

**REPORT ON MEASURES TO COMBAT
DISCRIMINATION IN THE 13 CANDIDATE
COUNTRIES (VT/2002/47)**

**COUNTRY REPORT
SLOVAKIA**

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Chapter 1. The legal framework, definitions and scope

a) The legal framework

Does national law guarantee the principle of equal treatment or non-discrimination with respect to the grounds racial or ethnic origin, religion or belief, disability, age and sexual orientation? If so, what is the nature of the national legal framework (e.g. Are the anti-discrimination laws and provisions general or ground-specific? Is discrimination on all of the grounds listed in Art.13 EC expressly prohibited in law as opposed to a non-exhaustive list that could be interpreted to include all listed grounds)? What is the scope of these laws and provisions? Is the level of protection the same for all grounds? Is there a definition of the grounds racial or ethnic origin, religion or belief, disability, age and sexual orientation, in legislation or case law? Does national law cover other grounds of discrimination (in particular nationality and membership of a national minority)?

The Slovak Republic is a country with a statutory law system, its basic law being the Constitution¹ which lays down the scope of guaranteed basic rights. 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 repeal it using the prescribed procedure). Furthermore, it is important to note that international instruments concerning human rights and fundamental freedoms, ratified by the Slovak Republic and promulgated as prescribed by the law, take precedence over national laws.² Slovakia is a party to altogether 15 international treaties and UN instruments on human rights including the European Convention on Human Rights³ (hereinafter "ECHR") and the International Convention on the Elimination of all Forms of Racial Discrimination⁴

Article 1 paragraph 1 of the Constitution provides that the Slovak Republic is a sovereign democratic state governed by the rule of law. It is not bound by any ideology or religion. 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, faith, religion, political affiliation or conviction, national or social origin, nationality or ethnic origin, property, birth or any other status. No person shall be denied their legal rights, discriminated against or favoured on any of these grounds". Paragraph 3 guarantees free choice of nationality (ethnicity), and paragraph 4 states that, "no person shall be prevented from exercising his or her fundamental rights and freedoms". This means that the choice of nationality is under the discretion of any person in any moment of his or her life, and that no-one can be persecuted due to this choice. This article of the Constitution on equality is perceived not as an independent but merely an accessory right (see below).

Thus, as far as the Constitution is concerned, the anti-discrimination clause is ground-specific, and the same level of protection is offered regarding these grounds. However, there are grounds mentioned in two EC Directives on equal treatment⁵ that are not explicitly listed in the Constitution. These grounds are sexual orientation, disability and age⁶. Thus far, an *expressis verbis* prohibition of discrimination is provided for at the level of the Constitution, which does not allow any "negative" differences

¹ The Constitution of the Slovak Republic (Ústava Slovenskej republiky), Act No. 460/1992 Coll. in the wording of relevant amendments ("Constitution" hereinafter). The English text of the Constitution can be found at www.concourt.sk. All other laws published in the Collection of Laws from 1998 onwards can be found in the Slovak language at www.zbierka.sk.

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

³ Announcement of the Federal Ministry of Foreign Affairs No. 209/1992 Coll., Slovak Republic signed, but has not yet ratified Protocol No. 12 to the ECHR.

⁴ Announcement of the Federal Ministry of Foreign Affairs No. 95/1974 Coll.

⁵ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework of equal treatment in employment and occupation (hereinafter "both Directives").

⁶ One could say that grounds not mentioned in the Constitution are considered to be covered by reference to "any other status"; however, this theoretical opinion has never been proved in practice, and there is no case law in this field.

concerning the level of protection. As far as positive action is concerned, the legal system based on special provisions of the Constitution allows certain preferential treatment of women, disabled and minors (see below). The Constitution refers to both the private and the public sector.

Article 30 of the Constitution guarantees equal access to elected or public offices. Equal access to courts and other bodies responsible for the protection of individual rights is guaranteed under Article 46 of the Constitution. Equal rights to the ownership of property is guaranteed under Article 20 of the Constitution. As far as civil law is concerned, the law says, "in the relationships governed by civil law, the parties have equal rights".⁷ Similar protection is guaranteed under the provisions of the Civil Procedure Code. This law states, "the parties to civil procedure have equal status. They have the right to proceed before the courts in their mother tongue."⁸ The court shall be obliged to guarantee them equal opportunities for exercising their rights."⁹

Persons belonging to national minorities or ethnic groups are guaranteed the right to learn the state language, to create and maintain their educational and cultural institutions, to receive information in their mother tongue, to use their minority languages in official communications¹⁰ with state administrative authorities, and the right to participate in the decision-making process concerning matters that affect national minorities or ethnic groups.¹¹ The Constitution of the Slovak Republic guarantees the persons belonging to national minorities equal rights to receive education at elementary and secondary schools in the Slovak language and in their mother tongue so as to ensure their full development. However, under the Schools Act, the exercise of this right is guaranteed only to certain minorities (Czechs, Hungarians, Germans, Poles, and Ukrainians),¹² and not to all of them. The Roma language is not listed among the languages that can be used as languages of instruction at primary and secondary schools; however, it should be noted that there is no uniform codification of this language in the country.

As far as data protection is concerned, there is a law that prohibits the processing (collection) of certain data without the consent of the persons concerned; data that reveals their racial or ethnic origin, political opinions or religion, membership of trade unions, or data concerning health and sexual life. However, the law sets out certain exceptions to this rule. In the author's opinion, these exceptions are reasonable and concern mostly healthcare.¹³

There is currently no legal instrument dealing specifically with the issue of discrimination, the relevant provisions being scattered through the whole legal system. They, without giving an *expressis verbis* definition of discrimination with the single exception of labour law,¹⁴ very often lay down general

⁷ Section 2 of Act No. 40/1964 Coll., Civil Code (Občiansky zákonník) as amended (hereinafter "Civil Code").

⁸ This means that persons who do not have a command of the Slovak language have the right to proceed before the courts in their mother tongue through an interpreter.

⁹ Section 11 of Act No. 99/1963 Coll., Civil Procedure Code (Občiansky súdny poriadok) as amended (hereinafter "Civil Procedure Code").

¹⁰ Act No. 184/1999 Coll., Act on the Use of Languages of National Minorities (Zákon o používaní jazyka národnostných menšín) states that in the municipalities where a national minority constitutes at least 20 percent of the population, the minority language can be used in contacts with governmental officials (the law gives no definition of a "national minority"). However, the 20% requirement excludes from the sphere of protection municipalities of more than 100,000 inhabitants with combined minority populations. This is why Hungarian members of the former political coalition voted against the law. On 25 August 1999, the Government issued a list of 656 villages in which minorities represent at least 20 percent of the population. This list also includes 57 communities where the Roma minority meets the threshold. However, the extremely limited number of ethnic Roma or Roma speakers within the administration does not permit the exercise of this right in practice.

¹¹ Articles 34 and 35 of the Constitution.

¹² The relevant law is Act No. 29/1984 on the System of Primary and Secondary Schools (The Schools Act - Školský zákon) as amended. Section 3 paragraph 1 reads: "Training and education are provided in the state language. Citizens of Czech, Hungarian, German, Polish, and Ukrainian (Ruthenian) nationality have the right to education in their own language to the extent required in the interests of their national development."

¹³ Act No. 428/2002 Coll. on the Protection of Personal Data in Information Systems (Zákon o ochrane osobných údajov v informačných systémoch), Section 9

¹⁴ The new Labour Code (Zákonník práce), Act No. 311/2001 Coll. of July 2, 2001 (hereinafter "new Labour Code" or "Labour Code"), effective from April 1, 2002 prohibits discrimination, defines indirect discrimination, shifts the burden of proof in discrimination cases and provides for compensation for the victims of discrimination (see below). In May 2003 Parliament passed an amendment to this code. This amendment introduces definitions of direct discrimination and harassment in harmony with both Directives (it literally translated the text of the Directives). As far as grounds of

protection from discriminative practices at various levels in rather general and declaratory terms, by prohibiting such practices. However, in many cases it is very hard to obtain an effective remedy, even in cases where discrimination is proven. The Slovak legal system relies more on the controlling powers of state authorities, responsible for implementing the laws concerning natural and legal persons than on the initiative of victims. The latter, besides the right to bring discriminative practices to the attention of competent agencies, very often lack appropriate access to courts (it is very often difficult or impossible to establish standing in order to take recourse to the judicial process). Thus, an agency can take action and impose a fine on the perpetrator, but the victim does not receive any compensation. In every case the plaintiff must bring evidence of the violation of a substantive law on top of the discriminatory practice, because proving discrimination *per se* is not sufficient to win the case. However, there is a lack of test cases in the field¹⁵, and it is hard to predict what the new Labour Code will bring in this respect.

The new Labour Code is the first general legal act (besides the Constitution) that prohibits direct and indirect discrimination and enumerates relevant grounds. Its Section 13 paragraph 1 states that the "rights related to labour law relationships are accorded to all employees without restriction, that is to say, without direct or indirect discrimination on the grounds of gender, marital or family status, race, colour, language, age, state of health (including disability - author's note), faith, religion, political or other opinion, trade union activities, national or social background, affiliation to a national minority or ethnic group, property, or any other status with the exception of cases stipulated by law or where there are substantive reasons resulting from job requirements or nature of the work to be performed." One can see that, on the one hand, the definition is broader than in the both Directives (and broader than in the Constitution) whilst, on the other hand, it still does not include, *expressis verbis*, sexual orientation. Section 13 paragraphs 1 and 2 of the new Labour Code also apply to access to employment (see below).

The second relevant law is the Public Service Act¹⁶ whose Section 1 paragraph 4 states that, "An individual shall be assured the right and opportunity to become a public service employee under the same conditions, without any limitations or discrimination on grounds of gender, race, colour of skin, language, age, belief and religion, political or other conviction, trade union activities, national or social origin, nationality or ethnic group affiliation, property, lineage or other status." Direct and indirect discrimination is also mentioned in another legal act, the Social Insurance Act.¹⁷ It states in Section 9 paragraph 2 that, "an insured person shall have the right to be provided basic social insurance without any restriction, direct or indirect discrimination on account of gender or reference to marital or family status, except for the provisions related to the protection of women in maternity, and without differentiation in relation to racial or ethnic origin."

As far as access to public offices and promotion is concerned (selection procedures), prohibition of discrimination and the grounds thereof are laid down, in conformity with both Directives (again with the exception of sexual orientation), in the Act on Judges and Lay Judges¹⁸ and in the Act on Prosecution.¹⁹

The previous government drafted a general anti-discrimination law during the period 2000 - 2002 in co-operation with certain Slovak and international NGOs, covering the whole area of discrimination and adding a supplementary tool to the already existing remedies. The draft law listed discrimination grounds, including sexual orientation, in conformity with the two Directives, and included additional

discriminations are concerned, the government suggested including sexual orientation into the relevant definition. Upon the suggestion of the Member of Parliament Mr. Pavol Minarik (Christian Democratic Movement), Parliament passed the text which in Article 13 Paragraph 1 does not allow the employer to acknowledge the sexual orientation of the employee. This amendment has not yet entered into force (the President has not yet signed this piece of legislation), hereinafter the author will refer to the text which is currently in force.

¹⁵ There are no relevant sources of information explaining why potential victims do not bring cases to the court. We can just assume that the reason might be the low level of awareness of society as to the legal system, and insufficient access to legal aid for poor people combined with weak legal instruments.

¹⁶ Public Service Act No. 313/2001 Coll. (Zákon o verejnej službe).

¹⁷ Social Insurance Act No. 413/2002 Coll. (Zákon o sociálnom poistení).

¹⁸ Act No. 385/2000 Coll. on Judges and Lay Judges (Zákon o sudcoch a prísediacich), Section 28 paragraph 3.

