

SLOVAKIA

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1. National court system

The Constitution of the Slovak Republic stipulates that the national judicial system consists of the Supreme Court of the Slovak Republic and other courts. The detailed structure of general courts is provided by the Act on Courts.¹ In accordance with the law, the national judicial system consists of the Supreme Court, eight regional courts and district courts. There is another court – the Specialised Criminal Court – which, though solely dealing with crimes, creates an inseparable component of the judicial system.

The Constitutional court stays aside from the general courts since its sole task is to protect constitutionality. It shall execute its powers independently from all other powers, including judiciary.

¹ Slovakia/zákon 757/2004 (09.12.2004).

The Slovak judicial system is a two-instance system which means that first instance decisions can be reviewed in appellate proceedings (with some exceptions concerning procedural and similar decisions). Generally speaking, district courts are first instance courts, if not stipulated otherwise. Regional courts are appellate courts (they decide on appeals filed against first instance decisions); however, there are certain types of lawsuits where they act as first instance courts, i.e. certain cases relating to social insurance issues and cases involving other countries or persons enjoying diplomatic immunities.² Moreover, regional courts are first instance courts in administrative lawsuits, except of cases where the Supreme Court is the court of first instance.

The Supreme Court shall act and adjudicate in following cases:

- appeals against decisions of regional courts as first instance courts,³
- extraordinary remedies against decisions of regional courts and the Supreme Court as well,⁴
- disputes between courts and other public authorities concerning remits,⁵
- certain administrative lawsuits (review of proceedings, decisions and inactivity of central public administration authorities and other authorities acting nation-widely, if it is stipulated by law).⁶

An appeal can be filed within 15 days from the delivery of the first instance court decision. In general, all decisions may be challenged by an appeal except of those explicitly stated in the Civil Procedure Code. Filing an appeal has a suspensive effect.⁷

Valid judicial decisions may be reviewed in extraordinary proceedings. While an appeal can be filed against almost all decisions, there are significantly stricter rules concerning extraordinary remedies. There are three possible instruments which can be used:

- A renewal of the proceedings can be filed to challenge a valid decision, except of judgements on divorce or decisions which can be changed or cancelled by another way. The Civil Procedure Code encompasses a strict and explicit list of reasons based on which proceedings can be renewed (including contradiction with a decision of the

² Article 9 paragraph 2, Slovakia/zákon 99/1963 (04.12.1963).

³ Article 10 paragraph 2, Slovakia/zákon 99/1963 (04.12.1963).

⁴ Article 10a, Slovakia/zákon 99/1963 (04.12.1963).

⁵ Article 8a, Slovakia/zákon 99/1963 (04.12.1963).

⁶ Article 246 paragraph 2, Slovakia/zákon 99/1963 (04.12.1963).

⁷ Article 204 Slovakia/zákon 99/1963 (04.12.1963).

European Court on Human Rights or the European Court of Justice). There are two stages of the proceedings: firstly a court of first instance shall adjudicate whether there are relevant reasons to renew proceedings. In case of a positive finding the former judgement is postponed and the court of first instance will anew adjudicate the matters of dispute. In this renewed proceedings the court may confirm the previous decision or may change it. Participants can file an appeal against this decision. A participant may initiate a renewal within three months from finding out the reasons for renewal, but not later than three years.⁸

- The extraordinary remedy ‘*dovolanie*’ may be used only to challenge appellate decisions and only on grounds prescribed by the Civil Procedure Code. Deadline for filing a motion is one month. The case is decided by the Supreme Court usually without public hearing. The Supreme Court may uphold the original decision, may change it, or cancel it and return the case to the lower court for a new decision.⁹
- ‘*Mimoriadne dovolanie*’ is a special motion which can be filed only by the General Prosecutor upon an application of a party to the proceedings or other subjects injured by the original decision. This motion may be filed if the General Prosecutor finds out that a valid decision of a court violated law and it is inevitable to protect the rights and interests of natural persons, legal entities or a state, and there are no other legal remedies to change the original decision. The General Prosecutor may initiate proceedings within one year from the validity of the original decision. The motion of the General Prosecutor is dealt by the Supreme Court applying the same rules as regulated for ‘*dovolanie*’.¹⁰

The Constitutional Court as a judicial body protecting constitutionality enjoys a special position within the national judicial system. Besides other issues the Court also deals with complaints of natural persons or legal entities claiming that their constitutional fundamental rights or freedoms, or human rights and fundamental freedoms guaranteed by international agreements have been violated by a decision or by another measure of a public authority, including courts. Performance and functioning of the Constitutional Court is regulated by the Constitution and the Act on the Constitutional Court,¹¹ proceedings are regulated by general procedural legislation. Before turning to the Constitutional Court, the following legally prescribed conditions must be fulfilled:

⁸ Articles 228-235, Slovakia/zákon 99/1963 (04.12.1963).

⁹ Articles 236-243d, Slovakia/zákon 99/1963 (04.12.1963).

¹⁰ Articles 243e-243j, Slovakia/zákon 99/1963 (04.12.1963).

¹¹ Slovakia/zákon 38/1993 (20.01.1993).

