

NATIONAL LEGAL MEASURES TO COMBAT RACISM AND INTOLERANCE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

SLOVAKIA, Situation as of 31 December 2002

General Overview

Preliminary Note: this table is accompanied by an explanatory note

COUNTRY: SLOVAKIA	Constitutional provisions	Specific legislation	Criminal law	Civil and administrative law
Norms concerning discrimination in general	Article 12 (1) Constitution.	No.	No.	No.
Norms concerning racism	Article 12 (2) Constitution.	No.	Articles 196-198a and 259-263a of the Criminal Code.	Article III of the Labour Code. Preamble to the Employment Act. Order n° 590/1990 of the Minister for Labour and Social Affairs, implementing the Social Security Act.
Relevant jurisprudence	No.	No.	No.	No.

EXPLANATORY NOTE

SLOVAKIA / GENERAL OVERVIEW

Introduction

Slovakia adopted its own Constitution on 1 September 1992. Most of the federal legislation of former Czechoslovakia still applies on Slovakian territory. This is true

of the Criminal Code, Labour Code, etc. and explains why the provisions mentioned here are identical to those quoted by the Czech Republic.

The basic law is the Constitution which lays down the scope of guaranteed basic rights. The Constitution provides the framework and represents the basis for all the laws, and no law can be in conflict with the Constitution (in case such law is passed, the Constitutional Court can reverse it by means of the prescribed procedure).

In practice, the main targets of intolerance and discrimination are national and ethnic minorities, especially the Hungarians and Roma/Gypsies. According to recent expert assessments, more than 22% of people living in Slovakia belong to national or ethnic minorities. From this perspective, Slovakia is ethnically the most heterogeneous country in the Central European region. The largest minority is the Hungarian minority (567,300 persons according to the last census of 1991, or 10.76% of the population of 5.4 million inhabitants), followed by the Roma minority (officially 1.7%, unofficially more than 9%)¹. These largest minority groupings are followed by the Czech (1.1%), Ruthenian and Ukrainian (1,0%) minorities, and smaller minorities of Germans, Jews, Poles, Bulgarians, and Russians.

Slovakia has signed the United Nations' Convention on the Elimination of All Forms of Racial Discrimination of 1965. All international agreements concerning human rights and fundamental freedoms, ratified by the Slovak Republic and promulgated in accordance with the law, take precedence over national laws.

A Government Committee is responsible for carrying out the action plan to combat out racism, xenophobia, anti-Semitism and intolerance². The chief responsibility of this body is to co-ordinate activities to prevent and counter racism, compile and manage the relevant data and carry out Council of Europe campaigns³.

Constitutional law: Slovakia

Preliminary Note: this table is accompanied by an explanatory note

Constitutional provision	Scope	Relevant jurisprudence	Remarks
Article 12.	People are free and equal in dignity and their rights. Basic rights and liberties are inviolable, inalienable, secured by law, and unchallengeable. Basic rights and liberties on the territory of the Slovak Republic are guaranteed to everyone regardless of sex, race, color of	No.	

	skin, language, creed and religion, political or other beliefs, national or social origin, affiliation to a nation or ethnic group, property, descent, or another status. No one must be harmed, preferred, or discriminated against on these grounds.		
Section Four, Articles 33 and 34.	Protects the rights of national minorities and ethnic groups. Prohibits discrimination against these groups, secures the right to develop their own culture, disseminate and obtain information in their first language, associate, create educational and cultural institutions, be educated in their own language, use their own language in dealings with the authorities and participate in the settlement of matters concerning them.	No.	

EXPLANATORY NOTE

SLOVAKIA / CONSTITUTIONAL LAW

Constitution of the Slovak Republic of 1 September 1992

1. Introductory comments

International agreements concerning human rights and fundamental freedoms, ratified by the Slovak Republic and promulgated in accordance with the law, take precedence over national laws, if they secure greater basic rights and freedoms (Article 11).

2. General provisions on equality

Article 12 of the Slovak Constitution establishes the equality of human beings in general and paragraph 2 specifically prohibits negative or positive discrimination. It is worded as follows:

"(1) People are free and equal in their dignity and rights. [...]