¹⁹ Act No. 153/2001 on Prosecution (Zákon o prokuratúre), Section 20 paragraph 3.

grounds set out in the Constitution. However, certain members of the former coalition (the Christian Democratic Movement) prevented the passage of the law when, together with the opposition, they voted in June 2002 to change the Parliament's agenda and exclude the relevant item from the proposed parliamentary debate. Their main argument was that the legal system ensures, through various provisions, effective and adequate remedies in discrimination cases, and that no special anti-discrimination law is needed. Moreover, they argued against the introduction of the term "sexual orientation" into the legal language, maintaining that such an expression belongs only to the private sphere. One can assume that this approach is strongly influenced by the religious background of the former coalition. Furthermore, they stated that the EC does not require that special legislation on discrimination be adopted, and that the proposed law would allow gays and lesbians to adopt children. However, the office of Deputy Prime Minister Pal Csáky (a member of the Party of the Hungarian Coalition; he held the same post also within the previous government) is again preparing a relevant draft law (hereinafter "proposed anti-discrimination law", see below). The grounds of discrimination²⁰ cover all the grounds mentioned in both Directives.

b) The definition of discrimination

Article 2 (Racial Equality Directive and Employment Equality Directive)

Direct and indirect discrimination

Is there a definition in law of both direct and indirect discrimination? If so, does this conform to the definitions in the Directives?

Please make precise reference to the relevant legal provisions and case law.

Does national law define harassment, as defined in the Directives?

Harassment

Does national law define harassment, as defined in the Directives?

Are there any existing or forthcoming Codes of Practice on harassment?

Please make precise reference to the relevant legal provisions and case law.

Instruction to discriminate

Is it contrary to national law to give instructions to discriminate? Does this conform to the Directives?

Please make precise reference to the relevant legal provisions and case law.

The word "discrimination" is mentioned, in addition to the various ratified international treaties and the new Labour Code, in 15 laws. Moreover, protection of national minorities is provided for in a number of laws, decrees and regulations. However, no law except for the new Labour Code gives a definition of discrimination - direct or indirect – and the legal system does not contain any definition of harassment or of instruction to discriminate. The existing Slovak anti-discrimination legislation lacks uniformity, and equality clauses in various laws do not always provide for an identical level of protection. Implementation is considered to be inadequate.²¹

The new Labour Code introduced the definition of indirect discrimination. Its Section 13 paragraph 2 states that, "for the purpose of the principle of equal treatment, indirect discrimination is any apparently neutral instruction, decision, or practice which puts at a disadvantage a large group of natural persons, unless such instruction, decision or practice is appropriate and necessary, and can be justified by objective circumstances." One can see that the wording of this definition is not fully consistent with the wording of both Directives, and seems to be more restrictive.

²⁰ Their enumeration is provided in Section 3 paragraph 1 of the proposed anti-discrimination law. There is no publication reference for this proposal, the material was given to the author of the paper by Mrs. Jana Kviecinska, the General Director of the Department of Human Rights at the Office of the Government

²¹ See for example the document of the Human Rights' Office of the Government "Basic Principles of the Act on the Prevention of All Forms of Discrimination" prepared in 2001 as the basis for drafting a general law against discrimination.

No national law defines direct discrimination²²; one could say that the legislator presumed that the meaning of the word "discrimination" is clear (i.e. that it means everything connected with "being put at a disadvantage"). There is no definition of harassment, either. However, Section 13 paragraph 3 of the new Labour Code states that the "rights and obligations related to labour law relationships must be in compliance with good practice. No-one may abuse these rights and obligations to the detriment of other participants of labour law relationships and other employees." The wording of this text could be considered to represent the prohibition of "unwanted conduct" mentioned in the two Directives in connection with harassment. There is no Code of Practice on harassment in the country.

However, it cannot be forgotten that, "unwanted conduct", as described in the Directives, could be qualified as a crime, a misdemeanour 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 the laws. Article 19 of the Constitution states, "every person shall have the right to maintain and protect his or her dignity, honour, reputation and good name. Everyone shall have the right to be free from unjustified interference in their privacy and family life. Anyone has the right to be protected against unwarranted collection, disclosure, and other misuse of personal information." Article 16 of the Constitution protects privacy in general.

These general provisions and statements are reflected in certain provisions of criminal law (Sections 196, 198, 198a, 260 and 261 of the Criminal Code), administrative law (Section 49 of the Act on Misdemeanours) and civil law (Sections 11, 12 and 13 of the Civil Code).

Section 196 paragraphs 2, 3 of the Criminal Code²³ (violence against a group of inhabitants or an individual) states that anyone who commits violence against an individual or a group of persons on account of their race, nationality, political conviction or religion is liable to imprisonment of up to two years. Under this provision, the same punishment applies to any person who joins another to commit an offence of this kind. Section 198 of the Criminal Code (defamation of a nation, race or belief) provides that anyone who publicly defames a nation, its language, a race or group of inhabitants due to their religion is liable to imprisonment of up to one year. Section 198a of the Criminal Code (incitement to ethnic and racial hatred) introduces criminal liability for anyone who publicly incites hatred against a nation or race, or who imposes restrictions on the rights and freedoms of their members, and for any person who joins another to commit an offence of this kind. The punishment applicable for this crime is again a sentence of imprisonment of up to one year.

Furthermore, it is forbidden to support and propagate a movement that spreads national, racial or religious hatred (Section 260 of the Criminal Code - support and enlisting support for movements, the aim of which is to abolish citizens' rights and freedoms - introduces an imprisonment sentence of up to five years) and to publicly express sympathy for fascism or a similar movement (Section 261 of the Criminal Code, imprisonment sentence of up to three years). All of these offences are intentional crimes and must be committed publicly, i.e. in a place that is publicly accessible, or in the presence of at least two persons.

In addition to these provisions of criminal law referring to "unwanted conduct" which affects the dignity of a human being and could be, to some extent, considered as harassment within the meaning of both Directives, there are also racially motivated crimes against physical integrity. In other words, in relation to certain crimes (assault, murder...), racial or religious motivation is considered to be a special aggravating circumstance.²⁴

²² According to the comments from the Ministry of Labour and Social Affairs this ministry proposes to amend Section 13 paragraph 2 of Labour Code to include a definition of direct discrimination. This draft states that direct discrimination shall be taken occur where the employee is treated less favourably than another is, has been or would be treated in comparable situations. (As with the definition of the indirect discrimination, this definition is not ground-specific either. However, according to the author, the grammatical interpretation of this general statement could even broaden the definition of the discrimination in practice). See note 14 either.

²³ Act No. 140/1961 Coll. as amended (Trestný zákon).

²⁴ Relevant provisions of the Criminal Code (for example Section 221, paragraphs 1,2, letter b) state that injury to one's health inflicted on account of political conviction, nationality, race, ethnic group, religious or other beliefs can carry higher criminal charges and harsher punishment than "simple" injury to one's health. However, there had been a problem regarding the Roma before the concept of "ethnic group" was introduced into the text of the Criminal Code in 2001. In the case of I.P

"Unwanted conduct", taking the form of unlawful harassment within the meaning of the Directives, also corresponds to misdemeanours referred to in the Misdemeanour Act.²⁵ 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 SKK 1000."

As mentioned above, the dignity of a person (without expressly mentioning discrimination or racial discrimination) is also protected under civil law provisions. Section 11 of the Civil Code states, "natural persons have the right to the protection of personhood, in particular life and health, civil honour and human dignity, as well as privacy, name and manifestations of personal nature." Section 13 of the Civil Code provides a remedy in case of breach of Section 11 and states, "natural persons have, in particular, the right to request that any unauthorised interference with the right to the protection of their personhood be discontinued, that the consequences of such interference be eliminated, and they also have the right to adequate satisfaction." In serious cases, non-pecuniary damages can be sought also in the form of monetary satisfaction. This possibility was also introduced by the new Labour Code.

As far as potential sanctions against perpetrators are concerned, the author considers that the abovementioned provisions adequately protect victims against certain types of harassment mentioned in Article 2 paragraph 3 of the Directive. Victims can instigate criminal or administrative procedures, lodge civil defamation complaints (protection of "personhood") and, as of 1 April 2002, they may bring actions alleging discrimination under the new Labour Code, or combine any of these possibilities. In other words, certain unwanted conduct related to racial, ethnic or other origin or status, which take place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment, can be considered as unlawful acts. A different problem is that public authorities sometimes refuse to recognise or they underestimate the racial motivation of such unwanted conduct. On the other hand, there are very few actual cases of this kind²⁶ - particularly as far as remedies are concerned.²⁷ Should a special law on discrimination providing for different types of additional procedures and remedies be passed, the definition of harassment would help to broaden the understanding of harassment and thus broaden access to remedies for a wider group of victims. This concerns in particular victims of harassment connected with disability, age or sexual orientation, because at this time their level of protection is lower than the protection from other types of harassment mentioned above.

Giving instructions that have the effect of discrimination on account of racial, ethnic origin, religion or other status (such as the prohibition of entry to a pub for the Roma, quite common in some regions) could be, under certain circumstances, considered as a crime under Section 198a of the Criminal Code

(the accused), heard by the Regional Court in Banská Bystrica in 1998-2000, where the aggrieved party was a Roma student attacked because of his Roma ethnicity, the court of first instance used a very restrictive and narrow interpretation of the relevant text of law (contrary to item 6 of the recital of the Directive). The court ruled that Roma belonged 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 "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 offence.

²⁵ Misdemeanour Act No. 372/1990 Coll. as amended (Priestupkový zákon).

²⁶ Victims of discrimination quite often fail to report their case (they do not press charges or do not complain) or are not able to prove that another law has been breached as well. One typical example is access to employment and recruitment policy in the private sector – the simple fact that, for example, a Roma has been denied employment or the fact that 80% of Roma children are placed every year in special schools, is not sufficient to prove an infringement of the right of access to education, employment, etc....

²⁷ In one case decided by the Regional Court in Banská Bystrica (15 Co 46/00), the matter was referred back to the District Court at Žiar nad Hronom for further proceedings with the instructions to deal with non-pecuniary damages suffered by the mother whose son was killed because of racial hatred. 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 are entitled to effective remedies. According to this binding legal opinion of the higher court, the court of first instance at Žiar nad Hronom (case No. 7C 818/96) decided to grant the mother of the son that was killed non-pecuniary damages of SKK 500,000. However, the decision was appealed again, and the second chamber of the court of appeal dismissed the petition of the victim.

(incitement to racial and ethnic hatred).²⁸ If such instruction is issued by a public authority (representative of a state or self-governing body), this act could be considered as an offence - abuse of power of a public authority pursuant to Section 158 of the Criminal Code.

As far as the case law regarding discrimination is concerned, there is just one decision of the Constitutional Court in which the court embraced and quoted in its reasoning the interpretation put forward by the European Court of Human Rights in Strasbourg in the Belgian Linguistic Case, section 400 Publications Court B, Vol. 3, 1965 and by the European Commission in Strasbourg in the Grandrath Case, Op. Com. section 40, YB X.²⁹ There have been no cases that show how the Constitutional Court deals with the broader concept of discrimination brought by the European Court of Justice or the revised definition of discrimination of the European Court of Human Rights in the Thlimmenos case, decision from April 6-th 2000. Taking into consideration the relevant jurisprudence of the Constitutional Court, it is clear beyond any doubt that its interpretation of the term "discrimination" in all cases is identical. In these cases the Court ruled that the legislator presumed that the meaning of the word is clear (i.e. that it means everything connected with "being put at a disadvantage"). Thus, not only is there no distinction made between direct and indirect discrimination, but there are no legal instruments giving the definition of the concept of "discrimination".