- a constitutional complaint may be filed only by an aggrieved subject, i.e. it is not possible for a natural person or legal entity to challenge a legal regulation in general, only its unconstitutional application can be challenged; moreover, a complainant cannot file a complaint on behalf of a third person;
- a complaint shall be filed within two-months from the validity of a challenged decision / measure;
- a complainant must exhaust all effective remedies (including an appeal, whereas extraordinary remedies do not need to be exhausted); a complainant may be exempted from this obligation if he/she cannot fulfil it due to specified reasons;
- a complainant must be represented by an attorney.¹²

The Constitutional Court may cancel an unconstitutional decision, order the breaching party (public administration authority/court) to act otherwise, and/or may return the dispute to the original public authority for new proceedings and decision. The complainant may also claim non-pecuniary damage compensation. The decision of the Constitutional Court is binding for all relevant state authorities.

Judges are appointed by the President upon proposal of the Judicial Council. To become a judge one must be a citizen of the Slovak Republic and fulfil all the conditions which apply for the Members of Parliament. A judge candidate must have turned 30 years of age and finished his/her legal studies.¹³ A Judge may not be a member of a political party or movement and may not be subject of any other employment or business relationship.¹⁴ Other conditions are set up by the Act on Judges and Other Members of the Bench¹⁵ and these conditions shall include a clear criminal record, full capability to legal acts, permanent residence within the area of the Slovak Republic, pass of the judicial exam and successful pass the tender.¹⁶

In accordance with the general rules, judges are appointed for life term. Judges may be removed from their office by the President of the Slovak Republic upon the proposal of the Judicial Council and based on a valid judgement on a criminal offence, on a valid decision of a disciplinary senate for an act which is not compatible with the judicial function, or if a judge no longer fulfils the conditions applicable for the members of Parliament. A judge may be removed

¹² Third part, Slovakia/zákon 38/1993 (20.01.1993).

¹³ Article 145 paragraph 1, Slovakia/ústava 460/1992 (01.09.1992).

¹⁴ Article 145a, Slovakia/ústava 460/1992 (01.09.1992).

¹⁵ Slovakia/zákon 385/2000 (05.10.2000).

¹⁶ Article 5, Slovakia/zákon 385/2000 (05.10.2000).

from his function also in case he/she reaches the age of 65 or due to his/her inconvenient health state.¹⁷

Specific laws regulating judiciary, such as the Act on Judges and Assessors¹⁸ and Act on Courts¹⁹ shall secure independency and impartiality of judges. These laws regulate the structure of the judiciary in the Slovak Republic, the status of judges, their disciplinary liability, recruitment of new judges and termination of their function, education of judges and candidates for judges, judicial self-government, etc. Breaching the obligation to act independently and impartially is recognised as one of the disciplinary offences of judges.

Nevertheless, despite of a quite elaborated system to safeguard independency and impartiality of the judiciary there is still a quite strong influence of the executive on the judiciary. For example, the minister of justice is entitled to appoint and to call off chairpersons of the courts (which is done without reasoning),²⁰ the minister can also initiate disciplinary proceedings against a judge,²¹ and a minister may suspend a judge from his/her function during disciplinary proceedings against him/her.²²

Parties to the proceedings may challenge a judge during the proceedings if there is a reason to believe that he/she is biased due to his/her relationship to the subject of the lawsuit, to some of the parties to the proceedings or to their legal representatives. Parties to the proceedings may raise their objection at the first court hearing or within 15 days since he/she has had the possibility to become aware of the reasons for objection.²³

2. Restrictions regarding access to justice

Unnecessary delays are one of the most significant obstacles individuals face in access to justice. This is proved by the case law of the Constitutional court as well as the European Court on Human Rights.

¹⁷ Article 147, Slovakia/zákon 385/2000 (05.10.2000).

¹⁸ Slovakia/zákon 385/2000 (05.10.2000).

¹⁹ Slovakia/zákon 757/2004 (09.12.2004).

²⁰ Articles 36-38, Slovakia/zákon 757/2004 (09.12.2004).

²¹ Article 120, Slovakia/zákon 385/2000 (05.10.2000).

²² Article 22, Slovakia/zákon 385/2000 (05.10.2000).

²³ Article 14 and 15a, Slovakia/zákon 99/1963 (04.12.1963).

In accordance with the Civil Code the general time-limit for claiming the law is three years²⁴; it is four years in accordance with the Business Code.²⁵ The right to damage compensation shall be applied within two years after the aggrieved party is notified about the damage, but not after three years, or within ten years if the damage was caused intentionally.²⁶ There are some other special time-limits for some certain situations.

Moreover, there are also procedural time-limits limiting access to justice in the interest of ensuring legal certainty. In labour cases complaint to claim rights from unlawfully terminated employment must be filed within a two months period. Similarly, in administrative court cases the case must be filed within two months from the delivery of the final decision of the administrative authority. Vain elapse of this time-period may not be waived.²⁷ A complaint against a non-valid decision of an administrative authority or a complaint against an unlawful action of the administrative authority (other than a decision) must be filed within 30 days.