(2) Basic rights and freedoms are secured on the territory of the Slovak Republic to all regardless of sex, race, skin colour, language, beliefs and religion, political or other views, national or social origin, nationality or ethnic group, property, birth or other status. No one may derive an advantage or suffer disadvantage for these reasons⁴."

3. The rights of national minorities and ethnic groups

Several paragraphs of the Slovak Constitution are devoted to the rights of national minorities and ethnic groups. These paragraphs are based on former Czechoslovakian provisions on the subject. It will be noted that the author of the Constitution was anxious to prohibit both forms of discrimination (Article 34 (3)).

"Article 33.

Membership of a national minority or ethnic group shall not be detrimental to anyone.

Article 34

(1) The advancement of citizens forming national minorities or ethnic groups in the Slovak Republic shall be guaranteed in all respects, especially the right, together with other members of the minority or ethnic group, to foster their own culture, disseminate and obtain information in their first language, join together in national associations and found and maintain educational and cultural institutions. The details shall be specified by law.

(2) Subject to the conditions established by law and in addition to the right to learn the national language, citizens belonging to national minorities or ethnic groups shall likewise be entitled to:

(a) instruction in their own language;

(b) use their own language in dealings with the authorities;

(c) participate in the settlement of matters concerning national and ethnic minorities.

(3) The exercise of the rights of citizens belonging to national minorities and ethnic groups, which are guaranteed by this Constitution, must not jeopardise the sovereignty or territorial integrity of the Slovak Republic or lead to discrimination against the rest of her population."

Criminal law: Slovakia

Preliminary Note: this table is accompanied by an explanatory note

Offence	Source	Scope	Sanction	Relevant jurisprudence	Remarks
Violence against a group of inhabitants or an individual.	Article 196 of the Criminal Code.	Punishes anyone who uses violence against an inhabitant or group because of race, nationality, political convictions or religion; also punishes anyone who joins with another to commit an offence of this kind.	Up to two years' imprisonment.		
Defamation of a nation, race or belief.	Article 198 of the Criminal Code.	Punishes anyone who publicly defames a nation, its language, a race or group of inhabitants.	Up to one year's imprisonment.		
Incitement to ethnic and racial hatred.	Article 198a of the Criminal Code.	Punishes anyone who publicly incites hatred against a nation or race, or who calls for restrictions on the rights and freedoms of their members; also punishes anyone who joins with another to commit an offence of this kind.	Up to one year's imprisonment.		
Genocide	Article 259 of	Punishes anyone who	Up to fifteen years'		

	the Criminal Code.	intends completely or partly to destroy a national, ethnic, racial or religious group.	imprisonment or exceptional penalty (15-25 years' or life imprisonment).		
Support and enlisting support for movements, the aim of which is to abolish citizens' rights and freedoms.	Article 260 of the Criminal Code.	Punish anyone who spreads national, racial, social or religious hatred.	Up to 5 years' imprisonment.		
Public expression of sympathy.	Article 261 of the Criminal Code.	Punishes anyone who publicly expresses sympathy for fascism or a similar movement.	Up to 3 years' imprisonment.		
Persecution of the population.	Article 263a of the Criminal Code.	Punishes anyone who, during a war, carries out racial segregation or commits other inhuman acts arising from racial discrimination.	Up to 10 years' imprisonment.		

EXPLANATORY NOTE

SLOVAKIA / CRIMINAL LAW

Penalties for discrimination are laid down in several articles of the Slovakian Criminal Code. Articles 196 and 198 specifically refer to violence and defamation motivated by racism and the Code represses these acts in general. Nevertheless, the penalties are no heavier.

