

Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity

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Executive Summary

Slovak legislation correctly transposed the provisions of the Council Directive 2000/78/EC (27.11.2000) concerning prohibition of discrimination based on sexual orientation in **employment** and **occupation**. Later legislation amended the regulations on **education** and **health care**. Sexual orientation was added as an additional explicit ground of non-discrimination also in these two areas. This legislation is quite favourable in the area of employment / occupation, education and health care, however the Directive 2000/78/EC was transposed only formally correct and there are still provisions (especially in the Labour Code) causing factual discrimination of LGBT individuals.

The anti-discrimination legislation was later amended again. Since 14.02.2008 sexual orientation is recognised as a prohibited ground of discrimination in all areas covered by the legislation, i.e. besides employment, also education, social and health care, and access to goods and services are covered.

There is no equality body dealing exclusively with discrimination on the ground of sexual orientation. Besides general authorities protecting lawfulness of the state authorities (such as Prosecutors office, Public Defender of Rights) the **Slovak National Centre for Human Rights** deals with all kinds of discrimination; however, this body has no judicial or executive authority and within the field of anti-discrimination it has the competence to, among other things, monitor and assess the observance of human rights; gather and provide upon request information on racism, xenophobia and anti-Semitism; provide legal assistance to the victims of discrimination and represent them in court. Moreover, the Centre may claim protection of the right to equal treatment instead of a real victim of discrimination, if a violation of the principle of equal treatment could threaten interests or freedoms of a large or indefinite number of people, or if such violation could seriously jeopardise public interest.

According to the Anti-discrimination Act, any person (natural or legal) can claim judgement of the civil court stating a breach of rights caused by the discriminatory demeanour. Such a person may, under specific circumstances, plead for compensation of pecuniary damage or non-pecuniary harm. The plaintiff can be represented by a non-governmental organisation or by the Slovak National Centre for Human Rights. The recently adopted amendment of the anti-discrimination legislation introduced the concept of the so called '*class action*' in protection of the principle of equal treatment. Moreover, mediation as an alternative dispute resolution was explicitly recognised as a way of dealing with discriminatory treatment.

Freedom of movement is basically regulated by the Act on Residence of Aliens according to which the term 'family member' only applies to spouses,

dependants, including direct relatives and other dependant family members or members of the household.

Although Slovak legislation does not recognise registered partnerships or other formalised forms of relationship of LGBT individuals, there are some provisions granting freedom of movement for LGBT partners of EU citizens, e.g. if such a partner can be considered as member of his/her household.

Foreigners with no connection to EU citizens have a different status and do not enjoy the same rights in respect to freedom of movement. Slovak legislation presumes that such a person shall have some kind of relational ties; however, according to some special provisions in the Act on Residence of Aliens, permanent residence can be granted if it is **in the interest of the Slovak Republic**.

Furthermore, foreigners are subject of so-called '**tolerated residence**', a special and exceptional type of residence within Slovakia, which may be granted if it is necessary for the foreigners' private or family life, or if there are obstacles to his/her administrative expulsion.

Affiliation to a particular social group based on the common characteristic of sexual orientation is recognised as a ground for granting **asylum status**. In other words, a person claiming existence of well-founded fear of being persecuted as a member of a particular group may obtain asylum status if due to such fear he/she is unable and/or unwilling to return to the country of origin.

However, such a person must fulfill all the relevant conditions as an individual because Slovak legislation does not recognise an LGBT partner of a refugee as a family member. The only way an LGBT partner of a refugee can be granted asylum without being persecuted in his/her country of origin is asylum for **humanitarian reasons**. Otherwise, such a person has to prove his/her marital status or direct kinship.

Family reunification is not applicable for LGBT partners under Slovak legislation. LGBT partnerships are not recognised as family ties. There are no alternatives (like being a member of household of a person) for an LGBT individual to seek residence based on the clause of family reunification.

The Right to freedom of assembly is granted to LGBT individuals on the same basis as it is to anyone else. Pride parades, marches and demonstrations can be realised under the Act on the Right of Assembly and shall not be subject to any permission proceedings. Public authorities such as police and/or municipalities are obliged (together with the organisers) to provide assistance during the assembly to ensure that the constitutional right to freedom of assembly is not threatened or infringed.

Between 2000 and 2007, only a few public gatherings in favour or tolerance of LGBT individuals took place, but the number of public gatherings has increased slightly in recent years. This is unofficial data gained from interviews with active members of the community and responses to the information request sent to eight county municipalities.

LGBT individuals facing **hate speech** are partially protected by the **Criminal Code** or by the **Act on Minor Offence**; however, none of these laws recognise any crime or offence aiming at specifically protecting LGBT individuals. There are only general provisions applicable, unlike those applicable to members of national, ethnic or racial minorities; however, LGBT individuals can be considered as members of a specific group and thus object of the criminal act 'Violence against a group of people and the individuals'.

Provisions concerning defamation and libeling stipulated in the **Civil Code** might be more relevant in the case of hate speech against LGBT individuals. According to theoretical statements and general judicial rulings concerning defamation law, **statements which are truthful but which deal with private and intimate life of a person aggrieved, can be published (in general terms) only with the consent of such person** (with certain exceptions for public persons). Spreading information about the sexual orientation of an LGBT individual against his/her will can thus be considered illegal under the defamation provisions of the Civil Code.

There is no reference about any real defamation case brought by an LGBT individual to the court; however, there have been many cases of hate speech presented by the **public officials**. These are more or less cases of abuse and/or humiliation and are examples of hostility towards LGBT individuals in Slovakia. The situation has not changed as for the year 2010. There are no official statistics on filed defamation cases, the statistics only track validly finished cases.

Legislation regarding **transgender individuals** stipulates that discrimination due to their sexual or gender identification is considered as **discrimination on the ground of sex**.

There are clear legislative provisions relating to the administrative issues concerning the surgical change of sex/gender, like change of name and change of identification number; however, **legislation concerning medical aspects is practically absent**. There is no proper legislative environment regulating changes of sex/gender and this might be one of the reasons why transgender individuals prefer to undergo operations in the Czech Republic.

There were some legislative changes in the area of name change which shall on one side make it easier to submit relevant documents when claiming the change of name; however, on the other side, the range of names which may be chosen

by a person who underwent a surgery was limited. A person may only choose a neutral name, not any name.

A. Implementation of Employment Directive 2000/78/EC

The principle of equal treatment is guaranteed under Article 12 of the Constitution of the Slovak Republic¹, which states in paragraph 1 that ‘people are free and equal in dignity and rights’. Paragraph 2 of Article 12 states that ‘fundamental rights and freedoms are guaranteed in the territory of the Slovak Republic to every person regardless of sex, race, skin colour, language, belief, religion, political affiliation or conviction, national or social origin, nationality or ethnic origin, property, lineage or any other status. No person shall be harmed, favoured or discriminated against on any of these grounds’. Sexual orientation as a ground of non-discrimination is not explicitly mentioned in the Constitution, so constitutional complaints regarding such discrimination shall be based on ‘other status’ of a possible victim. In other words, at the constitutional level, a person claiming discrimination on the ground of sexual orientation in front of the Constitutional Court would use ‘other status’ as a ground of discrimination.²

Council Directive 2000/78/EC (27.11.2000) establishing a general framework for equal treatment in employment and occupation was transposed into Slovak legislation primarily by the Act No. 365/2004 Coll. on equal treatment in certain areas and protection against discrimination (Anti-discrimination Act)³ adopted by Národná rada Slovenskej republiky (NRSR) [National Council of the Slovak Republic] (Slovak Parliament) on 20.05.2004 and came into force on 01.07.2004.

According to the Anti-discrimination Act, discrimination on the ground of sexual orientation is prohibited in employment relationships, similar legal and related legal relationships. The principle of equal treatment shall apply only in combination with the rights of natural persons provided by law and in the following areas:

- access to employment, occupation, other profit-making activities or functions, including recruitment requirements and selection criteria and modalities,
- employment and working conditions including remuneration, promotion and dismissal,

¹ Slovakia/Ústava Slovenskej republiky 460/1992 Zb. (01.09.1992)

² Different from the constitutional level, the amended Anti-discrimination Act explicitly recognises ‘sexual orientation’ as a ground of discrimination, which can also be explicitly addressed before the general courts.

³ Slovakia/ Antidiskriminačný Zákon 365/2004 (20.05.2004).

- access to vocational training, professional upgrading and participation in active labour market policy programmes including access to vocational guidance services, or
- membership and activities in employees' organisations, employers' organisations and organisations associating persons of certain occupations, including the benefits that these organisations provide to their members.

The Labour Code⁴ and other acts in the field of employment within specific areas (such as prosecutors, public services, military services, etc.) were amended accordingly.

The Slovak Republic originally did not explicitly recognise sexual orientation as a matter of discrimination within other areas mentioned in the Racial Equality Directive 2000/43/EC, like social security, education, health care, access to goods and services and housing; however, this has been changed by amending some acts in the area of education and later by amending the Anti-discrimination Act itself.⁵ The Act on Higher Education⁶ as well as the School Act⁷ were amended⁸. Sexual orientation is stipulated as one of the grounds of discrimination explicitly prohibited by these acts.

Similarly, the Act on Providers of Health Care⁹, in the Annex 4 – Ethical Codex of Medical Servants, states that it is a duty of any medical servant to protect life, support and restore health, prevent from diseases, lighten suffering regardless of nationality, race, belief, **sexual orientation**, political affiliation, social status, moral or intellectual level and reputation of the patient.

On 14.02.2008 Slovak Parliament has approved the amendment¹⁰ of the Anti-discrimination Act. According to this amendment discrimination on the ground of sexual orientation is prohibited also within other areas such as **social care, medical treatment, access to goods and services, and education**. The amendment of the Anti-discrimination Act¹² provides new structure and definitions. The Anti-discrimination Act now generally stipulates that the observance of the equal treatment principle dwells in the prohibition of discrimination due to listed grounds which also include discrimination on the ground of sex, sexual orientation and other status of a person.¹³

The original wording of the Anti-discrimination Act provided specific grounds of discrimination for different areas of legal relationships (social care, health

⁴ Slovakia/zákon 311/2001 (02.07.2001).

⁵ Amendment of the Anti-discrimination Act, Slovakia/zákon 85/2008 (14.02.2008).

⁶ Slovakia/zákon 131/2002 (21.02.2002).

⁷ Slovakia/zákon 29/1984 (22.03.1984).

⁸ Slovakia/zákon 363/2007 (03.07.2007).

⁹ Slovakia/zákon 578/2004 (21.10.2004).

¹⁰ Slovakia/zákon 85/2008 (14.02.2008).

¹² Slovakia/zákon 85/2008 (14.02.2008).