The right of a victim of discrimination to file a complaint to the court is guaranteed by the Anti-discrimination Act: ‘Everybody may claim his/her rights before a court if he/she assumes that his/her rights, legally protected interests or freedoms were breached by not fulfilling the principle of equal treatment.’²⁸ There are no specific restrictions for victims of discriminatory acts to file a complaint to the court. But if they claim their rights under specific laws (e.g. Labour Code) they must follow relevant provisions (e.g. if they want to challenge the decision of an employer on the termination of the employment relation, they must file their complaint within the time-limit of two months).

General rules relating to *locus standi* are provided by the Civil Procedure Code. An individual shall be a party to the proceedings if he/she is eligible to rights and duties, i.e. a natural person or a legal entity. Depending on the nature of the case further proceedings might be conditioned by proving the existence of an urgent legal interest in a dispute.²⁹

The Civil Procedure Code enables other subjects to join the parties to the proceedings as a secondary party; however such a person must prove his/her legal interest in the result of the dispute.³⁰ Moreover, there are certain proceedings (regarding minors, family issues etc.) which

²⁴ Article 101, Slovakia/zákon 40/1964 (26.02.1964).

²⁵ Article 397, Slovakia/zákon 513/1991 (05.11.1991).

²⁶ Article 106, Slovakia/zákon 99/1963 (04.12.1963).

²⁷ Article 250b paragraph 1, Slovakia/zákon 99/1963 (04.12.1963).

²⁸ Article 9, Slovakia/zákon 365/2004 (20.05.2004).

²⁹ Article 80, Slovakia/zákon 99/1963 (04.12.1963).

³⁰ Article 93, Slovakia/zákon 99/1963 (04.12.1963).

may commence *ex officio* or upon motion of a prosecutor.³¹ A prosecutor may also join disputes in some other cases.³²

Slovak legislation does not support the concept of *actio popularis*; however, there are a few legal areas (including discrimination) in which rights related to *locus standi* are also guaranteed to other subjects than those who are directly affected. *Locus standi* of such subjects is stipulated by law and a court shall not examine whether such a subject has substantive rights to defend or enforce. Those subjects are as follows:

- An association enforcing the principle of equal treatment: According to the Anti-discrimination Act, if by endangering the principle of equal treatment rights, freedoms or legal interests of a larger group or of a group consisting of a non-identifiably number of members could be violated, or if public interests could be violated, a legal entity can file a petition to the court to defend the principle of equal treatment. It is either the Slovak National Human Rights Centre or an NGO (an association) active in the field of anti-discrimination and promotion of the principle of equal treatment;³³
- An association protecting consumers' rights: In accordance with the Act on Consumer Rights such an association is entitled to file a complaint to the court in matters concerning defence or enforcement of consumers' rights;³⁴
- Inhabitants of a municipality: Based on the Act on Municipal Property, inhabitants may file a petition to the court in cases concerning public property;³⁵
- An environmental association: If a plan or activity according to the EIA Act is subject to environmental impact assessment (EIA), and an environmental non-governmental organisation is actively participating in the process, such an NGO is considered to be a subject whose right to a healthy environment can be affected. An NGO may be a party to the subsequent permit procedures, which includes the right to file a petition to the court to review the lawfulness of subsequent permissions.³⁶

³¹ These are non-criminal disputes regulated by the Civil Procedure Code; a prosecutor mostly represents interests of the Slovak Republic, e.g. in cases regarding state property or in administrative law cases.

³² Article 35, Slovakia/zákon 99/1963 (04.12.1963). Those cases concern minors, custodianship, eligibility to legal acts, bankruptcy matters, business registers, cases dealing with ownership, etc.

³³ Article 9a, Slovakia/zákon 365/2004 (20.05.2004).

³⁴ Article 25, Slovakia/zákon 250/2007 (09.05.2007).

³⁵ Article 9b, Slovakia/zákon 138/1991 (20.03.1991).

³⁶ Articles 26 and 27, Slovakia/zákon 24/2006 (14.12.2005).

3. Length of judicial proceedings

In general, there are no time limits specified for the courts to decide cases. Nevertheless, there are certain proceedings which must be decided fast and if they are not, it could be considered as a refusal of justice; such as interlocutory proceedings³⁷ or a petition to review the lawfulness of an expropriation administrative decision; these proceedings have to be decided within certain deadlines.³⁸

Neither legislation, nor jurisprudence provide for precise figures regarding unnecessary delays. According to the document of the Ministry of Justice 'Complex material regarding further development of judiciary in the Slovak Republic until 2010, including evaluation of present state', which was submitted to the government, unnecessary delays are the greatest problem of the judiciary.³⁹ During the time period from 14 October 1994 until 30 July 2007 there were 379 complaints filed to the European Court on Human Rights. In 124 cases the Slovak Republic was found guilty out of which in 96 cases the Court observed a violation of Article 6 of the European Convention on Human Rights. In 85 cases the violation of Article 6 was caused by unnecessary delays.

Similar findings were observed by the Constitutional Court of the Slovak Republic. Each year it handled from 77 per cent up to 87 per cent complaints due to unnecessary delays.

Out of the analysed cases, some were finished within a month,⁴⁰ or a few months. Some other cases were pending for more than a year.⁴¹ All these cases were, however, solved by the Constitutional Court.