In addition to these provisions, criminal law refers to "unwanted conduct", which affects the dignity of a human being and also racially motivated crimes against physical integrity. In other words, in certain crimes (assault, murder, etc.), racial motivation is considered as a special aggravating circumstance. Relevant provisions of the Criminal Code (e.g. Article 221, paragraph 1,2, letter b) state that injury to a persons' health inflicted on account of political conviction, nationality, race, religious or other beliefs can carry higher criminal charges and a more serious punishment than "basic" injury to one's health. However, a problem arose in this context regarding the Roma who are considered to belong to the same race as ethnic Slovaks and, consequently, not representing a special national minority group but an ethnic group. In the case of accused I.P., heard by the Regional Court in Banská Bystrica, where the aggrieved party was a Roma student attacked because of his Roma ethnicity, the court of the first instance used at first a very restrictive and narrow interpretation of the relevant text of law. The court ruled that the Roma belong to the same race as ethnic Slovaks and that they are not to be considered as a different national minority, but rather as a different ethnic group. According to the court's reasoning, there was no reason to qualify the criminal act as falling under section 221, paragraph 2, letter b) of the CC, since this provision does not contain the expression of "ethnic group". However, the court of appeal did not agree with this interpretation and the Regional Court in Banská Bystrica finally recognized the racial motivation which was eventually included into the legal qualification of the offence⁵.

Civil and administrative law: Slovakia

Preliminary Note: this table is accompanied by an explanatory note

Provision	Scope	Consequences of breach	Relevant jurisprudence	Remarks
Articles 1 and 2 of the Labour Code. (No. 311/2001 Official Coll. of Laws)	Natural persons have the right to work and to free choice of employment, to satisfactory working conditions and to protection against unemployment. They are entitled to these rights without any restriction or discrimination on the grounds of race, colour, language, sex, social origin, age, religion,	An employee who feels that her/his rights were adversely affected as a result of breach of conditions stipulated in the Labour Code, may claim her/his rights as well as adequate non-pecuniary damage at the court. The employer is obliged to prove that her/his conduct did not breach an equal treatment		Under the Labour Code, labour law relationships may be established only with the consent of the natural person and the employer. The exercise of the rights and duties resulting from labour law relationships must comply with the rules of decency and civic

	political or other opinion, political affiliation, trade union activities, belonging to a national minority or ethnic group, or any other status.	principle.	coexistence; no one may abuse these rights to the detriment of the other party, to the labour law relationship or fellow workers."
The Employment Act (No. 387/1996 Official Coll. of Laws)	According to para 112 of the Act employers are prohibited from publishing job advertisements that impose any restriction or discrimination on the grounds of race, colour, language, sex, social origin, age, religion political or other opinion, trade union activities, belonging to a national minority or ethnic group, or any other status	Article 125 of the Act states that the control bodies have the authority to impose a fine of up to 500,000 SKK on the entities falling under their controlling competence that breach their duties under labour law provisions and employment legislation and, in case of repeated violations of the duties in respect of which they had already been fined, a fine of up to 1,000,000 SKK.	No such fine has been imposed on the grounds of discrimination.

EXPLANATORY NOTE

SLOVAKIA / CIVIL AND ADMINISTRATIVE LAW

1. Labour law

1.1 Articles 1 and 2 of the Labour Code⁶ stipulate:

“Natural persons have the right to work and to free choice of employment, to satisfactory working conditions and to protection against unemployment. They are

entitled to these rights without any restriction or discrimination on the grounds of race, colour, language, sex, social origin, age, religion, political or other opinion, political affiliation, trade union activities, belonging to a national minority or ethnic group, or any other status. Under the Labour Code, labour law relationships may be established only with the consent of the natural person and the employer.

The exercise of the rights and duties resulting from labour law relationships must comply with the rules of decency and civic coexistence; no one may abuse these rights to the detriment of the other party to the labour law relationship or fellow workers.”

1.2. Para 13 of the Labour Code further states:

“(1) Rights related to labour law relationships are accorded to all employees without restriction, that is to say, without direct or indirect discrimination on grounds of gender, marital or family status, race, colour, language, age, state of health, faith, religion, political or other opinion, trade union activities, national or social background, affiliation to a national minority or ethnic group, wealth, or any other status (with the exception of cases stipulated by law, for example where a job, due to its conditions, requirements or nature, must be carried out by a particular employee).

(2) For the purpose of an equal treatment principle indirect discrimination is any seemingly neutral signal, decision, or a practice, which handicaps considerably larger group of natural persons, if such a sign, decision or practice is not appropriate and inevitable and cannot be justified by any objective reality.

(3) Rights and obligations related to labour law relationships must be in compliance with good practice. No one may abuse these rights and obligations to cause damage to other participants of labour law relationships and other employees.