¹³ Article I point 1 Slovakia/zákon 85/2008 (14.02.2008).

care, access to goods and services, education and labour, and similar relationships). The amended Anti-discrimination Act now generally defines the principle of equal treatment which shall be applied in all above mentioned areas of legal relations.¹⁴ This piece of legislation rectified deficiencies caused by the original Anti-discrimination Act.

The amendment stipulates that discrimination on the ground of sex shall also include discrimination on the ground of sexual or gender identification.¹⁵ Moreover, the amendment more generally defines one of the main principles of equal treatment. It stipulates that **everybody** is obliged to respect the principle of equal treatment in the area of labour and similar legal relationships, social welfare, health care, providing with goods and services, and education. The original version of the Anti-discrimination Act did not use the term ‘everybody’; instead, it listed a few subjects: state authorities, municipal authorities, other self-government authorities, natural persons and legal entities. The actual wording is more precise and shall cover all subjects with legal subjectivity.

Although the Anti-discrimination Act¹⁶ prohibits any kind of discrimination based on sexual orientation in employment and occupation, there are certain provisions in the Labour Code which can be considered disadvantageous for members of a same sex couple compared to a married couple.¹⁷ Here are the most visible ones:

- in case of death of the employees’ husband or wife the employer is obliged to grant to the employee two days off paid by the employer; however, in case of death of a person who lived with the employee in the same household the employer is obliged to grant to the employee only the minimum necessary amount of time, maximum one day off paid by the employer.¹⁸ Moreover, it can be more unpleasant for such a partner to prove their relationship.
- in case of childbirth, the employee (husband) is guaranteed the necessary amount of time to transport his wife to hospital and back paid by the employer. This benefit is guaranteed only to the husband of a wife.¹⁹

However, no official or non-official data is available to support whether the above mentioned provisions caused some kind of discriminatory performance.²⁰

¹⁴ Article I point 1 Slovakia/zákon 85/2008 (14.02.2008).

¹⁵ Article 2a paragraph 11 point a), Slovakia/ Zákon 365/2004 (20.05.2004). “Sexual and gender identification” is a literal quotation and translation of the actual wording of the Anti-discrimination Act (“diskriminácia z dôvodu pohlavnej a rodovej identifikácie”). This formulation may include the concept of gender identity, however, there is no reference to “gender reassignment” in the Anti-discrimination Act and this concept remains excluded.

¹⁶ Slovakia/ Zákon 365/2004 (20.05.2004).

¹⁷ There is no legislation on registered partnership or other officially recognised relationship of people of the same sex in Slovakia.

¹⁸ Art. 141, paragraph 2(d) of the Labour Code.

¹⁹ Art. 141, paragraph 2(b) of the Labour Code.

There is no case law related to alleged discrimination based on sexual orientation within labour law either.²¹

A.1. Equality body dealing with discrimination on the ground of sexual orientation

There is no equality body or other authority in Slovakia dealing exclusively with discrimination, not to mention discrimination on the ground of sexual orientation. Apart from general authorities protecting legality (general courts, constitutional court, prosecutors offices), there is also an Ombudsman office called *Verejný ochranca práv* [Public Defender of Rights] dealing with breaches of law conducted by the public authorities.

The only body which is considered as equality body dealing with all kinds and forms of discrimination is *Slovenské národné stredisko pre ľudské práva* (SNSLP) [the Slovak National Centre for Human Rights (SNCHR)]. SNCHR was founded by an agreement between the United Nations and the government of the Slovak Republic. The SNCHR is a legal entity engaged in activities relating to the promotion and protection of human rights in Slovakia. Activities in the field of anti-discrimination were added to the tasks of SNCHR after adopting the Anti-discrimination Act. Thus SNCHR is an equality body dealing with all forms of discrimination, however, it deals with other activities too (beyond the anti-discrimination field).

Established by the Act on Establishment of the Slovak National Centre for Human Rights,²² it has no arbitrament competencies. It is a supervising authority with advisory competence.

The duties of SNCHR were extended by the Anti-discrimination Act²³ to include monitoring and assessment of the observance of the principle of equal treatment. SNCHR has become the specialised body for the promotion of equal treatment for all grounds of discrimination.

The competences of SNCHR are defined quite broadly and in quite unspecified general language. SNCHR shall monitor and assess the observance of human rights and the observance of the principle of equal treatment according to a separate law, gather and provide upon request information on racism, xenophobia and anti-Semitism in the Slovak Republic, carry out research and surveys on the provision of information in the area of human rights, and to gather and disseminate information in this area, provide educational activities,

²⁰ <http://www.justice.gov.sk/h.aspx?pg=r30&htm=http://www.justice.gov.sk/stat/09/index.htm> (08.03.2010). Information was confirmed by the Ministry of Justice in February 2010.

²¹ Information was confirmed by the Ministry of Justice in February 2010

²² Slovakia/zákon 308/1993 (15.12.1993).

²³ Slovakia/ Zákon 365/2004 (20.05.2004).

take part in public information campaigns, and provide library services and other services in the field of human rights. SNCHR publishes an Annual Report on the respect for human rights in Slovakia.

Within the field of anti-discrimination activities SNCHR shall:

- provide for legal assistance for victims of discrimination and expressions of intolerance,
- prepare expert opinions on compliance with the principle of equal treatment.²⁴

According to the latest amendment²⁵ of the Act on Slovak National Centre for Human Rights,²⁶ approved on 14.02.2008 by the Parliament, SNCHR shall also:

- execute independent ascertainment regarding discrimination,
- develop and publish reports and recommendations in matters regarding discrimination.

The Act on Slovak National Centre for Human Rights²⁷ mentions ,providing for legal assistance to victims of discrimination ‘and, representing parties to the proceedings regarding violations of the principle of equal treatment’ among its competencies. Providing legal assistance to the victims of discrimination covers legal counselling to the victims or cooperation with attorneys and/or with non-governmental organisations providing legal aid in the field of equal treatment. Moreover, based on the amendment²⁸ the Anti-discrimination Act introduced a sort of *class action*. The amendment stipulates that SNCHR may claim the right to equal treatment instead of the actual victim if certain preconditions are fulfilled, which are the the rights, legally protected interests or freedoms of a larger number of people, or of an undefined number of people might be violated, or if by such violation public interest could be seriously jeopardised.

SNCHR is also authorised to represent parties free of charge in the proceedings concerning discrimination on any ground.²⁹ There is no data available on which forms of discrimination were claimed; however, from existing activities of the SNCHR it seems that the Centre provides more consultations than legal representation of victims. These are only assumptions of the author of this study since there are no official reports, evaluations or other data providing thorough information concerning their activities.³⁰ According to SNCHR there are three

²⁴ Art 1, paragraph 2. Slovakia/zákon 308/1993 (15.12.1993).

²⁵ This amendment did not come into force yet. It was not published in the official journal of the collection of laws. The approved version is available at:
http://www.nrsr.sk/exeIT.NRSR.Web.Webclass/Tmp/N%E1vrh%20z%20z%20kona_474.doc
(25.02.2008)

²⁶ Slovakia/Zákon 308/1993 (15.12.1993)

²⁷ Slovakia/Zákon 308/1993 (15.12.1993).

²⁸ Slovakia/zákon 384/2008 (23.09.2008).

²⁹ Art. 1, paragraph 3. Slovakia/zákon 308/1993 (15.12.1993).

³⁰ Information was confirmed on 08.03.2010 by the SNCHR via telephone interview..

discrimination cases in which the Centre represents the victims.³¹ However, none of these cases deals with discrimination on the ground of sexual orientation.³² SNCHR publishes reports on the observance of human rights annually.³³ These reports, however, deal with selected examples on the state of human rights in Slovakia, including activities of SNCHR in the field, but do not provide a comprehensive picture of the activities of SNCHR or of the state of human rights in the field of equal treatment.

Apart from above mentioned reports, SNCHR publishes Annual Reports on its activities.³⁴ No complaints objecting to discrimination based on sexual orientation were mentioned in the Annual Reports for the years 2004 and 2005. Data for the previous years are not available at all.

According to the Annual report for the year 2006, SNCHR dealt with 198 written petitions claiming violation of equal treatment and provided 630 individuals with telephone assistance in this field. Most of the petitions were complaints about discrimination related to employment and based on grounds of lineage and age. Three complainants claimed violation of equal treatment in employment based on their sexual orientation. The Centre provided legal counselling in these cases, but the victims did not want to bring their cases before the court.

In 2007 there were 320 written requests, 450 telephone requests and up to 250 visitors claiming counselling in the field of discrimination. Moreover, there were another 420 claims dealt with by regional offices of SNCHR. The main grounds of objected discrimination were age and nationality (Romans), and they were reported mainly in labour relationships and in the access to goods and services. There were three cases brought to the courts, only one of them was finished (the petition was dismissed by the court), but none of those cases dealt with discriminatory treatment due to the sexual orientation of a victim. There were a few expert opinions provided by SNCHR, but none of them dealt with discrimination based on sexual orientation.³⁵

The fact that SNCHR did not deal with specific cases of discrimination on the ground of sexual orientation does not mean that there are no such cases. The

³¹ This information was relevant in the beginning of 2008.

³² Information was confirmed by the Centre on 08.03.2010.

³³ These reports are available in English only for years 2004 and 2005 at:
http://www.snsplp.sk/rs/snsplp_rs.nsf/0/CBDA5EC6B49A84E0C125718E004036EC?OpenDocument&ID=PAR012395760467&TYPE=S&LANGUAGE=E&LENGTH=S (13.02.2008).
 Reports in Slovak for years 2004-2006 are available at:
http://www.snsplp.sk/rs/snsplp_rs.nsf/0/F048C56CB73E748BC1256FC600380C2F?OpenDocument (13.02.2008).

³⁴ The annual reports 2004 and 2005 on activities of SNCHR are available in English at:
http://www.snsplp.sk/rs/snsplp_rs.nsf/0/B76DD2FB0C07822CC1257237004D9666?OpenDocument (17.02.2008). Reports in Slovak for years 2004-2006 are available at:
http://www.snsplp.sk/rs/snsplp_rs.nsf/0/DAD33B76D16AFB2FC1256FEF00491B8E?OpenDocument (17.02.2008).