As far as equal treatment of persons is concerned in the wording of the Constitution, practically all the relevant laws use the word "discrimination" in connection with "sex, race, skin colour, faith, religion, political conviction, national or social origin, nationality or ethnic origin". All these types of discrimination are prohibited and, under certain conditions, punishable. However, the problem is that in concrete cases (when discrimination has already occurred) the victims do not have any remedy, unless they are able to prove that discrimination was connected with the breach of another statutory provision or article of the Constitution. As of today, discrimination alone is not considered to constitute a separate offence, and it can be objected to only in connection with other legal provisions. 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.³⁰ This Article, which guarantees equality, can only be implemented in practicethrough legal provisions stipulating, in concrete terms, the consequences that a discriminatory act may have for basic rights or freedoms of the petitioner. For example, it is not possible to allege discriminatory treatment regarding equal access to property within free market competition (decisions on various public tenders, privatisation of any kind...), because the Constitution³¹ guarantees merely the protection of the already existing property (not access to property).

In other words, one cannot press charges and seek a remedy in respect of discrimination alone. A person may bring charges and seek a remedy only where he or she is able to prove the breach of a specific statutory or basic law in combination with the general obligation of equal treatment. Because discrimination very often concerns access (or rather the denial of access) to the exercise of a right, and, according to the relevant jurisprudence, access to a subjective right does not guarantee the

²⁸ There are some villages and places in the region where Roma are not allowed to enter pubs or bars. However, in most cases this is an "informal" rule (there is no formal instruction or rule), and Roma people do not attempt to act against this "custom".

²⁹ The decision of the Constitutional Court of the Slovak Republic US 51/94. All the decisions of the Constitutional Court of the Slovak Republic are available in English language at www.concourt.sk.

³⁰ See decisions of the Constitutional Court US 19/98, I US 34/96, I US 14/98.

³¹ See the decision of the Constitutional Court US 44/96. The case in question concerned the right to conclude a purchase agreement with the state within the privatisation process, based on a Resolution of the former Government; the purchase agreement in question was annulled by the new Government. (The Government which replaced the "second" Government of Mr. Mečiar in 1994 decided to change the system of "direct" privatisation and cancelled relevant decisions on direct privatisation taken by the previous Government. The court ruled, *inter alia*, that no discrimination occurred because no other constitutional rights were infringed - the right to the protection of property guaranteed under Article 20 of the Constitution is not identical with the right of access to property granted on the basis of political will. Similar reasoning about the necessity to combine the obligation of equal treatment with another basic or statutory right is found in the decision of the Constitutional Court US 42/96. On the other hand, in the case US 18/97 the Court ruled that, "the concept of damage to property under Article 12 paragraph 4 cannot be linked only to the impossibility to exercise the already acquired right. Thus, the concept of damage to the rights must be understood also as any other restriction of the acquisition of a right, if it results in the violation of the constitutional principle of equality under Article 12 paragraph 1 of the Constitution as the exclusive and only consequence of the previous implementation of one of the fundamental rights or freedoms."

protection of the right itself in every case, the search for a remedy might be at the very least quite complicated.

The proposed anti-discrimination law introduces the definition of discrimination and states that discrimination means direct discrimination, indirect discrimination, harassment, and victimisation, including instruction or suggestion to discriminate. The law³² stipulates that direct discrimination shall mean such treatment, which is or would be, on the grounds referred to in Section 3, less favourable than the treatment of another natural person and/or legal entity under comparable circumstances.

Indirect discrimination shall mean a seemingly neutral provision, criterion or practice that in fact puts natural persons and/or legal entities at a disadvantage on grounds referred to in Section 3. This shall not apply when such a provision, criterion or practice is objectively justified by a legitimate aim and when the means of achieving that aim are appropriate and necessary.

Harassment shall mean any conduct related to any of the grounds referred to in Section 3 that has the purpose or effect of violating freedom and dignity of a person, and of creating a hostile, intimidating, degrading, humiliating or offensive environment for a natural person.

Victimisation shall mean any conduct which has the purpose or effect of adverse consequences for a natural person and/or legal entity as a reaction to the claim seeking enforcement of the principle of equal treatment.

c) Scope

Article 3.1 (*Racial Equality Directive and Employment Equality Directive*)

Fields of application

Does the prohibition of racial and ethnic discrimination apply to all the fields of application listed in Article 3 of the Racial Equality Directive, including both the private and the public sector? Does the prohibition go beyond the scope foreseen in the Directive?

Does the prohibition of discrimination on grounds of religion or belief, disability, age or sexual orientation apply to all the fields of application listed in Article 3 of the Employment Equality Directive, including both the private and the public sector? Does the prohibition go beyond the scope foreseen in the Directive?

Please make precise reference to the relevant legal provisions and case law.

In harmony with the statement made at the beginning of this paper regarding the scope of both Directives, the author repeats that all the provisions of the Constitution are generally binding on any legal or natural person. It means that the exercise of all legal rights is guaranteed without any discrimination on ethnic, racial, gender, political or religious grounds or any other status. State organs can act only within the limits of the law and other entities (citizens, private legal entities) can do anything that is not prohibited by the law.³³

It can be stated that, in general, every aspect of the legal system in the field of public law prohibits the abuse of power by decision-makers (public authorities) – i.e. any kind of unlawful conduct (discriminative advances, decision-making in the performance of their duties) can be qualified as a disciplinary offence or even as a criminal offence pursuant to Section 158 of the Criminal Code (abuse of power of public authority). In cases of "institutionalised" discrimination, where it is very hard to prove an intention to act against the criminal or administrative law, access to civil procedure in court, access to the Constitutional Court or access to the prosecutor or other administrative body responsible for the control of the agency is guaranteed.³⁴ Thus, it can be stated that the protection against

³² Section 3 paragraphs 2 - 5 of the proposed anti-discrimination law.

³³ Article 2 of the Constitution.

³⁴ In one case, the Government's plenipotentiary on the protection of personal data was informed that certain labour office officials were affixing the "R" mark to the files of ethnic Roma job seekers without their consent. Entrepreneurs who asked to be shown job seeker files were only shown the files of those applicants that did not bear the "R" mark. Section 8 paragraph 1 of Act No. 52/1998 on the protection of personal data prohibits the processing of special categories of personal data that reveal racial or ethnic origin, political conviction, religious faith or beliefs, trade union membership or data concerning health

discrimination in the public sector (access to all types of services managed by public bodies) is guaranteed through general constitutional provisions. There are also specific legal texts providing for various control mechanisms, systems of complaints or access to courts (administrative or constitutional judiciary where discrimination is connected with other statutory or constitutional rights). The system functions (with various levels of success, relying on investigative powers of state agencies, which sometimes fail to deal with cases involving a discrimination issue) without the existence of a definition of discrimination, and without a special body dealing solely with discrimination issues.

Provisions similar to the Constitution forbidding discrimination generally in the whole field of law are embraced in the Labour Code as well. According to Article 1 of the Labour Code (Articles 1 - 10 are basic principles of labour law, however, their legal enforceability might be - no test case up to now), "Natural persons shall have the right to work and to the free choice of employment, to fair and satisfying working conditions and to protection against unemployment. These rights belong to them without any sort of restriction and direct or indirect discrimination on grounds of sex, marital and family status, race, colour of skin, language, age, state of health, belief and religion, political or other conviction, trade union activity, national or social origin, national or ethnic group affiliation, property, lineage or other status, with the exception of cases established by law, or where there are substantive reasons resulting from job requirements or nature of work to be performed". Article 2 of this law states that, "Under this Act, an employment relationship may only be established upon the consent of the natural person and the employer. Enforcement of rights and obligations arising from the employment relationship must be in compliance with good morals; nobody may abuse these rights and obligations (Section 13 paragraph 3) to the detriment of another participant to the employment relationship, or fellow-employees." Article 6 generally forbids gender discrimination as far as access to employment, salaries, promotion, vocational training and working conditions are concerned.

As far as conditions for **access to employment**, self-employment, occupation, promotion, including selection criteria and recruitment conditions are concerned, as mentioned before, special laws prohibit discrimination in the public sphere regarding certain important state positions.³⁵ The prohibition of discrimination as described in Chapter 1a) (not including *expressis verbis* sexual orientation) concerns selection criteria, recruitment procedure and promotion. General prohibition of discrimination in pre-employment relationships is laid down in Section 41 paragraph 8 of the Labour Code. This provision states that, "When recruiting a natural person, an employer must not violate the principle of equal treatment concerning access to employment" (already quoted Section 13 paragraphs 1 and 2 of Labour Code).

Discrimination against women within pre-employment relationships with the exception of Sections 13 and 41 of Labour Code is guaranteed in the abovementioned Article 6 of Labour Code where is stated that, "Women and men shall be entitled to equal treatment with regard to access to employment, remuneration and promotion, vocational training, and also with regard to working conditions.

The Employment Act applies to both the public and private sector³⁶. According to Section 112 of this Act "employers can recruit workers of the required number and structure either based on 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, religious political or other opinion, trade union activities, belonging to a national minority or ethnic group, or any other status." Section 125 of the Act states that, " Bodies exercising control have the authority to impose a fine of up to SKK

and sexual life or criminal convictions. (Under paragraph 2 of the same provision, exceptions are only possible if the person concerned gives his or her explicit consent with the processing of such data; if the processing of data is required under a special law; if the processing of data is necessary for the protection of vital interests of a person who does not have physical or legal capacity and the consent of his or her legal guardian cannot be obtained; if the processing is carried out by a duly authorised association or another non-profit institution; if the processed personal data has been published; or if the processing of data is necessary for the purpose of preventive medicine or related purposes, provided that the data is processed by a health institution or the Social Insurance Agency.) Upon the plenipotentiary's intervention, the content of the lists and relevant files were brought in conformity with the law and, on the plenipotentiary's proposal, the Office of the Government-imposed fines on the officials who had breached their duties in the abovementioned manner.

³⁵ E.g. Public Service Act, Act on Judges and Lay Judges, Act on Prosecution - see notes 15, 17 and 18.

³⁶ Employment Act No. 387/1996 Coll. as amended (Zákon o zamestnanosti).

500,000 on the entities that fall under their jurisdiction and that breach their duties under provisions in the field of employment legislation and, in case of repeated violations of their duties in respect of which they had already been fined, a fine of up to SKK 1,000,000. 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 occurred." Relevant controlling bodies are executive bodies of the National Labour Office. Other entities that are responsible for controlling of the legality of labour relationships are Labour Inspectorates, which are based in every district of the country. In the case of breach of the labour law they can impose a fine upon the employer of up to 1,000,000 SKK³⁷.

In no single case has such fine been imposed in the country on the grounds of discrimination.³⁸ However, as far as pre-employment relationships are concerned, the investigative power of these bodies of control is considered as limited. Moreover, as mentioned above, the problem does not reside in unequal legal conditions under labour legislation, policy or competition in the field of recruitment, but rather in unequal practices of the decision-makers especially in the private sector who differentiate between, e.g., Roma and non-Roma³⁹ applicants. As far as their recruitment policy is concerned, many of them simply do not choose a Roma, or if a Roma asks for a job, they say that they do not need a new employee. (Many opinion polls show the high level of prejudices against this community in the country). Even if the victims of such treatment are able to prove the falsity of such claims, no legal remedy is available for reversing the decision – although, potentially, a fine could be imposed under the new Labour Code, it is possible to seek non-pecuniary damages (Section 41, paragraph 9 of the Labour Code - no test case up to now).

Discrimination regarding access to **vocational guidance and vocational training** in the field of labour law is guaranteed by general provisions of Labour Code prohibiting discrimination - Article 1 and Section 13 of Labour Code concerns all rights rising from labour relationships including vocational training. A specific regulation concerns juveniles (citizens up to 18); according to Section 7 of the Labour Code, juveniles have a right to special treatment and equal rights to vocational training enabling them to advance their physical and intellectual skills.