At the general courts' level there was a case which lasted for 16 months; where the proceedings at the first instance court took three months, proceedings at the appellate court took approximately

³⁷ Article 75, Slovakia/zákon 99/1963 (04.12.1963). In some cases of interim relief the court has to decide from 24 hours up to 30 days, depending on character of disputed issue.

³⁸ Article 247 paragraph 4, Slovakia/zákon 99/1963 (04.12.1963). Expropriation cases shall be decided within three months.

³⁹ <http://www.rokovania.sk/appl/material.nsf/0/80DA358944BD09DFC12575C100397A10?OpenDocument> (01.10.2009).

⁴⁰ Slovakia/ústavný súd I. ÚS 122/02 (30.10.2002).

⁴¹ For example 16 months, Slovakia/ústavný súd III. ÚS 102/01 (25.09.2002), or for 19 months, Slovakia/ústavný súd I. ÚS 34/96 (31.10.1996).

half a year and another almost half a year took the proceedings within extraordinary remedies at the Supreme Court of the Slovak Republic.⁴²

In accordance with the statistics of the Ministry of Justice, the average length of civil proceedings in 2008 was 14,07 months, but more than 14 per cent of cases lasted for more than two years. In previous years the average length of proceedings was over 15 months. In administrative cases the average length of proceedings was approximately 12 months in 2008 and 14 months in 2007. However, these data are for all administrative cases; judicial review of administrative decisions lasted for a longer time, in average over 18 months.⁴³

The above mentioned information is only a general one. There are no statistics pointing out the situation within the area of discrimination. The statistics do not distinguish between the different stages of the proceedings either.

4. Are procedures concluded within a reasonable time?

In general, unnecessary delays are one of the most significant obstacles individuals face in access to justice. This is proved by the case law of the Constitutional court as well as the European Court on Human Rights.

5. Does provision exist for speedy resolution of particular cases?

There are no legal provisions for speedy resolution in cases of discrimination.

⁴² Slovakia/najvyšší súd 2 Cdo 67/03 (26.08.2003).

⁴³ <http://www.justice.gov.sk/wfn.aspx?pg=r3&htm=r3/statr.htm> (01.10.2009).

6. Is it possible to waive the right of access to a judicial body?

In the field of anti-discrimination, the Anti-discrimination law entitles victims to seek protection and redress through non-judiciary proceedings, namely mediation.⁴⁴ The procedure on mediation is regulated by a special Law on Mediation.⁴⁵ However, it is upon the parties to the proceedings to decide whether they want to have their case solved by mediation. In other words it is not possible to waive the right of access to a judicial body. The court may only recommend to the parties to undergo mediation.⁴⁶

The final outcome of mediation – an agreement – shall be in written and is binding for all parties to the proceedings. Such an agreement is a ground for execution if it is in a form of a notarially record or if it is approved as a settlement before the court.⁴⁷ In other words, an approved agreement has the same consequences as a valid judgement.

It must be pointed out that it is a general obligation of the courts to always attempt to settle the case in a friendly settlement, or the court may recommend to the parties to the proceedings to enter a mediation procedure.

7. Access to non-judicial procedures

There is the possibility to access to non-judicial procedures to obtain redress through the Slovak National Centre for Human Rights (the Centre) and the Public Defender of Rights (Ombudsman).

The Centre was created in 1993 by the Act on Establishing the Slovak National Centre for Human Rights⁴⁸ as an independent institution to protect human rights following the Paris Principles.⁴⁹ In terms of the Act, the Centre shall fulfil all its tasks within the field of human rights and

⁴⁴ Article 9 paragraph 5, Slovakia/zákon 365/2004 (20.05.2004).

⁴⁵ Slovakia/zákon 420/2004 (25.06.2004).

⁴⁶ Article 99 paragraph 1, Slovakia/zákon 99/1963 (04.12.1963).

⁴⁷ Article 15, Slovakia/zákon 420/2004 (25.06.2004).

⁴⁸ Slovakia/zákon 308/1993 (15.12.1993).

⁴⁹ The Treaty on the Establishment of the Slovak National Centre for Human Rights between the Government of the Slovak Republic and the United Nations was signed on 09.03.1994 in Geneva. Under the Treaty's provisions the Centre was established to be engaged in human rights issues. According to the Treaty the first two years of its existence were supported by the Voluntary Fund subsidised by the Government of the Netherlands and a contribution of the Slovak Government. Further activities of the Centre were covered by the Slovak Government. Although the Centre has existed since 1994, its activities were rather formal until election of its new executive director in November 2003.

fundamental freedoms, including children's rights. Since the amendment of 2004⁵⁰ the Centre has executed its duties also within the area of non-discrimination and promotion of equal treatment.

The competencies of the Centre correspond to the minimum requirements of Directive 2000/43/EC and in certain aspects they even go beyond these requirements. The powers of the Centre are a mixture of powers of the national human rights institution and of the equality body pursuant to Directive 2000/43/EC. As a result of this fusion one part of the competencies being based on the Treaty on the Establishment of the Centre is defined in rather general language, whereas the later added second part of competencies resulting from the Racial Equality Directive is more specific. Thus some of the powers are doubled and they overlap.