³⁵ <http://www.snsplp.sk/index.php/lang-sk/vyrocnne-spravy-.html> (01.03.2010).

existence of discrimination on the ground of sexual orientation in the area of labour relationships was proved by a representative research on perception of human rights and the principle of equal treatment within the adult population of the Slovak Republic conducted in 2007. Sexual orientation was one of six grounds of discrimination reported in employment and 6 per cent of informants stated that they have had direct or indirect experience with discrimination.³⁶

In the recent years (2008 and 2009) SNCHR dealt also with a few discrimination cases on the ground of sexual orientation. Besides a few homophobic statements of some politicians SNCHR has provided legal assistance to five victims of discrimination on the ground of their sexual orientation, especially in the area of labour relationships. According to the information from the Centre the victims of discrimination were mostly teachers. There was also one case of a transgender person discriminated due to his sexual identity. The Centre provided legal counselling to the victims (providing them with information regarding the relevant legislation and possible legal steps); however, none of the victims was willing to elaborate the case further, not to mention to bring the case to the court.³⁷ None of the victims, however, wanted to reveal their identity to avoid harassment at their workplaces. SNCHR stated that due to prejudice and insufficient informing problems of the LGBT community are perceived as less important. The absence of discrimination cases at the courts might be caused by the concerns of uncertain outcomes of the cases and by negative popularity of the petitioners.³⁸ There is also another reason for the lack of discrimination cases brought to the court: The court proceedings are lengthy and, moreover, the unsuccessful party to the proceedings is usually obliged to compensate court fees and related expenses to the winning party. Albeit the victims of discrimination are entitled to free legal representation (e.g. by SNCHR), they are not automatically exempted from the duty to cover the expenses of the successful party to the proceedings. According to SNCHR this is a significant obstacle discouraging victims of discrimination to undergo judicial proceedings.³⁹

In the Report on Observance of Human Rights including the Principle of Equal Treatment in the Slovak Republic in 2008, the SNCHR reported that non-existence of relevant legislation allowing registered partnerships among persons of the same sex is a problem which is connected to existing discrimination of homosexuals. They do not have possibilities to enjoy legal protection of their family life despite of the formal constitutional guarantee of equality in dignity and rights and the general protection from discrimination. Existing legislation does not provide sufficient guarantees for permanent personal and property relationships of people of the same sex. The informants stated that the most

³⁶ <http://www.snslp.sk/index.php/lang-en/monitoring-a-vyskum.html> (01.03.2010).

³⁷ Information provided telephonically by the Head of Legal department of the Slovak National Centre for Human Rights (12.04.2010).

³⁸ <http://www.snslp.sk/index.php/lang-sk/sprava-o-dodriavani-udskych-prav.html> (01.03.2010).

³⁹ Information confirmed on 12.04.2010 by SNCHR via telephone interview.

⁴¹ <http://www.snslp.sk/index.php/lang-sk/sprava-o-dodriavani-udskych-prav.html> (01.03.2010).

often occurring cases of unequal treatment are present in loans and mortgages administration, in labour relationships in cases when *family members* are in question, in tax legislation and social welfare legislation which are connected to family and/or its members. Other obstacles are present in health care (with regard to access to health documentation) and in heritage provisions.⁴¹

In 2008 there was a legislative proposal on the codification of private law. Some NGOs provided comments to the proposal and suggested to adopt provisions on registered partnerships. This initiative was, however, rejected by the Ministry of Justice according to which there were no social and political conditions for such legislation.⁴²

The report on the observance of human rights in 2009 is not available yet.⁴³

A.2. Judicial review and implementation of Article 9(2) of the Directive 2000/78/EC

According to the Anti-discrimination Act, any natural person or legal entity can be considered a victim if claiming that his/her rights and interests protected by law were harmed because the principle of equal treatment was not applied to him/her. The victim can file a lawsuit in civil court (district court) claiming that the discriminator shall refrain from discriminating activities, and if possible the victim can require the rectification of the illegal situation and an adequate compensation. When the violation of the principle of equal treatment has considerably impaired the dignity, social status or social achievement of the victim, the victim may also seek non-pecuniary damages in cash. The amount of non-pecuniary damage shall be determined by the court, taking into account the seriousness of non-pecuniary damage and all related circumstances. The total amount of compensation is not limited and besides the legal conditions it is dependant mostly upon the discretion of the court.

The Anti-discrimination Act also introduced the possibility for a victim (plaintiff) to be represented in a judicial proceeding concerning equal treatment by a legal entity which is authorised by a separate law,⁴⁴ or whose goal or object of activities is the protection against discrimination. There are no restrictions as to the number of claimants (plaintiffs) represented by the association. If such an NGO takes up the representation of a victim/victims, it shall authorise one of its members or employees to act on behalf of the person represented.

⁴² <http://www.snslp.sk/index.php/lang-sk/sprava-o-dodriavani-udskych-prav.html> (01.03.2010).

⁴³ Information was confirmed by the Centre on 08.03.2010.

⁴⁴ According to the Act No. 311/2001, SNCHR is authorised by law to represent the plaintiff in the proceedings concerning violation of the principle of equal treatment.

The amendment of the Anti-discrimination Act⁴⁵ adopted in September 2008 introduced a sort of *class action* in anti-discrimination cases. The law stipulates that a legal entity defined by the Anti-discrimination law may claim the right to equal treatment instead of the actual victim if certain preconditions are fulfilled:

- if the rights, legally protected interests or freedoms of a larger number of people, or of an undefined number of people might be violated, or
- if by such violation public interest could be seriously endangered.⁴⁶

A legal entity (an NGO or the Slovak National Centre for Human Rights) may claim that the violator shall refrain from further illegal actions and, if possible, shall rectify the illegal situation.

As far as the author of this study is informed, there has not been any case before judicial bodies objecting discrimination on the ground of sexual orientation, not to mention such a plaintiff being represented by a legal entity in terms of Art. 9(2) of the Directive 2000/78/EC;⁴⁷ however, there are a few active NGOs within the LGBT community in Slovakia which fulfill the conditions and can represent victims at the court trials:

- Civic association *Altera* in Bratislava,⁴⁸
- Civic association *Ganymedes* based in Bratislava, Kosice, Prievidza,⁴⁹
- Civic association *Iniciatíva Inakosť* [Initiative Otherness] based in Trnava,⁵⁰
- Civic association *MUSEION – združenie lesbických žien a sympatizujúcich občanov* [MUSEION – association of lesbian women and sympathising citizens] based in Bratislava.⁵¹

There are further non-governmental organisations operating within the LGBT community, but in their statutes it is not explicitly stated that their goal/object is the protection against discrimination as stated in the Anti-discrimination Act.

The law does not provide any details on how the aim or content of activities of a non-governmental organisation shall be proved. It can only be assumed that the court will examine the statutes of such legal entity to search for its goal, aim or mission.

⁴⁵ Slovakia/zákon 384/2008 (23.09.2008).

⁴⁶ Article 9a, Slovakia/zákon 365/2004 (20.05.2004).

⁴⁷ Information was confirmed by the Slovak National Centre for Human Rights on 08.03.2010.

⁴⁸ www.altera.sk (01.03.2010).

⁴⁹ www.ganymedes.info (01.03.2010).

⁵⁰ <http://www.spatrick.info/phprs/index.php> (01.03.2010).

⁵¹ <http://www.lesba.sk/2008/> (01.03.2010).

A.3. Other remedies and sanctions

Besides civil court procedures in the area of private employment there are also other remedies available. Concerning private employment, bodies exercising control over the observance of the employment legislation (Labour Code⁵²) have the authority to impose a fine of up to 1.000.000 SKK (approximately 30.300 EUR). Relevant controlling bodies are *Národný inšpektorát práce* [National Labour Inspectorate] and *Inšpektoráty práce* [District Labour Inspectorates].⁵³ Similar controlling entities are established also for some other areas such as education - *Štátna školská inšpekcia* [State School Inspection]⁵⁴, or goods and services - *Slovenská obchodná inšpekcia* [Slovak Trade Inspection].

The amendment of the Anti-discrimination Act⁵⁵ expressly stipulates that everybody has the right to claim protection of his/her rights resulting from the Anti-discrimination Act via mediation.⁵⁶

⁵² Slovakia/zákon 311/2001 (02.07.2001).

⁵³ Slovakia/zákon 125/2006 (02.02.2006).

⁵⁴ Slovakia/zákon 596/2003 (05.11.2003).

⁵⁵ Slovakia/zákon 85/2008 (14.02.2008).

⁵⁶ Article I point 20, Slovakia/zákon 85/2008 (14.02.2008).

B. Freedom of movement

Directive 2004/38/EC (29.04.2004) on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States was transposed into Slovak legislation primarily by the Act on Residence of Aliens⁵⁷.

B.1. Right to entry

Family members of EU citizens who are not EU citizens are not required to present valid visa when entering the Slovak Republic if they can identify themselves with a valid residence card which clearly states their family tie.

EU citizens and family members can be denied from entry to Slovakia only if:

- he/she is an undesirable person in legal terms,
- there is reasonable suspicion that such a person could threaten state security, public order or public health, or
- he/she cannot provide passport or visa, if required.

When an EU citizen or a family member does not have the necessary travel documents, such a person shall be allowed to, during a reasonable time period, acquire travel documents or prove by other means that he/she has the right of free movement and residence.

Pursuant to the Act on Residence of Aliens a '**family member**' of an EU citizen means:

- the spouse⁵⁸ and his/her child under the age of 21 or the dependants,
- the child under the age of 21 or the dependants,
- dependent direct relatives,
- dependent direct relatives of the spouse,
- other dependent family members or members of his/her household.⁵⁹

The Act on Residence of Aliens does not distinguish between family members who are EU citizens and those who are third country nationals.

⁵⁷ Slovakia/zákon 48/2002 (13.12.2001).

⁵⁸ According to Family Law (Slovakia/zákon 36/2005 (19.01.2005)) only a man and a woman can be married. The term 'spouse' shall be interpreted in these terms as a marital partner of opposite sex. Vice versa, a couple of the same sex cannot be married and 'a spouse' cannot be a partner of the same sex. Same sex spouses cannot thus be qualified as 'family members'.

⁵⁹ Art 45b(2). Slovakia/zákon 48/2002 (13.12.2001).

The Slovak definition of a ‘family member’ is equivalent to the wording of the Directive 2004/38/EC (29.04.2004)⁶⁰; however, Slovak legislation does not recognise same sex couples nor registered partners as family members. Slovak legislation does not provide for registered partnerships, nor any other form of registered cohabitation of partners of the same sex, neither does it provide partners living in such partnership (arranged in another country) with similar rights as marital couples. For this reason, LGBT partners cannot claim to be family members based on a marital relationship.

However, LGBT partners of EU citizens can claim to be considered ‘family members’ on the basis of being ‘**other dependent family members**’ or ‘**members of his/her household**’. There are no details stating how this relationship can be proved. The Act on Residence of Aliens provides analogous provisions regarding special provisions for EU citizens. According to these provisions, the declared relationship can be proved by a certificate or by ‘honest statement’ confirming that the person is a dependent family member or member of the household of the relevant person⁶¹. Neither relevant data nor findings demonstrating the application of the quoted provisions in practice are available, however.⁶²

B.2. Temporary residence

Temporary residence permission⁶³ allows a foreigner to stay within Slovakia and travel abroad and return. Temporary residence permission is granted for certain purposes like business, employment, studies, special activities (lecturing, arts, sports, etc.), family reunification, or civil units of armed forces services.