The same that has been said about vocational guidance (general prohibition of discrimination) also applies to **working conditions**. Specific provisions concern women, juveniles and disabled persons. According to Article 6 of Labour Code, women shall be secured working conditions that enable them to partake in work taking into account their physiological capacity and the social function of motherhood, and also women and men with regard to their family obligations in the upbringing and care of children". An employer shall create for employees with disabilities such working conditions that enable them to apply and upgrade their work skills, taking account of their state of health, says Section 8 of the Labour Code. As far as equal pay is concerned, Section 119 paragraph 3 of the Labour Code provides that, "Wage conditions must be equal for both men and women without any discrimination on grounds of sex. Women and men shall be entitled to equal wages for work of an equal level of complexity, responsibility, and difficulty, performed under the same working conditions and upon achievement of the same efficiency and work results." The same system shall apply to the pay of accused and sentenced persons.⁴⁰

According to Section 13 paragraph 1 of the Labour Code the prohibition of discrimination relates to the **membership of and involvement in an organisation of workers** as well, general equality clause of the Constitution (Article 12) exclude discrimination on enumerated grounds regarding all constitutional rights of all generations including **social protection, social advantages and education**.

³⁷ Act No. 96/2000 Coll. on Inspection the Labour

³⁸ "Second report on Slovakia", European Commission against Racism and Intolerance (ECRI), Strasbourg, 27 June 2000, CRI (2000) 35, paragraph 13.

³⁹ It has to be mentioned that there are no relevant and reliable sources that would help to answer the question as to how many Romany applicants are actively job-seeking, how many have been denied, and the representation of Romany citizens in the public sector. The main reason is that the majority of Romany people declare Slovak or Hungarian nationality for evidential needs. The fact is that in many poor Roma settlements there is 100% unemployment. The author and the general public in the Slovak republic consider this information to be generally known facts (interview with Mrs Jana Kvecinska, the General Director of the Department of Human Rights at the Office of Government).

⁴⁰ Resolution of the Government No. 413/2002 Coll.

Special legal provisions related to equal or special treatment are contained in the Social Insurance Act (see page 4 and note 16) and the Schools Act (see note 10). According to Section 3, Paragraph 2 of this Act in certain circumstances disabled pupils have the right to education by using "special forms" in special educational facilities.

Discrimination of any kind against consumers (**access to supply of goods and services**) is prohibited *expressis verbis* by a special provision. Article 6 of the Consumer Protection Act⁴¹ stipulates that, "the seller may not discriminate against a consumer in any manner whatsoever and act in conflict with good manners. He or she must not, in particular, refuse to sell the consumer the products that are exhibited or otherwise displayed as if he sold or refuse to provide the consumer the services that are within the seller's operating possibilities." Such conduct would be considered unlawful. Control bodies may punish such conduct by a fine of up to SKK 500,000 (one US Dollar is around SKK 40).⁴² Discrimination in the field of public procurement is also unlawful- the Public Procurement Office can reverse the decision of a contracting authority if any discrimination is proven.⁴³ There are no special provisions on housing.

As one can see, these principles, constitutional and legal provisions cover generally and, in some areas, specifically all the fields of application mentioned in both Directives as far as labour and employment relationships are concerned. Moreover, the abovementioned Section 13 of the Labour Code further elaborates these principles and provisions (which, in essence already existed before the Code) into an enforceable legal text, and introduces a new legal remedy. The application of these principles under the new Labour Code is thus much less complicated and available to victims of discrimination (employees) as well. According to Section 13 paragraphs 4 and 5, they will be able to directly raise complaints against employers or bring actions in court based on discriminative conduct of their employers (see Chapter 2 - Remedies and enforcement). This right also concerns access to employment.

The prohibition of discrimination goes beyond the scope foreseen in both Directives in the field of the right of association, the right to assembly and freedom of expression. Citizens' rights of association are protected, provided that their associations: a) are not aimed at denying or restricting the rights of other citizens on the grounds of nationality, sex, race, origin, political or other opinion, religion or social status; are not aimed at inciting to hatred or intolerance on these grounds; are not aimed at promoting violence or otherwise violating the Constitution and the laws; b) do not pursue their objectives through unlawful means; c) are not armed or do not have armed elements.⁴⁴ If the Ministry of the Interior, which is responsible for the implementation of this provision, concludes that the activities of an association violate a law, it shall promptly notify the association of this fact and request that such activities be discontinued. The Ministry may dissolve the association that has not discontinued its activities following such a notice. The dissolution decision may be challenged before the Supreme Court.⁴⁵ However, this provision has never been applied in practice.⁴⁶ The conclusion can be made that it is impossible to restrict access to membership to any organisation on the basis of racial, national or ethnic origin.

⁴¹ Act No. 634/1992 Coll. as amended, Consumer Protection Act (Zákon na ochranu spotrebiteľa).

⁴² The Slovak Trade Inspection (STI) is the entity responsible for the implementation of these provisions. The STI annual report states that in 2001 the Inspection carried out 27,315 checks – but there is no indication that any of these checks were somehow related to discrimination or discrimination complaints, or that the STI identified any discrimination in the system or imposed any sanction for discriminatory practices.

⁴³ The details are provided for in Act No. 263/1999 Coll. on Public Procurement which gives the entities interested in a tender offer the right to raise objections against a decision of the contracting authority if they believe that they have been discriminated against. All the entities that administer public funds have the obligation to apply statutory public procurement procedures.

⁴⁴ Section 4 paragraph 1, letter a) b) c), Act No. 83/1990 Coll. on the Association of Citizens as amended (Zákon o združovaní občanov).

⁴⁵ Section 12 paragraph 3, letter c), Act No. 83/1990 Coll.

⁴⁶ The Government states that, "in the period between the creation of the Slovak Republic and December 1999, no civil association was dissolved by decision of the Ministry of the Interior". The Government of the Slovak Republic, Reports Submitted by State Parties under Article 9 of the Convention – Third Periodic Reports of State Parties due in 1998. Addendum: Slovakia, CERD/C/328/Add.1, 14 December 1999, paragraph 97. To the author's best knowledge, no association was dissolved in Slovakia after December 1999, either.

As far as freedom of assembly is concerned, notified district authorities may prohibit an assembly if the purpose of the assembly, as described in the notification, could result in the incitement to suppressing or restricting citizens' rights on grounds of nationality, sex, race, origin, political or other opinion, religion or social status, incitement to hatred or intolerance on such grounds, incitement to violence or gross indecency, or incitement to violation of the Constitution and the laws.⁴⁷

Regarding freedom of expression, it is prohibited to disseminate foreign periodicals or news of foreign press agencies whose content promotes violence and war, fascist and Nazi ideology or racial discrimination.⁴⁸ Racial or other kind of discrimination is also forbidden in the field of private detective service. The law on the activities of private security services and similar activities states that, "in running a detective service, it is prohibited to accept a commission or to perform an assignment which involves an enquiry into the political affiliation, trade union membership or religious conviction of a person or person's belonging to a certain race, ethnic group or nationality".⁴⁹

Exceptions and exemptions

Occupational requirements

Article 4 (Racial Equality Directive and Employment Equality Directive)

Do such exemptions exist on the national level? Does national law define 'genuine and determining occupational requirements' and, if so, how?

Please note that the Employment Equality Directive includes particular provisions with regard to organisations the ethos of which is based on religion or belief.

Does national law governing disability discrimination make any specific exceptions or provisions in relation to occupational health and safety rules?

Please make precise reference to the relevant legal provisions and case law.

Until the coming into force of the new Labour Code there were no laws, orders, decrees or other normative legal texts allowing differential treatment based on racial, national or ethnic origin, religion, disability or sexual orientation grounds in conjunction with special occupational requirements (except for specific preferential treatment as stipulated by the Constitution, and some other laws which could be considered more as positive action measures than genuine and determining occupational requirements). Under the new Labour Code, the cases where such treatment is stipulated by law or where there are substantive reasons resulting from job requirements or nature of work to be performed shall not be deemed as discrimination.

However, there are some examples where recruitment policies of certain agencies favour national or ethnic minorities. For example, in regions inhabited by the Hungarian minority, candidates of any agency (state or self-governing body) are favoured if they speak Hungarian. Similarly, some agencies in regions with a higher density of Roma population prefer hiring ethnic Roma as social workers or assistants in schools. This, however, is not an official policy, but rather individual initiative of relevant department heads. As far as the Roma minority is concerned, the problem is that there is a lack of educated candidates for such positions.

Apart from the new Labour Code, the national legislation does not set out genuine and determining occupational requirements, except for age requirements concerning certain public officials (the President, judges, prosecutors, and ombudsperson), and some indirectly stipulated requirements connected with health condition of applicants in certain occupations.⁵⁰ As regards organisations with a

⁴⁷ Section 10 paragraph 1 letter a), c) d), Act No. 84/1990 Coll. on the Right of Assembly as amended (Zákon o zhromažďování).

⁴⁸ Section 23 Act No. 81/1966 Coll. on Periodical Press and Other Mass Media as amended (Zákon o periodickej tlači a ostatných hromadných informačných prostriedkoch - Tlačový zákon).

⁴⁹ Section 48 Act No. 379/1997 Coll. on the Operation of Private Security Services and Similar Activities.

⁵⁰ See footnote 51.

special ethos connected with their religion or belief, relevant legislation states that there shall be no right to interfere with the internal matters of the church.⁵¹

As far as the proposed anti-discrimination law is concerned, it will set out conditions under which justified differential treatment will be allowed and will be not be considered as discrimination in Section 4 of the proposal. Such justified differential treatment must be objectively substantiated by a legitimate objective, and the means to achieve this objective must be appropriate and necessary. It will be applied, in particular:

in case the age requirement is specifically set out in connection with access to employment or vocational training, or in connection with employment and gainful activities, including termination of employment and remuneration, with a view to integrating young persons, elderly workers, or persons with nursing obligations into the labour process, or if a minimum age, professional or other experience requirement is set out in connection with access to employment or to certain employment-related benefits,

- b) in case of differential treatment on grounds of disability, gender or age in the armed forces,
- c) in the event that specific requirements concerning gender, age, disability or sexual orientation are defined by a church or religious society in connection with faith or religion, or in the event that specific requirements connected with faith or religion and related to the observation of internal regulations of a church or a religious society are defined in respect of access to employment, vocational training or gainful activities,
- d) in the event that specific requirements concerning age, gender or disability are defined by reason of the nature of work to be performed,
- e) in the event that occupational requirements prescribe the level of education, length of experience and passage of a specialised examination.

In the author's opinion such an arrangement of genuine and determining occupational requirements as suggested above fully complies with both Directives. However, it is really not clear why the proposal outlined in letter c) contains disability.

Reasonable Accommodation

Article 5 (Employment Equality Directive)

Are there specific national law provisions regulating the use of pre-employment medical examinations? If so, what are the main provisions/norms? What is the relationship between this body of law and the principle of equal treatment/prohibition of disability discrimination? How does this body of law relate to the duty to provide a 'reasonable accommodation'?

Does national law permit an employer to inquire about disabilities prior to entering into a contractual relationship with a prospective employee? If so, in which stage of the job application procedure? Are prospective employees required to disclose, prior to employment, disabilities that impact on job performance? If so, how much and what type of information are they obliged to disclose? According to the law, what consequences follow if they fail or refuse to disclose the information?

Is the duty to provide reasonable accommodation defined by law? Is the failure to provide such accommodation considered to constitute direct or indirect discrimination and/or does it infringe other (labour law) standards? Does such a duty exist only with respect to people with disabilities or also with respect to people discriminated against on the other grounds covered by the two Directives?

⁵¹ 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". However, according to Section 6. paragraph 1, letter b), paragraph 2 of this act, internal orders of churches cannot violate generally binding legal acts, and the activity of churches cannot contravene the Constitution, cannot endanger the safety of citizens, public order, health, morality or rights and freedoms of others. In practice it means e.g. that schools managed by religious organisations can have their own rules, however, these rules and the "external" relationships of such a school must comply with the generally binding rules.