- The powers of the Centre stipulated by law are as follows:
- to monitor and assess the adherence to human rights and the principle of equal treatment,
- to gather and to disseminate upon request information about racism, xenophobia and anti-Semitism in the Slovak Republic,
- to implement researches and surveys in the field of human rights, to gather and to disseminate information about human rights,
- to prepare educational activities and to participate in information campaigns aiming at increasing tolerance within society,
- to arrange legal aid for victims of discrimination and intolerance,
- to issue expert opinions concerning respect for the principle of equal treatment – upon request or on its own initiative,
- to execute independent surveys concerning discrimination,
- to issue and publish reports and recommendations concerning discrimination,
- to issue annual reports concerning adherence to human rights including the principle of equal treatment,
- to provide library services,
- to provide services in the field of human rights,
- to represent victims in cases of violation of the principle of equal treatment.⁵¹

⁵⁰ Slovakia/zákon 365/2004 (20.05.2004).

The Centre's general mandate covers all relevant tasks of the Centre: independent assistance to the victims of discrimination (by representing victims in cases of violation of the principle of equal treatment), conducting independent surveys concerning discrimination and publishing reports and recommendations concerning discrimination. The competences of the equality body stipulated by Directive 2000/43/EC are transposed into national legislation practically literally.

It can be stated that the powers given to the Centre even go beyond the minimum requirements of Directive 2000/43/EC. The law guarantees that the Centre shall not only "provide victims of discrimination with independent assistance in terms of pursuing their complaints about discrimination", but also "represent victims in cases of violation of the principle of equal treatment" and "arrange legal aid for victims of discrimination and intolerance". Such wording provides victims with wider assistance of the Centre throughout the whole legal proceedings and not only with pursuing their complaints. However, the Act on Establishing of the Slovak National Centre for Human Rights does not provide any further specifications and content of these competencies. For example, the law does not specify what shall be meant by arranging legal aid to the victims of discrimination. Legal aid can be provided in the form of legal consultations, legal representation of a victim in the court proceedings or by cooperation with attorneys and/or NGOs providing legal assistance in the field of equal treatment. Moreover, there is no clear statement about providing financial assistance with the costs of litigation. The Centre does not provide any kind of financial support and/or assistance to the victims.

The Centre receives complaints in various ways: in written form, via telephone, fax or e-mail, or during personal visits of complainants. The Centre always reacts to the complaints. Written or telephonic counselling is the most efficient way of response used by the Centre, and it usually includes:

- interpretation of relevant legal provisions regarding the principle of equal treatment; pointing out available legal remedies,
- providing direct assistance to a victim to prepare relevant legal submissions, including complaints to a court,
- pointing out legal remedies introduced by the Anti-discrimination Act, i.e. the possibility of a victim to claim termination of the illegal treatment, rectification of an illegal situation, and/or appropriate satisfaction, including non-pecuniary damage.

⁵¹ Article 1, Slovakia/zákon 308/1993 (15.12.1993).

The Centre also communicates with the violator (i.e. the party who violated the principle of equal treatment), provides detailed interpretation of the relevant legal provisions and files a request to a violating party to provide explanation regarding his/her illegal behaviour which is in dispute.⁵²

In general, the follow up activities of the Centre do not primarily lead to sanctions and/or compensation payments in the Slovak Republic. The Centre usually starts communication with both parties and provides assistance to the aggrieved party; it uses also mediation. The Centre itself cannot impose sanctions, only courts can decide on them. The Centre can only advise (support) and assist a victim to initiate judicial proceedings, or in certain situations it can commence such proceedings on its own. However, based on the written response of the Centre, it usually uses other ways of dealing with discriminatory cases.

There are only a few cases where sanctions were imposed (e.g. in 2007 sanctions were imposed only in two cases, these sanctions were not very severe)⁵³ thus there are no relevant data to analyse the effectiveness of sanctions. In the years 2004-2007 there were almost 5,500 complaints filed to the Centre; only in two cases pecuniary sanctions were imposed. It can be observed that such sanctions are imposed only very rarely and are neither effective nor dissuasive.

Since 2007 the Centre offers mediation through its pilot project on free mediation services in cases of violations of the principle of equal treatment. The main goal of the project is to create conditions for mediation as an alternative dispute resolution in discrimination cases.⁵⁴ Since then the Centre has used mediation as a regular procedure; however, not many cases have been solved satisfactorily yet, so it is impossible to assess its effectiveness. Only two cases out of 17 concluded in an agreement. One of the satisfactory cases was a case concerning discrimination on the ground of ethnic origin in an employment relationship.⁵⁵ No compensation was awarded to the victim.

The Centre provides mediation by its employees who completed training in a mediation procedure. These employees should be aware of all relevant techniques and methods to sufficiently protect the rights of all parties participating in a mediation procedure.

Mediation in general is a quite new way of dispute resolution and it is not so popular yet, One of the outcomes of the above mentioned project is a leaflet on mediation procedures used in

⁵² Written response of the Slovak National Centre for Human Rights to information request by the author of this Study, provided by e-mail (12.03.2009).