Detailed conditions and provisions dealing with family reunification are described further in this study, under item D on Family reunification. Apart from provisions regulating family reunification, there is no other relevant legislation regarding temporary residence in relation to LGBT partners.

Slovak law does not explicitly stipulate any specific legal status permitting LGBT partners of Slovak citizens freedom of movement in other EU countries. According to the Residence of Aliens Act, any individual who is not a Slovak citizen shall be considered an alien. If an alien (including the LGBT partner of a Slovak citizen) acquires any kind of residence permit, he/she can enjoy freedom of movement outside of Slovakia based on this permission; however, without permission to reside in Slovakia (temporary or permanent) each alien is

⁶⁰ Art. 2 and 3 of the Directive 2004/38/EC (29.04.2004).

⁶¹ Art. 45b(3)c of the Act No. 48/2002 Coll.

⁶² Information was confirmed by the representative of the Migration Office, Ministry of the Interior, in February 2010.

⁶³ Art. 17-29 of the Act No. 48/2002 Coll.

considered to be present in Slovakia either on short-term residence (less than three months), or without required permission.

B.3. Permanent residence

Permanent residence permission shall entitle foreigners to stay within the territory of Slovakia and to travel abroad and return for a time limit granted by the police. Permanent residence permission is issued in two stages:

- ‘first permission’ for five years, and
- ‘further permission’ for an unlimited period.

B.3.1. ‘First permission’

The Act on Residence of Aliens⁶⁴ distinguishes between the residence of foreigners-EU citizens and their family members, and of foreigners-third country nationals.

A foreigner (third country national with no ties to the EU) shall be granted first permission for permanent residence, if he/she is:

- the spouse of a Slovak citizen with permanent residence in Slovakia,
- a dependent direct relative of the Slovak citizen with permanent residence in Slovakia,
- an unmarried child under the age of 18 in personal care of a foreigner, who is married with a Slovak citizen with permanent residence in Slovakia,
- an unmarried child under the age of 18 years of a foreigner with permanent residence in Slovakia,
- a child under the age of 18 in personal care of a foreigner with permanent residence in Slovakia,
- a dependant above the age of 18 of a foreigner with permanent residence in Slovakia, or
- if granting permanent residence permission is in the interest of the Slovak Republic.⁶⁵

A foreigner shall be granted a first permission if he/she is a **family member of an EU citizen** with first permission and will not become a burden for the health-care or social system. As stated above, a family member is also a person to be ‘**other dependent family member**’ or a ‘**member of his/her household**’. This provision can apply also to LGBT partners of EU citizens.

⁶⁴ Slovakia/zákon 48/2002 (13.12.2001)

⁶⁵ Art. 35. Slovakia/zákon 48/2002 (13.12.2001).

The right to a ‘first permission’ for such a person then shall be granted also when the foreigner is economically safe (is entrepreneur, employee, or has sufficient means to cover his/her stay), and:

- his/her residence has lasted at least one year before the EU citizen’s death,
- his/her marriage was terminated and had lasted for at least three years including at least one year of residence, or out of which a dependent child was in his/her personal care, or due to special regards, or this foreigner has the right to contact the dependent child within the territory of the Slovak Republic,
- is studying and his/her parent, an EU citizen, has died or has terminated his/her residence in Slovakia.⁶⁶

The first residence permission for a family member of an EU citizen cannot be terminated if the consequences of such termination would be inappropriate with regards to his/her private and family life.

B.3.2. ‘Further permission’

A foreigner shall be granted further permission if he/she was granted the first permission and his/her temporary residence has lasted for at least five years. Such a person is called an ‘advantaged alien’. His/her residence rights are connected to the rights of EU citizens, members of his/her family. In other words, when a person can prove that he/she is member of the household of an EU citizen and is fulfilling other conditions (duration of stay in Slovakia, etc.), he/she can obtain a further permission.⁶⁷

B.3.3. Tolerated residence

The Slovak Act on Residence of Aliens⁶⁸ also recognises so called ‘tolerated residence’. A person shall be granted the status of tolerated residence, if:

- there is an obstacle to his administrative expulsion (he/she cannot be expelled to the country where his/her life or freedom could be in danger on the ground of his/her race, nationality, religion, affiliation to a certain social group or for political persuasion),
- he/she was granted temporary refuge according to the Act on Asylum⁶⁹,
- departure is impossible (and his/her detention is inexpedient),
- he/she is an underage child found within the territory of the Slovak Republic,
- he/she is a victim of human trafficking,

⁶⁶ Art. 45b. Slovakia/zákon 48/2002 (13.12.2001).

⁶⁷ Art. 38, Slovakia/zákon 48/2002 (13.12.2001).

⁶⁸ Slovakia/zákon 48/2002 (13.12.2001)

⁶⁹ Slovakia/zákon 480/2002 (20.06.2002).

- it is necessary for his/her private and family life.⁷⁰

Tolerated residence is an exceptional provision covering unexpected situations where it is impossible to expel the alien concerned. This provision, especially its last section relating to private and family life of a person, can also be used for cases of LGBT partners of EU citizens living within the territory of the Slovak Republic; however, the situation for LGBT partners would be easier and clearer if the Slovak legislation would recognise their status (registered or non-registered) as a member of the family of an EU citizen.

B.4. Statistics and case law

There are no relevant statistical data available, since the Migration Office of the Ministry of the Interior does not keep such statistics.⁷¹ Neither relevant data nor findings demonstrating the application of the quoted provisions in practice are available.⁷²

The same applies to case law. Several efforts were made in order to obtain such information; however, as it is explained in Annex I, according to the response of the Ministry of Justice of the Slovak Republic to an information request,⁷³ judicial statistics do not provide specific data on the type of discrimination claimed. Slovak courts are obliged to publish certain judicial decisions through internet; however, this court cases register is limited only to some civil cases and trade law cases. Another official source of information concerning case law were replies of the county courts and some district courts to the information requests filed by the author of this study; however, since the courts do not keep detailed statistics concerning parties of the proceedings and/or comprehensive information regarding the merits of the dispute, county court officers were unable to track any cases related to LGBT individuals.⁷⁴ Members of the LGBT community were interviewed and they also confirmed that during the years 2000-2007, there were no judicial proceedings claiming protection against discrimination based on sexual orientation.⁷⁵

⁷⁰ Art. 43. Slovakia/zákon 48/2002 (13.12.2001).

⁷¹ Information was confirmed by the Migration Office of the Ministry of the Interior on 18.02.2010 by phone.

⁷² Information was confirmed by the representative of the Migration Office of the Ministry of the Interior in February 2010 by phone.

⁷³ Personal communication via e-mail on 08.02.2008. Information was confirmed by the Ministry of Justice on 18.02.2010.

⁷⁴ Information was confirmed by the Ministry of Justice on 18.02.2010.

⁷⁵ Information was confirmed by a member of the LGBT community in February 2010.

C. Asylum and subsidiary protection

C.1. Persecution of LGBT individuals as a ground for asylum

Asylum procedure is regulated by the Act on Asylum⁷⁶. Pursuant to this act a person is granted asylum, if:

- the applicant has well-founded fear of being persecuted for reasons of race, nationality, religion, political opinion or membership of a particular social group, and is unable or unwilling to return to his/her country of origin due to such fear, or
- is being persecuted for claiming his/her political rights and freedoms in the country of origin.⁷⁷

Besides these conditions, the Ministry of the Interior can grant asylum for **humanitarian reasons** without proving existence of any reason stated above.⁷⁸ This is an exception from the asylum procedure and its conditions and the Act on Asylum does not provide more detailed information about granting asylum for humanitarian reasons.

When assessing the reasons for persecution, a ‘**group**’ shall be understood as a particular social group whose group members share innate features or a common background which cannot be changed, or share characteristics or belief which are so significant for their identity or conscience that such a person should not be forced to repudiate it, and is perceived by the surrounding society as being different; depending on the circumstances in the country of origin, a particular social group **can also include a group based on the common characteristic of sexual orientation**. Such orientation cannot include criminal acts as stated by a special law.⁷⁹

The Asylum Act almost literally implemented relevant provisions of the Directive 2004/38/EC considering the definition of reasons for asylum. On this basis, asylum seekers objecting to persecution due to their sexual orientation can be granted asylum status.⁸⁰

⁷⁶ Slovakia/zákon 480/2002 (20.06.2002).

⁷⁷ Art. 8, Slovakia/zákon 480/2002 (20.06.2002).

⁷⁸ Art. 9, Slovakia/zákon 480/2002 (20.06.2002).

⁷⁹ Art. 19a (4), Slovakia/zákon 480/2002 (20.06.2002).

⁸⁰ However, according to the response to an information request filed by the author of this study, the Migration Office of the Ministry of the Interior stated, that well-founded fear of being persecuted for different sexual orientation is not considered as a separate reason for granting

It cannot be proved by any relevant statistics or other information, neither official nor non-official, whether such applicant has ever been granted asylum. Neither the Ministry of the Interior of the Slovak Republic nor other relevant authorities (such as *Migračný úrad* [Migration Office]) gather such data.⁸¹ The available statistics considering asylum seekers and refugees only monitor the number of asylum seekers per month, based on their nationality, country of origin, gender, age, the outcome of the procedure and separate data concerning the number of unaccompanied juveniles.⁸² None of the respective authorities monitor the **reasons** for asylum seeking by the applicants.

There is no evidence that ‚phallometric testing‘ is applied in the Slovak Republic. This information is upheld by the statement of the representative of the Migration Office of the Ministry of the Interior⁸³ who was not aware of such testing and who had even never heard of such testing among Slovak state authorities.

C.2. Family members in the context of asylum procedure

The Asylum Act does not provide for a definition of ‘family member’ as such. The act stipulates the eligibility scope of family reunification as follows:

- the spouse of a refugee, if their marital status is still existing and was existing at the time when the refugee left his/her country of origin,
- unmarried children of a refugee or his/her spouse under the age of 18, or
- parents of an unmarried refugee under the age or 18.⁸⁴

‘Spouse’ of a refugee is meant to be a marital partner of opposite sex. This interpretation is based on Family Law⁸⁵ according to which spouses are marital partners while marriage is a relationship between a man and a woman. Same-sex spouses do not qualify as family members according to Slovak law.

asylum. (Decision of the Migration Office, Ministry of the Interior of the Slovak Republic, on non-disclosure of requested information (06.03.2008). There is no update regarding relevant legislation; however, according to the statement of the representative of the Migration Office of the Ministry of the Interior, the situation of each person must be examined individually, and well founded fear for being persecuted for different sexual orientation would have to be taken into account. Nevertheless, there has not been any such case dealt with by the Migration Office of the Ministry of the Interior. (18.02.2010)

⁸¹ Information was confirmed by the Migration Office of the Ministry of the Interior on 18.02.2010.