(4) An employee has the right to file a complaint with her/his employer regarding breach of rights and obligations as stipulated in sections 1-3; employer is obligated to reply to such a complaint without undue delay, implement suitable reparation, supersede any such conduct and eliminate any effects.

(5) An employee who feels that her/his rights were adversely affected as a result of breach of conditions stipulated in sections 1-3, may claim her/his rights as well as adequate non-pecuniary damage at the court. The employer is obligated to prove that her/his conduct did not breach an equal treatment principle.

(6) An employer may not sanction or handicap an employee for exercising his/her rights related to labour law relationships.”

1.3. According to Para 112 of the Employment Act ⁷,

"Employers can recruit workers of required number and structure either by their own selection or using employment services in the entire territory of the Slovak Republic. Employers are prohibited from publishing job advertisements that impose any restriction or discrimination on the grounds of race, colour, language, sex, social

origin, age, religion political or other opinion, trade union activities, belonging to a national minority or ethnic group, or any other status."

Para 125 of the same law states that:

"The control bodies have the authority to impose a fine of up to 500,000 SKK on the entities falling under their controlling competence that breach their duties under labour law provisions and employment legislation and, in case of repeated violations of the duties in respect of which they had already been fined, a fine of up to 1,000,000 SKK. The fine may be imposed within one year from the day on which the control body gained knowledge of the violation of these duties, but not later than three years from the day on which the violation took place."

Non-governmental organisations have often commented that institutions responsible for ensuring protection against discrimination are not always effective, or it is not clear which body is responsible for the protection. Among the reasons for this situation may be the fact that equality clauses are scattered throughout legislation and are considered more as principles, without the possibility of their direct implementation, rather than directly applicable normative texts: One example of such a situation is the case of municipality ordinances in the villages of Rokytovce and Nagov prohibiting the Roma to enter the village (local councillors obtained information that the local state authority was trying to find housing for the former Roma inhabitants of the village who were homeless at that time). This clearly discriminatory act was challenged for the first time before the Constitutional Court by the foundation "Good Romany Fairy Kesaj". However, the Court rejected the petition based on the reasoning that the foundation, a legal entity, does not have the standing to file a petition on behalf of other parties because its own rights were not implicated. The possibility of filing a protest with the prosecution was also rejected on the ground "that the case had already been dealt with by the Constitutional Court". The petition filed with the Constitutional Court by the persons directly affected (Romany citizens with formal permanent residence in the village) was rejected as well, because "the ordinance has not yet been implemented in practice in a discriminatory manner"⁸.

Note

¹ *Statistika rocenka*. Prague: *Cesky statisticky urad*, 1993, p. 412. These figures correspond to the answers given by members of the public. Estimates put the Roma/Gypsies at about 300,000.

Note

² Decision n° 1027 of the Government of the Slovak Republic, of 4 October 1994.

Note

³ *Statut Vladneho vyboru pre realizaciu "Akcného planu boja proti rasizmu, xenofobii, antisemitizmu a intolerancii"* (the rules of the committee).

Note

⁴ Translations of legislative texts contained in this chapter are Council of Europe translations of the Institute's translations.

Note

⁵ Reported by Hrubala J., *Legal analysis of national and European anti-discrimination legislation, A comparison of the EU Racial*

Equality Directive & Protocol no 12 with anti-discrimination legislation in Slovakia, European Roma Rights Center Budapest, Interights London, Migration Policy Group Brussels, September 2001

Note

⁶ *Zákoník práce*, č. 311/2001 Zb.

Note

⁷ *Zakon o zamestnanosti*, č. 387/1996 Zb.

Note

⁸ Hrubala J., Legal analysis of national and European anti-discrimination legislation, A comparison of the EU Racial Equality Directive & Protocol no 12 with anti-discrimination legislation in Slovakia, European Roma Rights Center Budapest, Interights London, Migration Policy Group Brussels, September 2001, p. 24 ; see also Written comments of the European Rights Center Concerning the Slovak Republic, For Consideration by the United Nations Committee on Economic, Social and Cultural Rights at its 29th Session, 11-29 November, European Roma Rights Center, Budapest, 2002.