How do courts determine whether accommodation is 'reasonable' or whether it imposes a 'disproportionate burden'? What type of criteria is used (medical, occupational, educational, grants etc.)?

How does, under national law, a failure to provide a reasonable accommodation relate to the prohibition of (direct or indirect) discrimination?

Pre-employment medical examination is only required in a limited number of cases, where it is considered necessary either in view of special requirements concerning physical skills,⁵² or to ensure protection of juveniles (persons aged 15 to 18).⁵³ In the author's opinion, these provisions do not infringe the principle of equal treatment, have a legitimate purpose, and the requirement is adequate.

The only objective of such pre-employment examination is to ascertain whether the applicant fulfils mental or physical preconditions necessary to perform the duties of a particular job. Furthermore, Section 41 paragraph 3 of the Labour Code reads "Where the performance of work is connected with special requirements concerning health or mental capabilities, or with other requirements under a separate law, the employer may conclude an employment contract only with a natural person that meets such physical or mental health requirements or a person that meets other requirements under a separate law". Paragraph 5 of the same Section states that, "an employer may request a natural person who is a first-time job-seeker to provide only such information that is related to the work to be performed. An employer may request a natural person, who has already been employed, to submit a work assessment and a certificate of employment."

Thus, the law does not allow inquiring into one's disabilities prior to entering into a contractual relationship with a prospective employee, unless there are special requirements concerning health or mental capabilities, or other requirements under a separate law. Furthermore, according to Section 41 paragraph 6, "An employer may not request a natural person to provide information

- a) concerning pregnancy, except concerning jobs prohibited to pregnant women,
- b) concerning family situation,
- c) concerning integrity, except for jobs that require integrity under a separate regulation, or where the integrity requirement emanates from the nature of work to be performed,
- d) concerning political conviction, trade union membership or religious affiliation,
- e) that could have adverse consequences for the applicant's personality.

Section 41 paragraph 7 states that, "A natural person shall be obliged to inform the employer about the circumstances that prevent him or her from performing the job, or that could otherwise be detrimental to the employer, and about the length of working time with other employers. This means that a prospective employee must disclose only those disabilities that could have an impact on the performance of the job. It is not possible to generalise what type or extent of information is to be provided by a prospective employee. It will depend on the circumstances of individual cases; no case law has been developed in this field yet. As regards the consequences of the failure or refusal to disclose such information, it could be used as a reason not to hire such a person."⁵⁴

Concerning reasonable accommodation, employers' duties in this regard are prescribed by law. Sections 158 - 159 of the Labour Code states 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

⁵² Such a requirement is imposed for example on firemen under the Fire Protection Act (Act No. 314/2001 Coll., Section 36 paragraph. 1, letter c), as well as persons coming into contact with food, using weapons, etc.

⁵³ Under Section 41 paragraph 3, "an employer may conclude an employment contract with a juvenile only based on a previous medical examination of the juvenile.

⁵⁴ As far as dismissal of the employee because of health reasons is concerned, according to Section 63, paragraph 1 letter c) of the Labour Code, employers may dismiss employees whose state of health prevents them from performing their current job in the long term, as confirmed by a medical certificate or decision of a state health administration body or of a social security body, or who cannot perform their job due to occupational illness or the risk of such illness.

necessary skills, and shall also be obliged to support the upgrading of these skills. Furthermore, employers shall be obliged to create conditions allowing these employees to assert themselves through 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 they can. As regards employees with disabilities who cannot be employed under usual working conditions, employers may set up for them sheltered workshops or sheltered workplaces." Moreover, "Employers shall enable their employees with disabilities to receive theoretical or practical training (retraining) aimed at maintaining, upgrading, expanding or changing their qualifications, or adapting it to technological progress with a view to safeguarding their employment." In these activities, employers must cooperate with trade unions.

Employers thus have a duty to provide reasonable accommodation for disabled persons. The failure to fulfil this duty could, depending on the circumstances of the particular case, be considered as direct or indirect discrimination. Section 9 of the Labour Code reads that, "Employees who are harmed by the breach of obligations under employment relationships may invoke their rights in court. Employers may neither disadvantage nor harm their employees who exercise their rights arising from employment relationships." Similarly, Section 14 of the Labour Code states that, "Disputes between employees and employers concerning claims arising from employment relations shall be heard and decided in court."⁵⁵

It is not possible to answer the question as to how the courts determine whether accommodation is "reasonable" or whether it imposes a "disproportionate burden". Since no complaints have been brought and no jurisdiction has yet been created, it is hard to predict how the courts will deal with potential cases and what type of criteria they will apply in their judgements. No doubt, there is a legal possibility to ask the employer to modify the physical features of the workplace, and if the employer does not comply, it is possible to take a legal action to court.

The wording used in connection with reasonable accommodation in the proposed anti-discrimination law is closer to the wording of the Directive on Equal Treatment in Employment and Occupation. Its Section 5 titled "Reasonable accommodation for disabled persons" states that, "employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the policy of employing persons with disabilities."

There are no provisions under Slovak law that mention reasonable accommodation in relation to the other grounds of discrimination mentioned in the Directives.

Minimum requirements and positive action

Minimum requirements

Article 6 (*Employment Equality Directive*)

When is differentiation on grounds of age 'objectively and reasonably' justified under national law? How is this test being applied?

Are any specific arrangements made in national law regarding age discrimination and occupational social security schemes? (Consider this question with reference to article 6.2 Employment Directive).

Is compulsory retirement permitted? Are there any national provisions on retirement? Do they allow the fixing retirement ages by individual or collective labour agreements and, if so, what are the conditions?

⁵⁵ According to Section 80, letter b) of the Code of Civil Procedure, a petition to commence judicial proceedings may be filed also to seek a ruling on the fulfilment of a statutory obligation, obligation under a legal relationship or obligation resulting from the violation of a law.

Are mandatory retirement ages fixed in national legislation/legally binding collective agreements? At what ages? What (if any) conditions/restrictions are imposed (e.g. not before state pension age/entitlement to (full) state pension)? Are rights to protection from unfair dismissal lost upon reaching this retirement age?

Are mandatory retirement ages (widely) imposed by employers (even if apparently in agreement with employees)? At what ages? Are rights to protection from unfair dismissal lost upon reaching these retirement ages?

Are early retirement schemes promoted by the State? If so, are they justified (or might they be justified) by any of the examples provided in Article 6 of the Directive (legitimate employment policy, labour market and vocational training objectives etc)?

Is selection for redundancy widely decided on age grounds?

Is there obvious evidence of age discrimination in access to training opportunities?

Similar provisions to those governing the situation of persons with disabilities in connection with the introduction and implementation of supportive actions can also be found in other sections of the Labour Code⁵⁶ and in some articles of the Employment Act.⁵⁷ These provisions justify differential treatment based on age, gender or parenthood (age and gender-related provisions).

According to Sections 171 - 173 of the Labour Code, an employer shall be obliged to create favourable conditions for the overall development of physical and mental capabilities of juvenile employees, including by adapting their working conditions. When dealing with significant matters concerning the juveniles, employers shall closely co-operate with the parents of juveniles. Employers shall be obliged to keep records on juveniles they employ. Any notice given to a juvenile employee, or termination of employment with immediate effect at the employer's initiative must also be brought to the attention of the juvenile's legal guardian or, where employment is terminated on the employee's initiative, the employer is obliged to request the opinion of the juvenile's legal guardian. Employers may only assign juveniles to the jobs that are appropriate to their physical and mental development, that do not jeopardise their morality, and they shall provide them with enhanced care at work.

Under these provisions, age-based differentiation is justified especially in the area of working conditions, termination of and access to employment. It is evident that the above-mentioned provisions are very general and declaratory. Due to the lack of jurisprudence in the field, it is impossible to answer the question as to how the test of objectivity and reasonability of differentiation is being applied. As far as the proposed anti-discrimination law is concerned, it allows an *expressis verbis* differentiation in cases where access to employment or to certain employment-related benefits is linked to minimum age and to professional or other experience requirements.⁵⁸

No specific arrangements exist at the national level regarding age discrimination and occupational social security schemes. As mentioned above, Section 2 of the Employment Act dealing with labour market policies stipulates, in very broad terms, the obligation of the state to provide increased care to juveniles and to persons over 50 years of age. However, this provision has never resulted in the introduction by the state of special age-based social security schemes, for example for older persons. There is no obvious evidence of age discrimination in access to training opportunities.

Compulsory retirement is not permitted; no law in the country permits the fixing of the age of retirement in an individual or collective labour agreement. Retirement age is fixed by law. Retirement age is currently 60 years for men and 53 to 57 years for women, depending on the number of

⁵⁶ Sections 171 - 173 on juveniles and Sections 160 - 162 of the Labour Code on women or men taking care of children.

⁵⁷ Section 2 of Employment Act on labour market policy stipulates that the state should devote increased attention to caring for juveniles, citizens over 50 years of age, graduates of secondary schools and universities and disabled persons, Section 87 paragraph 1, letter b) supports the creation of jobs for juveniles and school graduates - see the part on positive action.

⁵⁸ Section 4 letter a) of the proposed anti-discrimination law as quoted on page 18.

children.⁵⁹ General rights as to protection from unfair dismissal are not lost upon reaching retirement age. This means that anyone can continue in employment so long as he or she enjoys sufficient capacity, and the state retirement age simply refers to pension entitlement. According to the author's best knowledge, attempts on setting the mandatory retirement age is not widely imposed by the employers, and redundancy choices are not widely made on age grounds. The state does not promote early retirement schemes.

Positive action

Article 5 (Racial Equality Directive) and Article 7 (Employment Equality Directive)

Do specific measures exist in order to ensure or promote full equality or to compensate disadvantages linked with racial or ethnic origin, religion or belief, age, disability or sexual orientation (e.g. mandatory or voluntary quota systems, positive action programmes, financial incentive schemes, etc.)? Is the government considering adopting such measures?

Are there comparable specific measures in relation to gender discrimination?

Please make precise reference to the relevant legal provisions and case law. Please avoid describing social policies and policies aimed at the integration of certain groups.

Article 12 of the Constitution on equal treatment is generally considered to represent the constitutional prohibition of positive discrimination. As far as positive action is concerned, there is an ongoing debate in the country as to whether such an action (adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin) would be against the constitution. However, the Constitution itself contains articles that derogate from the rule of rigid equality, permitting positive discrimination in case of women, juveniles and disabled persons. These categories of persons enjoy more extensive health protection and special working conditions.⁶⁰ It is hard to say whether these "positive discrimination provisions" should be seen as special provisions that give a more concrete form to the general anti-discrimination principle enshrined in Article 12 of the Constitution, or whether they represent derogations from the general principle in specific fields. There is just one related case whereby the Constitutional Court held that it is forbidden to favour or to put at a disadvantage certain groups of citizens.⁶¹

As far as racial or ethnic discrimination is concerned, according to the author's best knowledge no positive discrimination measures have yet been adopted yet, except for the abovementioned informal employment policy in regions inhabited by ethnic or national minorities, favouring persons who speak the relevant minority language. On the other hand, legal debates on the adoption of positive action measures have already been initiated. On December 20th 2000 the government passed Resolution No. 1083/2000 according to which altogether five ministries were obliged "to re-value the need of elaboration and realisation of affirmative action programmes aimed at improving the situation of employment of Roma".

⁵⁹ Section 70 of Social Insurance Act. The law envisages the gradual unification of retirement ages for men and women; women's retirement in 2020 will be the same as for men - 60 years, without taking into account the number of children.

⁶⁰ 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".