⁸² Statistics of the Migration Office of the Ministry of the Interior are available at: <http://www.minv.sk/?statistiky-20> (08.03.2010).

⁸³ Information was received by phone interview on 18.02.2010.

⁸⁴ Art. 10, Slovakia/zákon 480/2002 (20.06.2002).

⁸⁵ Slovakia/zákon 36/2005 (19.01.2005).

Another form of protection for aliens is ‘**temporary refuge**’. For its purpose, the Ministry of the Interior of the Slovak Republic shall grant refuge to:

- the spouse of a person with temporary refugee status, if the two parties are still married and were married at the time when the foreigner left his/her country of origin,
- unmarried children of persons with temporary refugee status and unmarried children of a spouse of such a person under the age of 18, or
- other close relatives besides persons listed above, if they were living in the same household with a person with temporary refugee status and were fully or partly dependent on him/her.⁸⁶

Based on quoted relevant provisions of the Asylum Act, it is evident that LGBT partners are not recognised as family members in the context of asylum and/or subsidiary protection. Slovak legislation recognises only persons who have contracted marriage or who have direct kinship (ascending or descending) as family members. LGBT partners of refugees or asylum seekers can be granted asylum only based on humanitarian reasons.

Slovak Government objected that LGBT partners may be granted temporary refuge.⁸⁷ However, the valid legislation does support such interpretation. The only group which may be taken into consideration are ‘other close relatives of persons if they were living in the same household with a person with temporary refugee status and were fully or partly dependent on him/her’. The Asylum Act does not provide for a definition of ‘other close relatives’. This definition is encompassed in the Civil Code according to which a ‘close relative’ is understood as a relative in direct kinship, sibling and spouse; other persons in family or similar relationship may be considered as close persons, if a harm suffered by one of them would be legitimately felt by the other one as his/her own harm.⁸⁸ The first obstacle to apply this definition will be the term of ‘family or similar relationship’. The Slovak legislation does not recognise relationships of LGBT persons as similar to family relationships since their cohabitation is not legally recognised at all. The Slovak Government declares that same-sex partners could fall under the definition of ‘close relatives’, however it is rather unlikely that in the absence of relevant legislation LGBT persons would successfully convince respective state authorities to consider them to be close relatives. The Slovak legislation does not recognise any form of registered partnership of same sex partners, that is why the solution suggested by the Government is only theoretical.

Moreover, even if this definition is applied in the asylum procedure (taking into account the final part of the definition), and LGBT persons are considered as fitting within the terms of ‘close relatives’, it is only one of the conditions

⁸⁶ Art. 31a. Slovakia/zákon 480/2002 (20.06.2002).

⁸⁷ Contributions received from GEG members, gathered by the European Commission.

⁸⁸ Article 116, Slovakia/zákon 40/1964 (26.02.1964).

which shall be fulfilled to be granted temporary refugee status. The other conditions are as follows:

- such a person must be living in the same household with a person with temporary refugee status, and
- must be fully or partly dependent on him/her.⁸⁹

In case of LGBT persons they would have to prove their mutual dependence or dependence of one of them on the other one. Such dependence is considered as an economical one. However, besides the fact that it might be difficult to prove this dependence, there are situations when the LGBT partners are not dependent on each other. That is the reason why temporary refuge may not be granted to all LGBT partners.

C.3. Statistics and case law

The Migration Office does not keep statistics of the refugees including the reasons of asylum seeking; however, based on the reply of the Migration Office provided to the author of this study, there were no cases of asylum granted for the reason of persecution based on sexual orientation of the applicant. The situation has not changed in 2010 – there are no such statistics⁹⁰ and the Migration Office has not dealt with such a case.⁹¹

The same applies to case law. Several efforts were made in order to obtain such information; however, as it is explained in Annex I, no case law was accessed by the author of this study. There is no update in case law.⁹²

⁸⁹ Art. 31a. Slovakia/zákon 480/2002 (20.06.2002).

⁹⁰ <http://www.minv.sk/?statistiky-20> (08.03.2010).

⁹¹ Information provided by the representative of the Migration Office of the Ministry of the Interior on 18.02.2010.

⁹² Information provided by the representative of the Ministry of Justice on 18.02.2010.

D. Family reunification

Family reunification is regulated principally by legislation dealing with aliens and with refugees.

D.1. Aliens

According to the Act on Residence of Aliens⁹³ a temporary residence permit is granted for the sake of family reunification to:

- the spouse of a foreigner with temporary residence permit or permanent residence permit, if both of them are above the age of 18,
- an unmarried child under the age of 18 of foreigner/foreigners with temporary residence permit, the spouse of such foreigner or refugee, or the spouse of a refugee who personally cares for this child due to some special law or decision of a relevant authority,
- a dependent child above the age of 18 of a foreigner with temporary residence permit or his/her spouse,
- a relative in direct ascending line of the refugee above the age of 18,
- a single parent dependent on a foreigner with temporary residence permit or with permanent residence permit, or
- a dependant according to an international treaty.⁹⁴

Such a treaty is for example the agreement among parties of the North Atlantic Treaty Organization (NATO) and other countries participating in the partnership for peace related to the state of their armed forces⁹⁵. In terms of this treaty, a 'dependant person' is to be understood as the spouse of a member of the armed forces or civil units, or child of such member dependent on his/her support.

A 'spouse' is to be understood as a married partner of the opposite sex. It is clear that partners of LGBT individuals are not covered by the above quoted legal provisions; only children of LGBT individuals can enjoy advantages of temporary residence in Slovakia.

⁹³ Slovakia/zákon 48/2002 (13.12.2001).

⁹⁴ Art. 23. Slovakia/zákon 48/2002 (13.12.2001).

⁹⁵ The NATO treaty became part of Slovak legislation by Notice of the Ministry of Foreign Affairs of the Slovak Republic. Slovakia/oznámenie 324/1997 (13.01.1996).

D.2. Refugees

Pursuant to the Asylum Act⁹⁶ the Ministry of the Interior of the Slovak Republic shall grant asylum for the purpose of family reunification to:

- a spouse of a refugee, if their marital status still exists and did exist at the time when the refugee left his/her country of origin,
- unmarried children of a refugee or his/her spouse under the age of 18, or
- the parents of an unmarried refugee under the age of 18.

For the purpose of temporary refuge the Ministry of the Interior of the Slovak Republic shall grant refuge to:

- a spouse of a person with temporary refugee status, if their marital still exists and did exist at the time when the foreigner left his/her country of origin,
- an unmarried child or a person with temporary refugee status and the unmarried children of a spouse of such a person under the age of 18, or
- other close relatives, besides persons listed above, if they were living in the same household with the person with temporary refugee status and were fully or partly dependent on him/her.⁹⁷

It can be noted that the Slovak Republic has not adopted the provisions enabling the entry and residence of the unmarried partner being a third country national, with whom the sponsor is in a duly attested stable long-term relationship, or of a third country national who is bound to the sponsor by a registered partnership. As stated above, Slovak legislation does not regulate registered partnerships of people of the same sex and does not grant legal status to them. In these terms, the right to family reunification is granted only to spouses of the opposite sex (whose relationship is based on marital status) or to direct relatives in ascending or descending line. The same applies also to refugees and asylum seekers.

As mentioned above, ‚close relatives‘ are defined as relatives or other persons in family or **similar** relationship. Due to the fact that Slovak legislation does not legally recognise cohabitation of LGBT individuals, it would be difficult (if not impossible) to convince the relevant authorities that they should be considered as ‚close relatives‘. Moreover, they would have to also claim and prove that they are dependent on each other.

There is only one possibility for people outside of direct relative kin or marital status to gain entry and residence in Slovakia based on the right to family reunification. This applies to a single parent dependent on a foreigner with

⁹⁶ Slovakia/zákon 480/2002 (20.06.2002).

⁹⁷ Art. 31a. Slovakia/zákon 480/2002 (20.06.2002).

temporary or permanent residence permit. The conditions that must be fulfilled under this provision⁹⁸ are as follows:

- such person must be single in terms of Slovak legislation: i.e. since Slovakia does not recognise registered partnership as legal relationship, this can apply to a single LGBT individual as well as to a person living in a registered partnership,
- such person must have a child/children: this excludes a large number of possible applicants of LGBT individuals without descendants,
- such person must be dependent (economically, socially) on another alien with temporary or permanent residence permit: this might be difficult to prove for people of the same sex – it can be assumed that the original provision was meant for a person taking care of a single parent and his/her child, e.g. single parents taking care of each other and of their child/children; however, it can be difficult for a LGBT individual to prove that he/she is dependent on a person of the same sex.

None of these assumptions can be confirmed by statistical or other data since there is no official or unofficial source. Based upon restrictive legislation, it can be presumed that there are no LGBT partners of third country nationals residing in the Slovak Republic, who have benefitted from family reunification.

D.3. Statistics and case law

There are no relevant statistical data available, since the Migration Office of the Ministry of the Interior does not keep such statistics.⁹⁹ The same applies to case law. Efforts to obtain case law is further explained in Annex I.

⁹⁸ Art. 23, Slovakia/zákon 48/2002 (13.12.2001).

⁹⁹ Information was confirmed by the Migration Office on 18.02.2010.

E. Freedom of assembly

The right to freedom of assembly is guaranteed by Article 28 of the Constitution of the Slovak Republic.¹⁰⁰ Conditions for exercising this right are set forth in the Act on the Right to Assembly.¹⁰¹ Parades, marches and demonstrations are also considered as assemblies.

Assemblies may not be conditioned by the permission of public administrative authorities. The organiser of an assembly shall only notify the respective municipality about time and place of assembly, its purpose, estimated number of people, estimated ending time of gathering, and relevant precautions to ensure that the assembly will be conducted within legal limits. If a parade or march is in question, starting point, itinerary and ending point shall be communicated. The municipality shall be notified five days prior to the assembly.

The municipality **shall ban** the assembly if the notified purpose of the assembly would mean:

- repudiating or restricting personal, political or other citizens' rights due to their nationality, gender, race, origin, political or other persuasion, religious belief and social status, or evoking hatred and intolerance due to these reasons,
- violence or offensive incivility, or
- any other violation of constitutional or other legal provisions.¹⁰²

The municipality shall ban the assembly also in case of conflict with other interests (conflict with another assembly at the same time and place, danger to the participants' health).¹⁰³ The assembly can be halted if it becomes clear during the gathering that the assembly has violated any of the above points.