⁵³ European Union Agency for Fundamental Rights Annual report, 2008.

⁵⁴ http://www.snslp.sk/rs/snslp_rs.nsf/0/6D2FDA56EF99F0D8C125734E004C72B2?OpenDocument (01.04.2009).

⁵⁵ http://www.snslp.sk/rs/snslp_rs.nsf/0/6D2FDA56EF99F0D8C125734E004C72B2?OpenDocument (01.04.2009).

discrimination cases⁵⁶ which can help spreading information about this alternative way of solving discrimination cases. Information on the outcomes of mediation procedures is presented in the reports of the Centre or it is available upon request.

There are only very few discrimination cases dealt with in mediation. This is a reason why it is impossible to provide any further information on the protection of the interests of the victims, or on the sufficiency of their awareness of their alternative legal possibilities during mediation. It is also impossible to assess the effectiveness of the outcomes of mediation

The Public Defender of Rights (Ombudsman) is an independent public authority established by the Constitution of the Slovak Republic.⁵⁷ The Ombudsman shall participate in the protection of human rights and fundamental freedoms in proceedings, decision-making and acting or omitting to act by public bodies. The Ombudsman shall deal with individual applications focussing on violations of rights and freedoms of an applicant. The Ombudsman can initiate criminal proceedings, participate in a relevant hearing, file a petition to the Constitutional Court or to other public authorities if the constitutionality or legality of legal provision is in question. The Ombudsman can also propose relevant public authorities how to deal with the case. The Ombudsman has no power to take decisions in disputed cases or to provide legal representation to applicants.

8. Legal aid

The Slovak Constitution guarantees that everybody has the right to legal aid in judicial, administrative or other state proceedings.⁵⁸

Basically, there are two ways for individuals with insufficient funds to get access to legal representation. The court may appoint an attorney to the party to the proceedings if there is a reason for being released from the court fees and if it is inevitable to protect his/her interests. It is upon the court's discretion to decide whether such a legal representative shall be appointed.⁵⁹ An individual may be released from the obligation to pay court fees if his/her personal circumstances give reasons for it and if the lawsuit is not arbitrary or obviously unsuccessful. It is upon the

⁵⁶ [http://www.snslp.sk/rs/snslp_rs.nsf/0/19c4b1af9f6708d8c12574f70056c100/\\$FILE/Letak_Mediacia.pdf](http://www.snslp.sk/rs/snslp_rs.nsf/0/19c4b1af9f6708d8c12574f70056c100/$FILE/Letak_Mediacia.pdf) (01.04.2009).

⁵⁷ Article 151a, Slovakia/ústava 460/1992 (01.09.1992).

⁵⁸ Article 47 paragraph 2, Slovakia/ústava 460/1992 (01.09.1992).

⁵⁹ Article 30, Slovakia/zákon 99/1963 (04.12.1963).

court's discretion to decide on the release from paying court fees; the law does not stipulate any specifications concerning the evaluation of 'personal circumstances' of the applicant.⁶⁰

The second possibility is to seek free legal assistance through the Centre for Legal Aid. The Centre for Legal Aid is a special institution established by the Act on Providing Legal Aid to People in Material Deficiency, which shall provide legal assistance to people in material need.⁶¹ The Centre of Legal Aid provides legal assistance and representation in certain cases to individuals of low income which is not increasing the sum 1.4 of living wage. The Centre operates only within certain legal areas which are civil law, family law, labour law, asylum law and trans-boundary commercial law issues.⁶² The Centre does not provide legal assistance in administrative cases, including cases of foreigners within the area of free movement of persons.

Moreover, the Anti-discrimination Act introduced a possibility for victims of discrimination to be represented in judicial proceedings by a legal entity, the Slovak National Centre for Human Rights (the Centre) or a non-governmental organisation (NGOs) working in the fields of equal treatment and anti-discrimination.⁶³

The Centre's general mandate covers among others independent assistance to the victims of discrimination (by representing victims in cases of violation of the principle of equal treatment). The law guarantees that the Centre shall not only "provide victims of discrimination with independent assistance in terms of pursuing their complaints about discrimination", but also "represent victims in cases of violation of the principle of equal treatment" and "arrange legal aid for victims of discrimination and intolerance". Such wording provides victims with wider assistance of the Centre throughout the whole legal proceedings and not only with pursuing their complaints.

NGOs can play an important role in judicial proceedings regarding discrimination. The Anti-discrimination Act introduced the possibility for the victims of discrimination (plaintiff) to be represented in judicial proceedings concerning discriminatory treatment by a legal entity. The legal entity must be provided with the respective authority under a separate law,⁶⁴ or such entity (NGO) has to aim at or deal with protection against discrimination.⁶⁵ The Anti-discrimination Act

⁶⁰ Article 138, Slovakia/zákon 99/1963 (04.12.1963).

⁶¹ Slovakia/zákon 327/2004 (23.06.2005).

⁶² Slovakia/zákon 327/2005 (23.06.2005).

⁶³ Article 10, Slovakia/zákon 365/2004 (20.05.2004).

⁶⁴ The Slovak National Centre for Human Rights is empowered to represent such victims in the proceedings concerning violations of the principle of equal treatment, Slovakia/zákon 308/1993 (15.12.1993).