⁶¹ See the decision of the Constitutional Court PL US 19/1998. This case dealt with statutory mandatory ethnic quotas in local municipality elections. These quotas reserved a certain percentage of seats in local parliaments for the representatives of Slovak ethnicity in the constituencies in which ethnic Slovaks are a minority. The Constitutional Court abolished these provisions by reference to the general anti-discrimination principle, 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 (...)". Although this case was not directly linked to positive discrimination of ethnic minorities (because the majority Slovak population is, naturally, not recognised as an ethnic minority), the Court in its reasoning on the protection of voting rights also expressed the following opinion: "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."

The Complex Development Programme of Romany Settlements, which was adopted by Government Resolution No. 357/2002 on April 22nd 2002, can be considered to be a positive action measure. 13 villages in the country with Romany settlements have been selected for this programme for which the government intends to improve housing of Roma by building new "low standard" houses with proper infrastructures, in order to remove their segregation and improve general conditions for education. Another similar project is the Programme of Special Social Workers for members of Roma community that was adopted by the same Government Resolution. This programme is aimed at providing special advisory services for members of the Romany community in altogether 18 villages. Furthermore, there are a lot of smaller projects focused on the improvement of education of Romany people, sensitising public opinion to human rights issues and other problems of the Roma community.

There are no statutory or voluntary quota systems, or financial incentive schemes. Moreover, in the light of the abovementioned decision of the Constitutional Court, similar measures or programmes would be considered unconstitutional.

The enjoyment of all third-generation rights (including all social rights for women, persons caring for others, disabled and juveniles, for whom the Constitution allows positive action) is restricted by the fact that they can only be exercised under the terms of the existing laws. Only certain provisions of these laws fully follow the letter of the Constitution and, especially as far as women and people caring for others are concerned, their wording is very general and declaratory.

The situation is somewhat better with regards to the positive discrimination of disabled persons. According to Section 9 of the Labour Code, "employees with disabilities are ensured working conditions that enable them to apply and develop their working skills, taking account of their health condition". This principle is embodied in the abovementioned provisions of Sections 158 - 159 of the Labour Code and of the Employment Act. The latter Act guarantees the right to special work rehabilitation, advisory service, free vocational training and guidance, existence of special sheltered workplaces eligible for state aid, etc.⁶² According to Section 87 paragraph 7 of the Labour Code, employers may only introduce irregular working hours for persons with disabilities subject to their agreement (this provision also applies to pregnant women and to persons caring for a child of less than 3 years of age). Persons with disabilities enjoy special protection against dismissal – a person with a disability can be only be given notice subject to prior endorsement by the National Labour Office.

In addition to the abovementioned provisions regarding specific working conditions for women, pregnant women and persons caring for small children, there are no specific measures related to gender discrimination.

Chapter 2. Remedies and enforcement

Article 7 (Racial Equality Directive) and Article 9 (Employment Equality Directive)

a) Judicial and/or administrative procedure

What judicial, administrative and conciliation procedures are available on the national level for the enforcement of the principle of equal treatment? Is action needed on the national level to comply with Articles 7.1 and 9.1 respectively?

Please make precise reference to the relevant legal provisions and case law.

Please make precise reference to the relevant legal provisions and case law.

Victims of unconstitutional or **unlawful treatment by public authorities** are entitled to the following legal remedies under the available procedural system:

1. Victims can bring complaints (non-judicial action) that will be dealt with by a higher public body. Complaints are brought mainly in order to challenge the actions of the relevant bodies and to seek remedial actions. Legal provisions do not prescribe any formal requirements for filing complaints.⁶³

⁶² Sections 97 - 111 of Employment Act No. 387/1996 Coll. These provisions make it possible to provide, for example, financial support to disabled persons undergoing vocational training, or to employers who create sheltered workplaces. State bodies responsible for providing this type of support are labour offices.

⁶³ See Act No. 152/1998 Coll. on Complaints (Zákon o sťažnostiach).

Complaints are filed directly with the head of the public administrative body against which the complaint is directed. Complaints directed against the head of a public administrative body are handled by the body that is immediately superior. The authority for handling complaints against actions of members of local councils, mayors of municipalities, and chief controllers of municipalities is vested in the commissions set up by municipal councils.⁶⁴ The authorities are also obliged to deal with anonymous complaints that contain concrete data indicating the breach of legal provisions. Complaints must be dealt with no later than 30 days from the date of the act. This time limit may only be extended in exceptional cases (by another 30 or 60 days) and the complainant must be informed of the reasons for the extension. The complainant must also be notified if the handling of the complaint falls under the remit of another organisation, whilst the responsibility for referring the complaint to the correct body lies with the body that received the complaint. The complaint is deemed to have been processed when the complainant is notified in writing of the result of its processing, and when measures are taken to remedy the identified irregularities. The heads of the body dealing with the complaint are obliged to adopt, without delay, necessary measures to eliminate the identified irregularities and to ensure that they are not repeated. The organisation handling the complaint must follow up on the implementation of any remedial measures and, in cases where they are not implemented, pursue relevant action for the responsible persons. If the complaint is filed in respect of an administrative or judicial procedure for which the complainant has the right to use a legal remedy (such as an appeal and the complaint is an appeal of fact) and the time limit for lodging the appeal has not run out, the complaint – considered as an appeal - is referred to the superior body that shall issue a ruling in appeal proceedings. Complaints can only be filed against judges and other judicial bodies in connection with their conduct in relation to the proceedings (e.g. racially motivated conduct of a hearing) or due to delays in the proceedings. Complaints against judicial bodies are processed by court presidents; complaints against court presidents are dealt with by the presidents of superior courts.⁶⁵

2. Victims can report unlawful treatment by public entities to the public prosecution office. Prosecutors then examine the lawfulness of the procedures applied by the relevant authorities. Prosecutors are permitted to take various measures when dealing with the matter. Thus, they can file complaints against competent authorities that issue decisions, adopt legal regulations, generally binding municipal ordinances, or issue guidelines or resolutions in violation of the law. Complaints must be processed within a 30-day time limit; the relevant authority either acts to remedy the situation, or refers the matter to its superior body. If the law is violated by the procedure of a public administration authority (i.e. if the objection is aimed against the procedure rather than at the decision of an authority), or by its inaction, the prosecutor may request that authority to remedy the unlawful situation. The relevant authority is obliged to inform the prosecutor of the measures taken upon the prosecutor's proposal. If the report indicates that a criminal offence may have been committed, the prosecutor initiates criminal prosecution.⁶⁶ Furthermore, the Supreme Audit Office of the Slovak Republic has important powers of control⁶⁷ especially as regards public funds, and the Office of the Government⁶⁸ has powers of control over towards ministries and other bodies of state governance.

Victims of **general** unconstitutional or **unlawful treatment (either public authorities or private bodies)** are entitled to the following legal remedies under the system of available procedures:

3. Besides the office of the prosecution and aforementioned agencies, other agencies established by the state are also authorised to perform checks on either public or private entities. They include, in addition to the abovementioned Slovak Trade Inspectorate in the field of consumer law, the National Labour Office and Inspectorates of Labour in the field of labour law. The aforesaid agencies exercise their powers of control mainly on their own initiative, but nothing prevents them from also acting on petitions lodged by natural persons or legal entities.⁶⁹

⁶⁴ In addition to the Act on Complaints, see Section 10 paragraph 2 and Section 15 of Local Government Act No. 369/1990 Coll.

⁶⁵ Section 6 of Act No. 335/1991 Coll. on Courts and Judges (Zákon o súdoch a sudcoch).

⁶⁶ See the Criminal Procedure Code and Act No. 314/1996 Coll. on Prosecution (Zákon o prokuratúre).

⁶⁷ Articles 60-63 of the Constitution, Act No. 39/1993 Coll. on the Supreme Audit Office.

⁶⁸ Sections 2-5 of Act No. 10/1996 Coll. on the Control in State Administration (Zákon o kontrole v štátnej správe).

⁶⁹ All these possibilities are of a general nature and none of them envisages special procedures in discrimination cases.

4. In any administrative case where the prescribed procedure has already been initiated, the victim (or any party to the procedure) can use the "classical" appeal system. This means that he or she (or a legal entity) may file an appeal against the decision of an administrative authority. The appeal will be heard by its superior body. In the case of losing at this stage, in most cases it is possible to lodge an appeal with a court of general jurisdiction under the system of judicial control over administrative decision-making. The jurisdiction lies with either the district courts or the Supreme Court depending on the "level" of the administrative body that decided the case in the second instance.

5. As stated in Article 46 of the Constitution, there is a system guaranteeing general access to courts.⁷⁰ Regarding access to the courts of general jurisdiction, petitions may be filed mainly to seek rulings on (i) one's personal situation, (ii) fulfilment of a statutory obligation, an obligation under a legal relationship or violation of the law, and (iii) establishment of the existence of a legal relationship or right, if there is an urgent legal reason to establish such facts.⁷¹ The large majority of cases are dealt in first instance by regional courts, and some cases commence at district courts. Access to the Constitutional Court is only guaranteed (also to individuals) to invoke basic rights laid down in the Constitution, provided that no other court has the jurisdiction to deal with the case.

In the author's opinion, the system does not adequately ensure compliance with the Directive in every case. It is ineffective particularly as regards remedies for victims; however, significant changes have been introduced under the latest amendment of the Constitution, which has increased the effectiveness of constitutional complaints,⁷² and under the new Labour Code.

The new Labour Code introduces the possibility to file special complaints alleging discrimination. Employees have a right to file complaints with their employers regarding the breach of their rights and obligations stipulated in paragraphs 1-3 of Section 13 of the Labour Code (anti-discrimination clauses); employers are obliged to reply to such complaints without undue delay, to take adequate remedial action, to discontinue any such conduct and to eliminate any consequences. Moreover, employees who feel that their rights have been harmed as a result of the breach of the conditions stipulated in paragraphs 1-3 of the abovementioned Section, may invoke their rights and claim adequate non-pecuniary damages in court.⁷³

Similar protection is granted regarding access to employment. The new Labour Code has introduced the possibility for job seekers, whose right to equal treatment has been violated, to claim adequate pecuniary compensation to the amount of twice the monthly wage that they would have earned were they to have been given the job.⁷⁴

However, the only "remedy" in various other cases remains to be the imposition of a notice or fine on the perpetrator of the offence, without any impact on the subjective right of the victim. Discrimination can also be found in connection with access to rights in cases that would be deemed inadmissible in court,⁷⁵ or where there is no way of proving that another constitutional or statutory right has also been violated. Finally, institutions responsible for upholding the law sometimes fail to fulfil this obligation, also it is not always clear which body is responsible.⁷⁶ One of the reasons for this situation may be the

⁷⁰ According to this Article, "every person may claim his other rights by procedures established by law before an independent and impartial court of law or other public authority of the Slovak Republic in cases specified by law. Any person who claims to have been denied his or her rights as a result of a decision made by a public authority may turn to a court of law to have the legality of the decision reviewed, unless otherwise provided by law. The review of decisions in matters of fundamental rights and freedoms shall not be excluded from the jurisdiction of the courts of law.

⁷¹ Section 80 of the Civil Procedure Code.

⁷² Amended Article 127 of Constitution considerably extends access to the Constitutional Court by means of constitutional complaints. Based on this new legislation that entered into force on 1 January 2002, the Constitutional Court not only has the right to reverse an unconstitutional decision, but may also prohibit unlawful treatment, give instruction to act in the matter or to restore the situation to the state it was in before the violation. It also introduces the possibility of granting non-pecuniary damages.

⁷³ Section 13, paragraphs 4 and 5 of the Labour Code.

⁷⁴ Section 41 paragraph 9 of the Labour Code.

⁷⁵ For example, the decisions of state agencies in the privatisation process, discriminatory practices in recruitment policies of private entrepreneurs... Similarly as in other instances mentioned above, a successful court action cannot be based solely on unequal treatment.