The person calling for assembly is responsible to assign a sufficient number of organisers. If there is well-founded fear that the assembly might be interrupted or otherwise bothered, the organiser of a meeting can ask the municipality or respective police unit to assist during the assembly. The same applies to the unexpected interruption of the assembly, in which case organisers can also ask for necessary police assistance or help of the municipality.¹⁰⁴

Any person violating a legally called assembly can face a minor offence procedure according to the Act on Assembly. If any person shall infringe

¹⁰⁰ Slovakia/ústava 460/1992 (01.09.1992).

¹⁰¹ Slovakia/zákon 84/1990 (27.03.1990).

¹⁰² Art. 10, Slovakia/zákon 84/1990 (27.03.1990)..

¹⁰³ Art. 10, Slovakia/zákon 84/1990 (27.03.1990).

¹⁰⁴ Art. 6, Slovakia/zákon 84/1990 (27.03.1990).

somebody else's right to free assembly by violence or by threat of violence, such person can be held responsible for crime. The same applies to a person who resists the measures (such as instructions, orders, bans, etc.) of the organisers of the assembly.¹⁰⁵

There are no special provisions concerning assembling of LGBT individuals. Any meetings, gay pride parades or demonstrations in favour of tolerance of LGBT individuals are subject of general legal regulations which generally do not create any obstacles for LGBT individuals to execute their right to freedom of assembly. As stated above, the assembly cannot be in any case the subject of permission proceedings, so public authorities have no power to ban such event unless it is subject of any of the exemptions mentioned above.

Moreover, public authorities such as police and/or municipalities are obliged (together with the organisers) to provide necessary assistance during the assembly to ensure that the right to freedom of assembly is not threatened or infringed.

There were just a few meetings or other public gatherings over the years 2000-2007 in favour of tolerance of LGBT individuals. Slovakia is not a traditional locality of gay pride parades and, according to unofficial sources, there was only one mini gay pride parade in 1993 in Bratislava.¹⁰⁶ Among other activities there were 'marches of difference' in three county cities in 2000 (Bratislava, Banska Bystrica, Kosice), a few petition campaigns (over the years 2006-2007), information spots in summer open-air music festivals (over the years 2005-2007) and public expositions on occasion of the year of equal opportunities in 2007 (Bratislava, Banska Bystrica, Kosice). There were no meetings in the years 2008 and 2009; however, there is a Rainbow Pride supposed to take place in May 2010.¹⁰⁷

Official statistical data on assemblies is missing. The author of this study submitted a request for information to the responsible authorities of municipalities of eight county cities. The replies to these requests are so far the only data on this issue. Out of eight county cities (plus three city areas of Bratislava, the capital of Slovakia) only one county city did not reply to the request. There are no new official data available; however, based on the unofficial information of a representative of the LGBT community, there were no other assemblies in 2008 and 2009.¹⁰⁸

There is even less information and data available concerning demonstrations against tolerance for LGBT individuals. The Act on the Right of Assembly prohibits violent, offensive meetings, as well as assemblies restricting or denying personal and other citizens' rights due to their specific status (gender,

¹⁰⁵ Art. 195 of the Criminal Code

¹⁰⁶ Interview with a member of LGBT community.

¹⁰⁷ <http://www.duhovypride.sk/en/> (25.02.2010).

¹⁰⁸ Interview with a member of the LGBT community on 08.03.2010.

race, origin, political or other persuasion, social status). Calling for an assembly to deny or restrict an individual's rights would be illegal and an assembly would be prohibited; however, agendas hostile towards LGBT individuals can be found on programmes of illegal or semi-legal meetings of ultra-rightwing extremists. Activists of such groups also organised a march against registered partnerships of LGBT individuals, which took place in Nitra in March 2007. The municipality was duly informed about this march and it was monitored by the police.¹⁰⁹ Despite posters stating that 'homosexuals have no rights', this march was not banned.

There are no official reports of violence during LGBT marches known. This does not mean, however, that such antagonistic performance would not occur. Hate speech, other antagonistic and aggressive statements and threats are present in all anonymous public discussions, e.g. in print media.¹¹⁰

E.1. Statistics and case law

There are no available statistics on the number of demonstrations in favour or against tolerance for LGBT individuals. Statistics on the number of demonstrations are based on an interview conducted with members of the LGBT community and subsequently on responses of eight county cities to requests of information filed by the author of this study.¹¹¹

Moreover, there is no official information on the existence of case law in what concerns the freedom of assembly and the rights of LGBT individuals. Several efforts were made in order to obtain such information however, as it is explained in Annex I, according to the response of the Ministry of Justice of the Slovak Republic to an information request,¹¹² judicial statistics do not provide specific data on the type of discrimination claimed.¹¹³ Furthermore, Slovak courts are obliged to publish certain judicial decisions through internet; however, this court cases register is limited only to some civil cases and trade law cases.

¹⁰⁹ Information available at: <http://www.sme.sk/c/3303573/Protestny-pochod-proti-homosexualom-bol-riadne-ohlaseny.html> (01.03.2010).

¹¹⁰ See for example, one of the most popular journal, SME': <http://qlf.blog.sme.sk/> (08.03.2010).

¹¹¹ Information was confirmed by a member of the LGBT community on 08.03.2010.

¹¹² Personal communication via e-mail on 08.02.2008.

¹¹³ Information was confirmed by the Ministry of Justice on 18.02.2010.

F. Criminal law, hate speech

F.1. Hate speech

The Slovak Constitution guarantees the right to dignity and private life: ‘Everybody shall have the right to maintain his/her dignity, personal honour, reputation and good name. Everyone shall have the right to be protected from unjustified interference with his/her private and family life.’ (Art. 19, Section 1 and 2 of the Constitution). This is a baseline for protection from hate speech on any ground. These general provisions are then reflected in certain provisions of criminal and civil law.

There are no verbal crimes referring explicitly to LGBT individuals stipulated by the Criminal Code¹¹⁴. If any hate speech against LGBT individuals occurs and can be considered a crime, it shall be assessed under the general provisions of the Code.

Art. 423 of the Criminal Code states that ‘Any individual who calumniates in public

- any nation, its language, any race or ethnic group, or
- a group of people due to its confession or due to its lack of confession,

shall be liable to imprisonment up to one year.’

Art. 424 of the Criminal Code states: ‘Any individual who publicly:

- threatens a person or a group of persons due to their affiliation to a nation, nationality, race or ethnic group or for their skin colour, by suppressing their rights and freedoms, or who conducted such suppression, or
- agitates to suppress rights and freedoms of some nation, nationality, race or ethnic group,
- shall be liable to imprisonment up to three years.’

Art. 359 of the Criminal Code on ‘Violence against a group of people and individuals’ provides that ‘Any individual who threatens a group of people with death, severe harm to the health or other severe harm, or by causing damage of a great extent, or who uses violence against a group of people is liable to imprisonment up to two years.’

¹¹⁴ Slovakia/zákon 300/2005 (20.05.2005).

Similarly, the factual substance of ‘Supporting and promoting groups tending to suppress fundamental rights and freedoms’ (Art. 421 of the Criminal Code) is specified as follows: ‘Anybody who supports or promotes a group of people, which by violence, threat with violence or threat with other severe harm tends to suppress fundamental rights and freedoms of people is liable to imprisonment from one to five years.’

There are no special provisions protecting LGBT individuals from hate speech. Thus LGBT individuals can be protected only by general provisions of the Criminal Code (as stated in Art. 421 or Art. 359).

The most frequent tool to protect an individual from verbal attacks is the Civil Code.¹¹⁵ Pursuant to the Civil Code, a ‘natural person has the right that his/her personality, in particular life and health, civil honour and human dignity, as well as privacy, reputation and expressions of personal nature be protected’ (Art.11). Art. 13 of the Civil Code provides a remedy in case of breach of these personal rights: ‘Natural persons have, in particular, the right to request that any unlawful interference with their personality rights shall be discontinued, that the consequences of such interference shall be eliminated, and they also have the right to adequate satisfaction’. If another form of satisfaction is not sufficient (like apology), notably due to serious degrading of dignity and/or respect in society, a natural person can seek also pecuniary satisfaction. The amount of pecuniary satisfaction shall be determined by the court, taking into account the seriousness of the damage and circumstances of the relevant situation.

Reputation and/or name of a legal entity is protected by the Civil Code accordingly.

A victim of defamation can seek protection at civil courts not only in case of false statements, but also in case of offending, or unfounded, unsubstantive critique. Moreover, such a person can bring an action against the perpetrator also if published statements were truthful but were related to the private life of a person. In other words, information on private, intimate life cannot be published or publicly released without the consent of the respective person. Also if a person has a justified interest that some information is not spread, and this interest prevails over the interest of releasing it, such information cannot be published.¹¹⁶

It can be assumed that (depending on the circumstances) spreading information about a person’s sexual orientation, if such a person is not willing to make this information public, could be judged as illegal in civil proceedings. Unfortunately, due to the lack of defamation cases brought by LGBT individuals this assumption cannot be proved by case law. The Ministry of Justice does not keep record of plaintiffs/petitioners, so it is impossible to gather

¹¹⁵ Slovakia/zákon 40/1964 (26.02.1964)

¹¹⁶ K. Knap, J. Švestka, O. Jehliška, P. Pavlík, V. Plecítý (1996) Ochrana osobnosti podle občanského práva, Praha: Linde, pp. 265-266.

official data on plaintiffs and merits of the cases. The statistics refer to general information on the number of defamation cases.¹¹⁷

F.2. Homophobic motivation of crime

The Criminal Code does not explicitly mention LGBT individuals in any of its provisions. Crimes against LGBT individuals (based on their sexual orientation) can be covered only by general provisions. Affiliation to the group of LGBT individuals is not explicitly covered by aggravating circumstances, albeit prohibiting or hindering the enforcement of an individual's fundamental rights and freedoms is considered as one of them (Art. 37 of the Criminal Code).

The Criminal Code also recognises so called 'special motives' which are used to define more serious actions of relevant crimes. Among them there are also national, ethnic or racial hatred and hatred due to skin colour (Art. 140 of the Criminal Code); however, hatred due to affiliation with a certain social group, like the group of LGBT individuals, is not covered by special motives either.

Affiliation to LGBT individuals can be recognised only as a motivation of a crime.

Crimes against LGBT individuals are covered mostly by general provisions of the Criminal Code. There might be certain circumstances when attacks due to sexual orientation might be considered as more severe, especially if they can be considered as an attack against the enforcement of fundamental rights and freedoms or if the offence is assaulting the group of LGBT individuals. The use of only general provisions would make it more difficult to seek fair satisfaction and remedy for a victim of such crime.