⁶⁵ Article 10, Slovakia/zákon 365/2004 (20.05.2004).

does not stipulate how the aim or content of activities of such an entity (NGO) can be proved. It can be assumed that the court will follow the statute of the entity to look for its mission.

There are no restrictions as to the number of petitioners the association can represent. If an NGO takes up the representation of a victim, it shall assign one of its members and/or employees to act on behalf of the victim represented.

NGOs not only represent the victims of discrimination (including discrimination on the ground of race or ethnic origin), the Slovak Anti-discrimination Act also enables these entities to file so-called class actions. If the rights and/or legally protected interests of a large or indefinite number of persons could be injured by a violation of the principle of equal treatment, an NGO (or the Slovak National Centre for Human Rights) can file an action instead of the direct victim/s.⁶⁶ In such cases an NGO (or the Centre) can claim termination of the discriminatory treatment and, if possible, rectification of the illegal situation. This new extension of the procedural role of NGOs was adopted to the Anti-discrimination Act by amendment which has been in force since 15 October 2008.⁶⁷ There does not exist relevant experience with this role of NGOs, however it is a quite progressive and unique competence of NGOs within the legal system of the Slovak Republic.

NGOs spread information on their work and on the possibilities to provide legal assistance and representation in discrimination cases using usual channels: their web pages, leaflets and information brochures, manuals, annual reports, information in the media and day-to-day work with communities. Once cooperation is established, the victims are informed sufficiently.

There are a few NGOs providing assistance in cases of violations of the principle of equal treatment, such as legal advice, consultation, or legal representation in court proceedings. The most active NGOs having a wide territorial coverage are the following associations: Občan a demokracia [Citizen and Democracy]⁶⁸ based in Bratislava, Nadácia Milana Šimečku [Milan Simecka Foundation]⁶⁹ based in Bratislava, Liga Aktivistov pre ľudské práva [League of Human Rights Advocates]⁷⁰ based in Bratislava, Poradňa pre občianske a ľudské práva [The Centre for Civil and Human Rights]⁷¹ based in Kosice. Besides these organisations there are some others

⁶⁶ Article 9a, Slovakia/zákon 365/2004 (20.05.2004).

⁶⁷ Slovakia/zákon 384/2008 (23.09.2008).

⁶⁸ <http://www.oad.sk>, <http://www.diskriminacia.sk> (01.04.2009).

⁶⁹ <http://www.nadaciamilanasecku.sk> (01.04.2009).

⁷⁰ <http://www.lhra-icpr.org> (01.04.2009).

⁷¹ <http://www.poradna-prava.sk> (01.04.2009).

dealing with racism and discrimination without providing legal representation to the victims, e.g. Ludia proti rasizmu [People against racism].⁷²

Although there are a few NGOs operating in this field, it is not easy for victims, particularly for poorer groups of victims, namely Roma communities, who have very limited access to media and to internet, to find and obtain assistance from these NGOs. There is a new web page⁷³ established by the association “Citizen and Democracy” providing all necessary information on discrimination, including information on follow-up proceedings in case of discrimination.⁷⁴

According to the Anti-discrimination Act trade unions play no role in anti-discrimination procedures. There is no information concerning activities of trade unions to support or provide assistance to victims of discrimination on the ground of race or ethnic origin. The only activities of the Confederation of Trade Unions in the field of anti-discrimination are dealing with gender equality on the labour market.⁷⁵ The Slovak Republic did not transpose the provisions of Article 11 of Directive 2000/43/EC into its national legislation and trade unions practically play no role in the protection of victims against discrimination on the ground of race or ethnic origin.

There is no obligation regarding anti-discrimination rules in the Act on Collective Bargaining.⁷⁶ The same applies to collective bargaining agreements – there is no information available concerning anti-discrimination rules incorporated in the collective bargaining agreements.

To sum up, victims of discrimination with insufficient income have access to professional legal assistance provided by the Slovak National Centre for Human Rights or by an NGO working in the field of discrimination, by the Centre for Legal Aid (providing they fit into their income limit and areas of operation), or by an appointed attorney (under conditions stipulated by the Civil Procedure Code).

9. Forms of satisfaction available to a vindicated party

The Anti-discrimination Act encompasses quite detailed regulations concerning claiming adequate redress for victims of discrimination. The law states that everybody may claim his/her rights at the court in cases of violation of his/her rights or protected interests or freedoms due to

⁷² <http://www.rasizmus.sk> (01.04.2009).

⁷³ <http://www.diskriminacia.sk> (01.04.2009).

⁷⁴ <http://www.diskriminacia.sk/?q=help>(01.04.2009).

⁷⁵ For example: <http://www.kozsr.sk/cms/index.php?aid=327> (01.04.2009).

⁷⁶ Slovakia/zákon 2/1991 (04.12.1990).

not respecting the principle of equal treatment. A victim may in particular ask to impose on a violator the obligation to stop the unlawful action, restitution, or adequate compensation. If such a compensation is not sufficient (e.g. public apology), especially because the victim's dignity or public respect was extensively diminished, a victim may seek non-pecuniary damage compensation in finance. The amount of the sum is determined by the court with regard to the seriousness of harm and all relevant circumstances.⁷⁷

10. Adequacy of compensation

Due to lack of relevant case law, the evaluation of whether compensations awarded were adequate could not be provided.

