore this is an important decision, giving the plaintiffs greater security when they seek to exercise their right to equality through judicial means and making their cases more likely to be successful.