It is very difficult to assess how such an act would be judged in reality due to total absence of such cases. According to a statement by *Generálna prokuratúra Slovenskej republiky* [the General Prosecution Office of the Slovak Republic], there is no relevant statistical data concerning convictions regarding homophobic hate speech, nor on the number of criminal court cases concerning this issue filed by the General Prosecution Office.¹¹⁸ Hence, it can be presumed that there have been no such cases. This conclusion is supported by the expression of members of the LGBT community who confirmed that LGBT individuals tend not to report such cases to the police due to a hostile social environment in Slovakia. The way of keeping files has not changed in the years

¹¹⁷ <http://www.justice.gov.sk/h.aspx?pg=r30&htm=http://www.justice.gov.sk/stat/09/index.htm> (08.03.2010).

¹¹⁸ <http://www.genpro.gov.sk/statistiky-4801/43441s> (08.03.2010).

2008 and 2009. The General Prosecution Office of the Slovak Republic does not keep separate information regarding homophobic hate speech.¹¹⁹

Some of the attacks against LGBT individuals might be judged as minor-offences in accordance with the Act on Minor Offences,¹²⁰ like harm to honour by insulting or ridiculing, threat to health, or threat with harm to health. Similarly as in criminal law, there are no special provisions explicitly protecting LGBT individuals.

F.3. Hate speech by public officials

As mentioned above, there are no court cases concerning hate speech against LGBT individuals. This does not mean, however, that there have been no hate speech cases. On the contrary, there are many hostile public expressions humiliating LGBT individuals, expressed in particular by politicians or Christian representatives.

Such politicians are generally either members of Christian parties or of the Slovak National Party. Some of them state that homosexuality is a disease: ‘An increasing number of homosexuals in society is detrimental because they do not have an easy life. It [homosexuality] is at least a defect, if not a disease’ (Jan Carnogursky, former Minister of Justice, representative of *Kresťansko-demokratické hnutie* (KDH) [Christian-democratic Movement (CDM)]¹²¹. Similarly, according to Alojz Rakús, physician, member of CDM, homosexuality is a mental defect which can be cured; ‘many psychological studies prove 52 per cent success in treatment of homosexuals’.¹²² Another member of CDM, Peter Muransky (Member of Parliament) stated: ‘In my opinion, homosexuality is social exhibitionism’.¹²³

Generally, the worst statements have been made by Jan Slota, the leader of *Slovenská Národná Strana* [Slovak National Party]. There are many hateful and degrading statements made by Slota in the media, where he declares to consider homosexuals abnormal, deviants akin to pedophiles. He has also mentioned a ‘disgusting sexual orgy’ when talking about LGBT individuals. These publicly

¹¹⁹ <http://www.genpro.gov.sk/statistiky-4801/43441s> (08.03.2010).

¹²⁰ Slovakia/zákon 372/1990 (28.08.1990) (Zákon č. 372/1990 Zb. o priestupkoch v znení neskorších predpisov).

¹²¹ Praca (18.08.2000), http://www.ganymedes.info/qarchiv_2002/blackbox/vyroky.html (07.02.2008).

¹²² Praca (18.08.2000), http://www.ganymedes.info/qarchiv_2002/blackbox/vyroky.html (07.02.2008).

¹²³ Praca (01.03.2001), http://www.ganymedes.info/qarchiv_2002/blackbox/vyroky.html (07.02.2008).

presented statements were cited by media¹²⁴ but they are also mentioned on the official web page of the Slovak National Party.¹²⁵

None of his statements have been subject to criminal prosecution or civil court trial yet; however, in 2007 the association *Iniciatíva Inakost* [Initiative Otherness] has turned to the Slovak National Centre for Human Rights asking for a statement on the speech of another Member of Parliament, Peter Gabura (CDM). In January 2007 Gabura was supposed to say that homosexuals are 'perverse and sick people'.¹²⁶ SNCHR has issued a statement (12.03.2007) observing that the statement of Gabura does not represent a violation of the Anti-discrimination Act¹²⁷ because his words were neither addressed nor related to identifiable persons. SNCHR has stated that it respects the freedom of expression of Mr. Gabura, but considers him an example of a person with prejudices, who insults and degrades groups of people.¹²⁸ There were no other official statements issued by SNCHR regarding hate speech by public officials.

F.4. Statistics and case law

There are no relevant statistics available. None of the relevant authorities (courts, Ministry of Justice) keep statistics on case law distinguishing cases of hate speech against LGBT individuals.¹²⁹

The same applies to case law. Several efforts were made in order to obtain such information however, as it is explained in Annex I, according to the response of the Ministry of Justice of the Slovak Republic to an information request,¹³⁰ judicial statistics do not provide specific data on the type of discrimination claimed. Moreover, Slovak courts are obliged to publish certain judicial decisions through internet; however, criminal law cases are not obligatorily published.

¹²⁴ http://spravy.pravda.sk/slotov-luxus-jachta-lietadlo-aj-vila-dv5-sk_domace.asp?c=A090531_163000_sk_domace_p29 (08.03.2010).

¹²⁵ <http://www.sns.sk/clanky/slotu-v-relacii-tv-markiza-sito-53.html> (08.03.2010).

¹²⁶ Available at <http://diskriminacia.altera.sk/view.php?cislocianku=2007020201> (15.02.2008)

¹²⁷ Slovakia/ Antidiskriminačný Zákon 365/2004 (20.05.2004).

¹²⁸ Available at <http://www.snsip.sk/index.php/lang-en/odborne-stanoviska/125-odborne-stanovisko-iniciativa-inakost-932007.html> (08.03.2010).

¹²⁹ Information was confirmed on 18.02.2010.

¹³⁰ Personal communication via e-mail on 08.02.2008. Information was confirmed on 18.02.2010.

G. Transgender issues

The Slovak legal system does not explicitly recognise transgender individuals as a special group which should be granted specific protection.

Apart from laws regarding name and surname, registry office and identification number, only the Anti-discrimination Act¹³¹ partly touches on the issue of transgender individuals. The Anti-discrimination Act originally stipulated that discrimination in employment matters on the ground of sexual or gender identification is to be understood as discrimination on the ground of sex.¹³² The latest significant amendment of the Anti-discrimination Act of February 2008¹³³ extended the protection of transgender individuals also within other areas of life, i.e. education, social care and health care, and access to goods and services. This is also a guideline on how to deal with discrimination of transgender individuals.

G.1. Change of name

The Procedure concerning changes of name and surname after genital change is regulated by the Act on Name and Surname,¹³⁴ according to which a change of name and/or surname is usually conditioned by a permission procedure; however, there are a few exceptions when permission is not needed, like in case of the change of name and/or surname due to change of gender.¹³⁵ Such change is made by the registry office and it is based on a written declaration of the person concerned or his/her legitimate representative. A medical statement shall be presented by the transgender person, too. According to the Act on Administrative Fees, this administrative change is free of charge.¹³⁶

The amendment to the Act on Name and Surname adopted in November 2008¹³⁷ brought some modifications of the legislation. First of all, unlike the former wording of the law, it is not possible to change the name after change of gender to any name; according to a new version of the law the registry office shall permit to use 'a neutral name and surname'. A person who wants to change his/her name due to change of gender does not have to submit a medical statement, but only a confirmation of the medical facility which provided surgery.¹³⁸ Despite of the fact that the law uses a term 'shall permit', the

¹³¹ Slovakia/ Antidiskriminačný Zákon 365/2004 (20.05.2004).

¹³² Art. 6 (3)a. Slovakia/ Antidiskriminačný Zákon 365/2004 (20.05.2004).

¹³³ Slovakia/zákon 85/2008 (14.02.2008).

¹³⁴ Slovakia/zákon 300/1993 (24.09.1993).

¹³⁵ Art. 7. Slovakia/zákon 300/1993 (24.09.1993).

¹³⁶ Annex, Item 19. Slovakia/zákon 145/1995 (22.06.1995).

¹³⁷ Slovakia/zákon 564/2008 (28.11.2008).

¹³⁸ Article 6 paragraph 6, Slovakia/zákon 300/1993 (24.09.1993).

procedure itself is not a permission procedure; in case of change of the name due to change of gender there is no permission necessary, the registry office shall simply change the name upon submission of application and a confirmation of the medical facility.

The registry office shall announce the change of the name and surname to state authorities and municipalities pursuant to special laws.¹³⁹

There is a draft law¹⁴⁰ in the Parliament (National Council of the Slovak Republic), which shall amend the Act on Name and Surname.¹⁴¹ The draft law was submitted by a Member of Parliament and its purpose is to guarantee that all official documents issued before the change of name of a person shall be changed accordingly with the name change. These documents shall include school certificates, permits and other administrative decisions, and other necessary documents. The draft law was accepted in the first reading in the Parliament and is now pending.

G.2. Change of identification number

According to the Act on Identification Number¹⁴², each person born in Slovakia must acquire an identification number. Each number is unique and different for male and female.

The Ministry of the Interior shall change the identification number of a transgender person upon receipt of a relevant medical statement. Such change is free of administrative charges.¹⁴³

Subsequently, transgender persons shall change (due to the change of his/her identification number) his/her birth certificate, ID, travel document, and change information in other public registers (Social insurance register, Health insurance register, etc.).

G.3. Other legislative issues

Legislation regarding practical medical issues of transgender individuals in Slovakia is basically non-existent. There are missing laws or legislative provisions concerning surgery of transgender individuals. According to Slovak sexologists, new types of operations (including change of gender) have decreased since the 1990s. As a result, fewer workplaces provide

¹³⁹ Article 13a, Slovakia/zákon 300/1993 (24.09.1993).

¹⁴⁰ <http://www.nrsr.sk/Default.aspx?sid=zakony/zakon&MasterID=3273> (01.03.2010).

¹⁴¹ Slovakia/zákon 300/1993 (24.09.1993).

¹⁴² Slovakia/zákon 301/1995 (14.12.1995).

¹⁴³ Art. 9. Slovakia/zákon 301/1995 (14.12.1995).

comprehensive medical assistance and doctors tend to send their patients to the Czech Republic for operations. There is also a problem with the expense of such surgeries, since they are not covered by health insurance. Due to this fact there are fewer surgical operations for transgender individuals.¹⁴⁴

The same applies to legislation dealt with in remainder of this study. Apart from the Anti-discrimination Act¹⁴⁵, transgender individuals are, in principle, not mentioned in the respective legislation at all. As stated above, only the Anti-discrimination Act transposing provisions of the Employment Directive specifically deals with transgender individuals. If any kind of discrimination occurs in the field of employment, it should be considered (according to the Anti-discrimination Act) as discrimination based on sex. The amendment of the Anti-discrimination Act from February 2008¹⁴⁶ extended the protection of transgender individuals also in other areas, i.e. education, social care and health care, and access to goods and services. According to the Anti-discrimination Act, in current wording discrimination on the ground of gender shall also include discrimination on the ground of sexual or gender identification. The Anti-discrimination Act does not, however, include any reference to gender reassignment.¹⁴⁷

Slovak law is silent concerning consequences of gender operation leading to a change of the sex of a person. For example, the Slovak Family Act¹⁴⁸ stipulates that marriage is a relationship between a man and a woman, it does not allow marriage between people of the same sex; however, there are no provisions regulating the situation if one of the marital partners undergoes a change of his/her gender. According to Slovak law, such couple should be divorced. The Family Act states that a marriage can be terminated by divorce only if the relationship is seriously damaged and broken in perpetuity, the marriage cannot fulfill its role and it is inconceivable to expect a renewal of the marital relationship. Based on these legal prerequisites, a transgender person who is still married (since it can take a few months for the court to decide on the divorce) shall be considered a family member in terms of freedom of movement, asylum protection or family reunification issues.