11. Rules relating to the payment of legal costs

Legal costs in civil proceedings are regulated by the Civil Procedure Code and by the Act on Court Fees. Grounds for liberation are defined in two forms: there are certain disputes and certain subjects exempted from the obligation to pay court fees (including individuals who are enjoying legal assistance from the Centre of Legal Aid, charitable, humanitarian, environmental non-governmental organisations or consumers' rights protection associations).⁷⁸

In general, the Civil Procedure Code stipulates rules for paying legal costs depending on the outcome of the dispute which is based on the general rule 'the losing party pays all'. The courts have, however, options to decide differently, and a litigant may be released partly or completely from the obligation to pay court fees and legal costs even in case he/she loses the case. Such a decision depends on the litigant's personal financial situation or on the matters of the dispute. 'Courts may release upon request a party to the proceedings partly or completely from his/her obligation to pay court fees, if it is justified by the circumstances of a party to the proceedings, and if it is not arbitrary or manifestly unsuccessful enforcing or defending the law'.⁷⁹

⁷⁷ Article 9 paragraph 3, Slovakia/zákon 365/2004 (20.05.2004).

⁷⁸ Article 4, Slovakia/zákon 71/1992 (28.01.1991).

⁷⁹ Article 138, Slovakia/zákon 99/1963 (04.12.12963).

The law does not specify a particular income of a claimant, all the relevant facts (family life, economic situation, etc.) shall be examined individually for each case. Court decisions on liberation from the court fees may have retroactive effects and shall also include the legal costs of the appointed attorney (if an attorney was appointed by the court).⁸⁰ This regulation shall guarantee that court fees should not be an obstacle to enforce or defend rights. Regarding court fees the Constitutional Court stated that they are a balancing factor between the right to a material protection of someone's rights on the one hand, and protection of smooth and just proceedings from careless or even harassing complaints from litigants on the other hand.⁸¹

There are no special rules applied in the procedures within the areas of discrimination in terms of legal costs. Compensation of legal costs shall also include compensation for interim measures and for evidence. On the other side it does not include compensations for interpreter's expenses which are always covered by state.⁸²

Court fees are stipulated by the Act on Court Fees. In accordance with this law, the court fee for commencing a lawsuit in cases regarding the principle of equal treatment is 66 Euro; if a non-pecuniary damage is claimed in cash the court fee is 66 Euro plus 3 per cent from the claimed sum.⁸³ Court fees in administrative judicial cases are in general also 66 Euro, only in cases of judicial appeal filed against a first instance decision of the administrative authority the court fee shall be 33 Euro. Some of the administrative proceedings are free – e.g. there is no court fee in cases of inactivity of the administrative authority or in cases of illegal action of the administrative authority.

The court may decide upon litigants' proposal to erase the obligation to pay court fees, if it is justified by the personal situation of a litigant and the case is not arbitrary or a manifestly unsuccessful dispute.

In discrimination cases, proceedings within the following institutions: the Centre of Legal Aid, the Ombudsman, the Slovak National Centre for Human Rights, are free of charge. If a victim is represented by the Centre of Legal Aid or by the Slovak National Centre for Human Rights, he/she shall not pay any expenses connected to his/her legal representation (e.g. expenses of lawyers). A victim can be exempted from the duty to pay court fees if his/her personal material situation gives reasons for it. However, if a victim loses his/her case, he/she can be obliged to

⁸⁰ Article 138, Slovakia/zákon 99/1963 (04.12.1963).

⁸¹ Slovakia/ústavný súd III. ÚS 209/05.

⁸² Articles 142 – 151a, Slovakia/zákon 99/1963 (04.12.1963).

⁸³ Annex I, point 7d, Slovakia/zákon 71/1992 (28.01.1991).

pay expenses of the winning party, unless he/she is exempted from this obligation by a court decision (depending on her/his personal material situation).

If a victim is represented by an NGO, the situation usually is the same. Expenses of legal representation are usually covered by own resources of an NGO.

12. Rules on burden of proof

General provisions applied in civil proceedings guarantee equality of parties in a court proceeding;⁸⁴ the burden of proof is placed upon the party who brings a particular claim. Parties to the proceeding have a procedural evidential duty, i.e. each party has to present evidence proving their claims.

The Anti-discrimination Act changed this general principle by introducing an exception to be applied in discrimination cases: A defendant is obliged to prove that he/she did not violate the principle of equal treatment, if a plaintiff presents facts to the court which give rise to a reasonable assumption that a violation of the principle of equal treatment occurred. Such shifting of the burden of proof is applicable in all civil judicial proceedings dealing with the observance of the principle of equal treatment disregarding the ground of discrimination (direct or indirect discrimination, harassment, instruction to discriminate, etc.) and the field in which discrimination has occurred. It is surely one of the instruments making the Anti-discrimination Act meaningful and useful.

⁸⁴ Article 47 paragraph 3, Slovakia/constitution 460/1992 (01.09.1992).