⁷⁶ One example of such situation is the municipality ordinances in the villages of Rokytovec and Nagov prohibiting Roma people to enter the village (local councillors obtained information that the local state authority was trying to find housing for

fact that equality clauses are scattered all over the legal domain and are considered more as general principles, without the possibility of their direct implementation, rather than directly applicable normative texts.

The proposed anti-discrimination law also introduces some changes in this field. Upon its adoption, a natural person and/or legal entity wronged by the breach of the principle of equal treatment guaranteed under the Constitution of the Slovak Republic, under the anti-discrimination law or other laws will have, in particular, the right to sue the discriminator – be it a natural person or a legal entity – and demand that he/she refrain from such conduct and, where possible, restore the situation to as it was before the violation. Victims may also claim adequate satisfaction and cash compensation for harm other than proprietary harm. A court shall determine the amount of compensation for harm other than proprietary harm, taking into account the seriousness of the detriment caused and the circumstances under which the violation of the equal treatment principle occurred. Damages that result from such treatment may be claimed as well.⁷⁷

No officially acknowledged conciliation procedure exists in the field of discrimination. Except for some projects sponsored by foreign donors and carried out by non-governmental organisations, there aren't any conciliation or mediation centres co-operating with the state agencies; dispute resolution by arbitration is only possible in the field of commercial law. However, the Ministry of Justice is drafting, in co-operation with a British partner, a law on mediation that would allow mediation in cases referred by judges.⁷⁸

The latest amendment of the Constitution has introduced an ombudsperson into the system of bodies responsible for the protection of the individuals' rights. However, the responsibilities of this institution are rather symbolical and advisory, and it is hard to predict the position that the first elected ombudsman will be able to establish for himself.⁷⁹

b) Associations

Are associations and other entities with a legitimate interest in ensuring compliance with anti-discrimination law entitled to engage in judicial and/or administrative procedures on behalf of or in support of the complainant? If so, how often do associations and other entities make use of this possibility and with what results?

Please make precise references to the relevant legal provisions and case law.

Associations, organisations and other legal entities have various, at a varying scale of formality, opportunities (bargaining, educational activities, campaigns, rallies...) to influence the policy of the state sector. However, under the Slovak law they do not have the standing to sue on behalf of other aggrieved parties. The Slovak legal system does not recognise and allow class actions, actions to defend public interest or other third party standing (*actio popularis*, public interest law actions such as

the former Roma inhabitants of the village who were homeless at that time). This openly discriminative act was challenged for the first time before the Constitutional Court by the foundation "Good Romany Fairy Kesaj". However, the Court rejected the petition and stated in its reasoning that the foundation, being a legal entity, does not have the standing to file a petition on behalf of other parties because its own rights were not concerned. The complaint filed 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 directly affected persons (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 "...

⁷⁷ Section 6 of the proposed anti-discrimination law.

⁷⁸ According to an interview with Mrs. Rupcova of the Ministry of Justice (5 December 2002), this project aims at introducing mediation as a general procedure that is not restricted to specific fields of law.

⁷⁹ The Constitution contains a very general provision - Article 151 paragraph 1 - which reads "a public defender of rights is an independent body that participates, within the scope of and in the manner prescribed by law, in the protection of fundamental rights and freedoms of natural and legal persons against actions, decisions, or the inaction of public administration bodies where such actions, decisions or inaction are in conflict with the legal system or with the principles of a democratic state." The details are provided for under Ombudsman Act No. 564/2001 Coll. According to this act an ombudsman can e.g. send an instigation to the public prosecutor to start a legal action, he or she can be present at the administrative procedure, bring proposals and suggest how to deal with the case. In substance, administrative bodies are not obliged to follow the ombudsman's instructions or suggestions. Therefore, the authority of the ombudsman depends greatly on his or her "general" authority, negotiation and mediation skills etc.

they are known in common law countries), and there is no general possibility for associations to engage in judicial procedure on behalf of any party.⁸⁰ Complainants or plaintiffs may only be represented by lawyers or other natural persons. The only exception is trade union members, who can be represented by their trade union organisations. The same applies to the administrative procedure.

As far as criminal law is concerned, the situation is somewhat different. Investigative bodies, the office of prosecution and courts are expected to co-operate with various associations in order "to strengthen the educational impact of criminal prosecution", and such associations can send their representatives to the trial.⁸¹ This option has thus far only been used on behalf of accused persons. However, in the author's opinion, nothing prevents the association from taking part in the trial also on behalf of the victims.

c) Time limits

What is the situation concerning time limits?

Please make precise references to the relevant legal provisions and case law.

The legal system does not set out any special time limits for equal treatment cases. Time limits are determined in accordance with the relevant procedure that is chosen. The deadline to challenge an administrative decision before the court is two months from the date of the challenged decision or act, and claims under Labour Code forfeit within three years.

d) Burden of proof

Article 8 (Racial Equality Directive) and Article 10 (Employment Equality Directive)

Does the principle of the shift or easing of the burden of proof in cases of discrimination exist under national law (constitutional, civil, penal, labour and administrative)? AH: as mentioned before, if included in penal law, this would be contrary to international human rights law

Are there comparable provisions in national law in relation to gender discrimination (NB this is covered by Directive 97/80/EC on the burden of proof in cases of discrimination based on sex).

Please make precise references to the relevant legal provisions and case law.

General provisions in force guarantee the equality of parties in a court procedure;⁸² the relevant law places the burden of proof upon the party that files the particular claim. The Civil Procedure Code states that "parties are obliged to bring evidence to prove their claims."⁸³ Parties to the proceedings have a procedural evidential duty, i.e. they have to introduce evidence proving their claims. The decision as to which party has the burden of proof concerning relevant circumstances depends on the applicable substantive law provision.

The new Labour Code has changed this general principle and introduced an exception for discrimination-related cases. Pursuant to its Section 13 paragraph 5, which provides for access to the courts, employers are obliged to prove that their conduct did not breach the equal treatment principle. However, this applies only to cases of direct or indirect discrimination, and not to cases where an employee's dignity has been prejudiced at the workplace. This could be considered as a complete reversal of the burden of proof. It means that for the victim it is enough to file the case in the manner prescribed by the Civil Procedure Code, to describe the discriminative behaviour, to describe how this action affected him or her and it will be upon the employer to prove that the described occurrence did not happen or that it was not discriminative. The prohibition of the gender discrimination is included

⁸⁰ Section 93 of the Civil Procedure Code admittedly enables the participation of so-called "secondary parties"; however, the court only allows secondary parties to participate in the proceedings if the outcome of the dispute could affect the legal status of such parties.

⁸¹ Sections 3-6 of the Criminal Procedure Code.

⁸² Article 47 paragraph 3 of the Constitution.

⁸³ Section 120 paragraph 1 of the Civil Procedure Code.

into Section 13 paragraph 1, thus the shift of the burden of proof also applies to this form of discrimination.

Prior to the adoption of the new Labour Code there had only been one attempt at reversing the burden of proof to fall upon the respondent by means of a procedural provision. The legislator provided in 1995 that respondents in civil defamation actions must submit the "evidence of the truth", because otherwise the court would only take into account the evidence submitted by the plaintiffs.⁸⁴ The Constitutional Court's ruling in an action brought by a judge of a general court abolished this provision and declared it to be in conflict with the principle of equality of parties as guaranteed by Article 47 paragraph 3 of the Constitution. However, the Court did not base its ruling on the unconstitutionality of the relevant provision, but rather on the fact that the burden of proof was reversed.⁸⁵ Thus, to sum it all up and taking into account the wording of the Constitutional Court's ruling in the aforementioned case, the reversal or otherwise easing of the burden of proof does not create an unconstitutional situation.

The team working on the draft anti-discrimination law within the office of Deputy Prime Minister Pal Csáky intend to partly shift the burden of proof in all unequal treatment cases. Article II of the draft modifies the Civil Procedure Code, and the new Section 200ia paragraph 4 introduces the respondent's obligation to prove that no violation of equal treatment principle occurred if the person who believes they have been harmed by the breach of the principle of equal treatment submits reasonable evidence to the court.

e) Victimization

Article 9 (Racial Equality Directive) and Article 11 (Employment Equality Directive)

Does protection against victimisation, as defined in Article 9 and Article 11 respectively, exist in national law?

Please make precise references to the relevant legal provisions and case law.

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. Apart from this provision, only two other laws directly provide for the protection against victimisation. The Act on Complaints stipulates that the mere fact of filing an action must not be used to the detriment of the complainant. Moreover, the complainant may request that his/her identity not be disclosed.⁸⁶ The other law is the new Labour Code. Its Section 13 paragraph 6 states that the employer may not sanction or disadvantage an employee for exercising his/her rights under the labour law relationships.

According to the proposed anti-discrimination law, victimisation shall mean any conduct that has the purpose or effect of deriving adverse consequences for a natural person and/or legal entity as a reaction to their seeking enforcement of the principle of equal treatment. Such conduct is considered discriminatory and is forbidden.⁸⁷

f) Sanctions

Article 15 (Racial Equality Directive) and Article 17 (Employment Equality Directive)

What provisions exist on the application of effective, proportionate and dissuasive sanctions, penalties and remedies in anti-discrimination cases? How do these compare to sanctions in other areas (eg

⁸⁴ Act No. 232/1995 Coll., Section 200i - amendment of the Code of Civil Procedure, which was abolished in 1997 by decision of the Constitutional Court in case US 9/96, published in the Coll. of Laws No. 359/1997.

⁸⁵ See the case US 9/96. As far as reversal of the burden of proof was concerned, the court ruled "...it shall not be deemed as the violation of the principle of equality of the parties if the defendant is requested to prove that he or she has not violated the right to the protection of personhood ... the imposition of the burden of proof on the defendant shall not be deemed as the violation of his or her constitutional rights..." Reversal of the burden of proof does not work against the equality of the parties, provided that this situation does not cause the breach of the equality of arms principle.

⁸⁶ Sections 6 and 7 of the Act on Complaints.

⁸⁷ See Sections 2, paragraphs 1, 5, Section 3 paragraph 1 of the proposed anti-discrimination law.

labour law)? Do equivalent provisions already exist on the national level in other areas? Is multiple discrimination an aggravating circumstance?

The author has mentioned on several occasions that basic principles of equal treatment have been laid down. There is, however, a problem as to the extent to which victims can make effective use of these principles, and to the lack of initiative of the relevant authorities for taking action against the violators of these principles. (As mentioned above, the State Trade Inspectorate and the National Labour Office and Inspectorates of Labour have the power to impose a fine of up to 1,000,000 SKK; however, they have never exercised this power due to racial, gender or ethnic discrimination. Moreover these sanctions do not include compensation for victims)⁸⁸. This means that there is a need to increase the effectiveness of this system.

As far as judicial procedures that could bring compensation for victims are concerned, there is a lack of test cases in the field. As mentioned above, it is possible to bring both a defamation action ("protection of personhood") and, an action for non-pecuniary damages simultaneously. Such a claim can be based on discrimination in conjunction with the right to dignity. The new Labour Code has introduced two special types of claims. Its Section 13 paragraph 5 allows claims for non-pecuniary damages in cases of discrimination in relationships governed by labour law, and Section 41 paragraph 9 allows appellants to claim a sum amounting to twice the monthly wage that the discriminated employee would have earned were he/she to have been hired for the job. Section 6 paragraph 1 of the proposed anti-discrimination law introduces the possibility for the appellant to seek special non-pecuniary damages in all cases of discrimination connected with the Constitution or statutory rights. The court may, in general, order the discriminating entity to refrain from discriminatory conduct or to remedy an unlawful situation. The amount of non-pecuniary damages is not limited and depends primarily on the seriousness of the detriment caused and circumstances under which it occurred.

g) Dissemination of information

Article 10 (Racial Equality Directive) and Article 12 (Employment Equality Directive)

What action is being taken or is planned to ensure that anti-discrimination legislation has been or will be brought to the attention of the public?