However, it is more likely that a transgender person is not living in a marriage anymore and his/her position is then comparable with the position of LGB individuals in regard to family reunification, or freedom of movement and asylum protection. There are no special provisions protecting transgender individuals or providing them with a more favourable position. Such absence of legal regulations can lead to discriminatory proceedings concerning transgender individuals.

¹⁴⁴ (19.02.2008).

¹⁴⁵ Slovakia/zákon 365/2004 (20.05.2004).

¹⁴⁶ Slovakia/zákon 85/2008 (14.02.2008).

¹⁴⁷ Article 2a paragraph 11, 365/2004 (20.05.2004).

¹⁴⁸ Slovakia/zákon 36/2005 (19.01.2005)

As far as the author of this study is informed, there were no marches or assemblies of transgender individuals in the observed period. The same applies to the years 2008 and 2009. The LGBT community organises a Rainbow Pride which shall be a march for LGBT equalisation, i.e. including transgender individuals. The Rainbow Pride will take place in May 2010 in Bratislava.¹⁴⁹ With regard to freedom of assembly, transgender individuals are in the same legal position as LGB individuals.

From a legal point of view, transgender individuals have the same position as LGB individuals in regard to criminal law and hate speech. There are no special provisions protecting transgender individuals in the Criminal Code. Each hate speech against transgender individuals shall be considered by the general provisions of the Civil Code; however, as stated above, information regarding the intimate life of a person revealed in public can be considered as defamation and this applies also to transgender individuals.

If sexual orientation is discussed only marginally in today's Slovak society, transgender issues are practically taboo. There is no statistic information available concerning name changes or the number of persons who changed their sex.¹⁵⁰ According to an official employee of the registry office (the Department of General Internal Administration in Bratislava), there might be a maximum of 10 cases a year.¹⁵¹

G.4. Statistics and case law

There are no relevant statistics available. The author of this study filed requests for information to the Statistic Office of the Slovak Republic, to the Ministry of Public Health of the Slovak Republic as well as to the National Centre on Medical Information. None of these institutions had any information concerning transgender issues at their disposal.¹⁵² The same applies to case law, as further explained in Annex I.

¹⁴⁹ <http://www.duhovypride.sk/en/> (08.03.2010).

¹⁵⁰ Information was confirmed by the Statistics Office of the Slovak Republic on 08.03.2010.

¹⁵¹ L. Sobotová (2007) 'Zmena mena', in: SME ženy (02.01.2007). Available at: <http://zena.sme.sk/c/3076717/Zmena-mena.html> (19.02.2008).

¹⁵² Information was confirmed by the Statistics Office of the Slovak Republic on 08.03.2010.

H. Miscellaneous

Legislative and judicial research showed that there are hardly any provisions or good practices towards LGBT individuals. Not only law provisions, but also social attitude, are frequently unfavourable towards LGBT individuals. Society has a tendency to hostile practices against LGBT individuals, and politicians either openly oppose their rights or, in the best case, pay no attention at all. As a matter of fact, no political party has incorporated the promotion of rights of LGBT people into their political programmes.¹⁵³

There is no official statistical data and almost no unofficial statistical data on discrimination on the grounds of sexual orientation available. This does not necessarily prove the absence of discrimination based on sexual orientation, but rather indicates a low rate of reported cases.

The first extensive research on discrimination within the gay and lesbian community was carried out in 2002.¹⁵⁴ Out of 251 participants, 87 were women and 164 were men. The main findings are as follows:

- 60 per cent of respondents hide their sexual orientation at least from one of their parents (46 per cent hide it from both parents, 14 per cent from one parent, mostly the father), while 60 per cent of the respondents hide their sexual orientation from other relatives,
- 50 per cent of respondents would not reveal their sexual orientation to the public; 52 per cent of the respondents conceal their sexual orientation in their working environment,
- 15 per cent of respondents had suffered aggravated assault due to their sexual orientation; 43 per cent of respondents had been harassed; however, only two per cent of the victims had reported the attacks to the police.

The above mentioned findings are a small portion of the outcomes of this research. They reinforce the impression that due to social hostility, LGBT individuals do not reveal their sexual orientation and remain invisible to the majority of the population. This might also explain why very few victims of discrimination on the ground of sexual orientation have claimed their rights in court. LGBT individuals often prefer to stay invisible and away from unwanted publicity.

The 'Initiative Otherness' conducted another survey in 2009. Its object was to identify the approach of the public towards registered partnerships of two persons of the same sex. Out of 1039 respondents 45 per cent would support the

¹⁵³ H. Fábry (2007) 'Diskriminácia gejev a lesieb – existuje?' Available at: <http://www.lesba.sk/view.php?cislocianku=2007011801> (14.01.2008).

¹⁵⁴ M.Šípošová, P. Jójart, A. Daučíková (2002) Správa o diskriminácii lesbických žien, gejev, bisexuálov a bisexuálok na Slovensku, Bratislava: Q archív.

idea of institutionalised registered partnership and 41 per cent would oppose such idea. Sixteen per cent of respondents had no opinion on the issue.¹⁵⁵ There were no other surveys conducted.

Due to the lack of interest in the rights of LGBT individuals, the environment is not favourable for the approval of the law guaranteeing registered partnership. This disregard also causes the absence of official statistical data.

Apart from sporadic hate speech of some of the public officials there is no legislation similar or comparable to institutional homophobia surfaced in Lithuania.

¹⁵⁵ <http://www.diskriminacia.sk/?q=node/958> (08.03.2010).

I. Good practice

There are only few examples of good practices in Slovak legislation concerning the rights of LGBT individuals.¹⁵⁶ Actually, the only thing that can be considered as ‘good practice’ is the latest amendment of the Anti-discrimination Act,¹⁵⁷ which was approved on 14.02.2008¹⁵⁸ and prohibits discrimination in employment (as required by the Employment Directive) as well as in other areas of social life, such as equal access to medical treatment, to goods and services as well as to education. This is a good step forward which means that there are no unfounded differences in the treatment of victims of discrimination and unequal treatment in various areas of life. The amendment clearly prohibits all kinds of discrimination based on a wide range of grounds of discrimination in all relevant areas.

The above mentioned amendment of the Anti-discrimination Act also incorporated so called ‘*class action*’. This means that in certain cases it does not have to be the actual victim of discrimination claiming protection of his/her rights at the court. The law stipulates that legal entities defined by the Anti-discrimination law may claim the right to equal treatment instead of the real victim if certain preconditions are fulfilled. A legal entity (an NGO or the Slovak National Centre for Human Rights) may claim that the violator shall refrain from further illegal actions and, if possible, shall rectify the illegal situation.

¹⁵⁶ As stated in Chapter H, there is no case law regarding discrimination based on sexual orientation.

¹⁵⁷ Slovakia/zákon 365/2004 (20.05.2004).

¹⁵⁸ Slovakia/zákon 85/2008 (14.02.2008).
http://jaspi.justice.gov.sk/jaspiw1/htm_zak/jaspiw_maxi_zak_fr0.htm (08.03.2010).

Annexes

Annex 1 – Presentation of case law

There is no official data on case law on discrimination based on sexual orientation available. According to the response of the Ministry of Justice of the Slovak Republic to an information request,¹⁵⁹ judicial statistics do not provide specific data on the type of discrimination claimed, i.e. there is no statistical data on the number of complaints of discrimination based on sexual orientation.

Slovak courts are obliged to publish certain judicial decisions through internet; however, this court cases register is limited only to some civil cases and trade law cases. Criminal law cases or administrative law cases are not obligatorily published. The scope of published case law is limited by the ministerial instruction of the Ministry of Justice of the Slovak Republic.¹⁶⁰ It is important to highlight that the obligation to publish case law by the courts was established only in 2005. Moreover, courts do not follow this responsibility consistently and thoroughly and only a part of the case law has been published so far.

Another official source of information concerning case law were replies of the county courts and some district courts to the information requests filed by the author of this study; however, since the courts do not keep detailed statistics concerning parties of the proceedings and/or comprehensive information regarding the merits of the dispute, county court officers were unable to track any cases related to LGBT individuals. Despite this, many county courts replied that no such cases were dealt by them.¹⁶¹

This information was confirmed by members of the LGBT community. According to their statements during the years 2000-2007, there were no judicial proceedings claiming protection against discrimination based on sexual orientation.¹⁶² This is particularly due to the hostile social environment against LGBT individuals, which causes many persons not to reveal their sexual orientation unless they are certain that they are in safe surroundings.

¹⁵⁹ Personal communication via e-mail on 08.02.2008. Information was confirmed by the Ministry of Justice on 18.02.2010.

¹⁶⁰ Slovakia/inštrukcia 21/2005 (28.11.2005)

¹⁶¹ Information was confirmed by the Ministry of Justice on 18.02.2010.

¹⁶² Information was confirmed by a member of LGBT community on 08.03.2010.

Annex 2 – Statistics

Implementation of Employment Directive 2000/78/EC

Statistics by *Slovenské národné stredisko pre ľudské práva (SNSĽP)* [Slovak National Centre for Human Rights (SNCHR)] were provided on the basis of the request of the author of this study as follows:

	2000	2001	2002	2003	2004	2005	2006	2007 ¹⁶³	2008	2009
Complaints filed to the Slovak National Centre for Human Rights concerning discrimination based on sexual orientation	Data not available	Data not available	Data not available	Data not available	0	0	3	5	Data not available	Data not available

¹⁶³ <http://www.snslp.sk/index.php/lang-sk/vyrocné-spravy-.html> (08.03.2010).

Freedom of assembly

The statistics on the number of demonstrations is based on replies from the authorities of eight county municipalities, after an information request filed by the author of this study, and interviews conducted with members of the LGBT community:

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of demonstrations in favour of tolerance for LGBT individuals, gay pride parades, etc.	3	1	0	0	0	0	0	0	0	0
Number of demonstrations against tolerance for LGBT individuals	0	0	0	0	0	0	0	1	data not available	data not available