What action is being taken or is planned to ensure - by means of information and training and where necessary by effective sanctions - that all officials and other representatives of the public authorities at every level abstain from any discriminatory speech or behaviour in the exercise of their functions? The purpose of the research is not to establish whether measures are appropriate and effective, but whether or not they exist.

Slovakia's legal system can be characterised as being relatively complicated, and general public awareness of the existing laws as being low. There have been some attempts to improve the situation, initiated especially by non-governmental or foreign-based organisations, aimed either at changing attitudes or at spreading the knowledge. Most of these activities are oriented towards enhancing legal awareness (mainly as regards human rights issues); however, there are no projects aimed exclusively at discrimination-related issues.⁸⁹

As far as the activities of the government and other state bodies are concerned, the author believes that the situation changed after the 1998 elections, and that the elections in 2002 did not reverse the trend. The current government, top representatives of the prosecution office and of the police force strive (with varying levels of success) to address discrimination issues more seriously than the governments preceding them. Co-operation between the government and external bodies is also better than under

⁸⁸ See pages 13 and 15

⁸⁹ The most significant projects related to spreading legal awareness are those carried out by foundations "The Citizen and Democracy - Minority Rights Group Slovakia" (Nadácia Občan a Demokracia - MRG Slovensko), "Open Society Fund Slovakia (Nadácia otvorenej spoločnosti - OSF) and the Centre for Environmental Public Advocacy (CEPA - Centrum pre podporu miestneho aktivizmu). The first project in this field was the project of the American Bar Association - Central and Eastern Europe Law Initiative. This organisation published a series of leaflets providing basic legal information necessary for ordinary citizens in everyday life.

previous governments. To give examples of concrete activities, we could mention the document prepared by the former government under the title "Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Forms of Intolerance in the 2000-2001 Period",⁹⁰ various "action plans" of individual ministries and other bodies (prosecution, police...), and the Conference against Racism, Xenophobia and Intolerance held in May 2000. The abovementioned plans contain sections devoted to educational activities. Thus, in 2001, training courses and workshops were organised in the field for policemen, prosecutors, judges and other state officials. Issues of discrimination are included in these activities.

h) Social dialogue and NGOs

Article 11 and 12 (Racial Equality Directive) and Article 13 and 14 (Employment Equality Directive)

Has the government taken steps to promote dialogue with the social partners at national level? If so, what are the measures adopted and what are the results?

Has the government taken steps to promote dialogue with non-governmental organisations at national level? If so, what are the measures adopted and what are the results?

Social dialogue in Slovakia is based on negotiations within the tripartite mechanism (trade unions, employer unions and the state) and collective bargaining. Employers and trade unions can conclude collective agreements under which employees are guaranteed various social rights.⁹¹ However, it is not common practice to include anti-discriminatory or similar clauses in these agreements. It is believed that a general prohibition of discrimination is laid down in the Constitution and the laws, and that there is no need to repeat similar provisions in collective agreements. Measures to promote social dialogue on discrimination issues have not yet been introduced - either in general or within the scope of collective bargaining.

As far as the non-governmental sector in Slovakia is concerned, NGOs are generally considered to be very active. There are a number of various Romany, Hungarian, Ruthenian organisations and organisations representing certain other national minorities, as well as women's organisations, organisations representing sexual and other minorities, etc. Most of them try to find an appropriate forum for communication with state authorities, and the government sometimes turns to non-governmental organisations as well (e.g. when drafting the laws that have an impact on the non-governmental sector or laws that have implications for the fields of activity of non-governmental organisations).

Dialogue between the state and these organisations has varying levels of success. It takes place without being formally established or guaranteed. There are no laws, decrees, orders or ordinances concerning compulsory co-operation with the NGO sector in the field of discrimination.⁹² Notwithstanding this fact, many governmental entities or other agencies have developed the good practice of co-operating with non-governmental organisations.⁹³ The abovementioned Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Forms of Intolerance contains some general clauses that also support co-operation with NGOs.

⁹⁰ Government Resolution No. 283/2000; also added to the Resolution was the plan for the 2002-2003 period.

⁹¹ The right to collective bargaining is guaranteed under Article 36, letter g) of the Constitution. There is also a Collective Bargaining Act No. 2/1991 Coll. (Zákon o kolektívnom vyjednávaní), which distinguishes between "enterprise-level collective agreements" (concluded between the trade union at the workplace and the employer) and "higher-level collective agreements" (concluded between the higher trade union body and the employer's union).

⁹² There are some provisions on general co-operation with non-governmental organisations in specific fields - the Social Assistance Act No. 195/98 Coll. (Zákon o sociálnej pomoci) and the Advertisement Act (Zákon o reklame) stipulate that relevant state agencies should co-operate with non-governmental organisations.

⁹³ Among examples of such co-operation we could mention the participation of external representatives in various conferences organised by the state, concrete co-operation between police leaders and the organisation called People Against Racism (Ľudia proti rasizmu) in the fact-finding related to the skinheads movement, co-operation between the Ministry of Justice and the Center for Environmental and Public Advocacy and the Citizen and Democracy - Minority Rights Group Slovakia foundation in the area of judicial training on issues related to discrimination and racially motivated attacks, etc.

Chapter 3. Specialised bodies

Article 13 (Racial Equality Directive)

Does such a body exist on the national level? Where it does, what are its resources (staff and budget), powers and duties in relation to the requirements of the Racial Equality Directive? Has it also a mandate on other grounds of discrimination?

Are existing bodies addressing the issue of multiple discrimination?

Where a body does not exist on the national level, are there plans to establish such a body?

No special body in the country has yet been designated for the promotion of equal treatment of all persons without discrimination, however, the relevant law has already been passed. The authorities responsible for dealing with this issue (in addition to designated persons at certain ministries), include the Office of the Government - Section of Human Rights and Minorities, and the Government Plenipotentiary for Addressing Roma Minority Problems. The ombudsperson institution is responsible for the general defence of rights, and has no special mandate for discrimination issues.

The Section of Human Rights and Minorities of the Office of the Government falls under the supervision and political responsibility of the Deputy Prime Minister for Human Rights. The office has 15 employees (3 lawyers) and is considered to be a service organ for implementing human rights policy. Its staff give comments on draft laws in the framework of inter-ministerial comments procedures, prepare research papers, reports, draft laws, organise conferences and study tours in the field of human rights and minority protection, provide assistance in relevant PHARE projects, etc. The duties of the Section do not include assistance to victims. However, if a complaint is addressed to the Section, its staff usually provides basic information and try to give assistance by finding a legal representative. The Section is currently headed by the General Director, former NGO activist Mrs. Jana Kvecinská.

According to the Act on Organisation of Ministries and other Central State Administration Bodies, the government may appoint plenipotentiaries for special types of activities.⁹⁴ One such plenipotentiary (there are currently around 23 of them) is the plenipotentiary for addressing Roma issues. His or her task is to deal with the problems of the Roma in general, to look for the ways of improving their social situation and reducing their level of poverty. Analogically to the Section mentioned above, this body is more policy-oriented and, as such, has more political than "legal" (decision-making) powers. The office of the plenipotentiary is currently held by Mrs. Klára Orgovánová who is of Roma origin.

The proposed anti-discrimination law does not introduce a special body responsible for dealing with discrimination. However, the office of the Deputy Prime Minister for human rights has prepared a draft amendment to the Act on the Establishment of the Slovak National Centre for Human Rights,⁹⁵ under which, *inter alia*, the Centre would be transformed into a special body responsible for the promotion of equal treatment. There was a suggestion that the responsibilities of the centre should include, e.g., monitoring and evaluation of compliance with the principle of equal treatment, creation of a national information network on racism, xenophobia and anti-Semitism, mediation of dispute resolution and provision of legal assistance to victims of discrimination. The Centre for Human Rights in its suggested form would have had the non-judicial power to deal with all grounds of

⁹⁴ Section 2b of Act No. 347/1990 Coll. on Organisation of Ministries and Other Central Administration Bodies (Zákon o organizácii ministerstiev a ostatných ústredných orgánov štátnej správy) reads as follows: "The Government may appoint plenipotentiaries for certain specific areas of activities. They shall act on the basis of powers vested in them by the Government. The scope of powers of individual plenipotentiaries shall be determined by the Government at the time of their appointment." The decision whether and for which area a plenipotentiary will be appointed is exclusively a matter of political will. The plenipotentiary for addressing the Roma issues was appointed by Government Resolution No. 127/1999.

⁹⁵ Act No 308/1993 Coll. This law outlines in a very general manner the current goals of the centre, which lie in research, education and providing various SKK services in the field of human rights. According to the international treaty, the centre receives every year 5,000,000 SKK from the state budget. Up to now, the centre does not have any special powers in relation to equal treatment.

discrimination, and according to the author, the proposal satisfactorily met the requirement of Article 13 of the Racial Equality Directive. The relevant amendment was passed in March 2003⁹⁶, however, the final text does not detail the centre's mandate. The law uses very general language, saying that the centre operates in the field of human rights, monitors and evaluates the respect of human rights, provides research and educational activities, collects and spreads information, and provides library and analogous services.

Chapter 4. Compliance and implementation

Article 14 (Racial Equality Directive) and Article 16 (Employment Equality Directive)

a. Screening

Does national law provide a mechanism for the abolition of laws, regulations and administrative provisions that are contrary to the principle of equal treatment?

Is there a mechanism under national law by which provisions in agreements, contracts or rules relating to professional activity, workers and employers that are contrary to the principle of equal treatment can be declared null and void or amended?

As stated at the beginning of this paper, no law, regulation or administrative provision may be in conflict with the Constitution. In cases where such a law or other normative act is passed, the Constitutional Court can reverse it using the prescribed procedure.⁹⁷ Since the Constitution guarantees equal treatment, it can be stated that national law provides a mechanism for the abolition of all normative acts that are contrary to the principle of equal treatment.

Opmerking: This question should have been answered under the different points above.

To the author's best knowledge, there are no laws, regulations or administrative provisions that directly or indirectly discriminate on any grounds covered by EC legislation. It is guaranteed that any normative act, registered by a state agency or a court (by-laws of associations, by-laws of independent professions and workers' and employers' organisations, by-laws of profit-making organisations, etc.) must not be contrary to the principle of equality. If the by-laws submitted for registration are in breach of this principle, the decision-making body must reject them.

The situation is different regarding individual acts in the fields of private law. Neither the state nor any other party that is not directly affected by an individual act can challenge the act, e.g., a business contract containing a discriminatory clause.⁹⁸ As far as international treaties are concerned, as mentioned in the introduction, the treaties concerning human rights and fundamental freedoms, ratified by the Slovak Republic and promulgated in accordance with the law, take precedence over national laws. Positive action to guarantee the priority of specific national anti-discrimination laws is not necessary, provided that such laws are in conformity with the Constitution.

⁹⁶ Act No.136/2003 Coll.

⁹⁷ Article 125, paragraph 1 letter a) provides that the Constitutional Court decides on conformity of laws and all other normative acts with the Constitution, constitutional statutes and international treaties approved by the National Council of the Slovak Republic. Under Article 130, paragraph 1 of the Constitution, a motion to initiate such proceedings may be filed by at least one fifth of members of the National Council of the Slovak Republic, the President of the Slovak Republic, the Government, a court or the General Prosecutor.

⁹⁸ Some attempts have been undertaken to broaden an often conservative and narrow interpretation of the question of who has the right to sue. It is hard to decide where the obstacle is provided for by the law and where it is, e.g., a "routinely" deciding judge (see for example the brochure "Access to Justice" published in 1999 by the Centre for Environmental and Public Advocacy as the product of the meeting of various lawyers on this subject).