

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

Slovakia

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Contents

Executive Summary	1
A. Implementation of Employment Directive 2000/78/EC	5
A.1. Equality body dealing with discrimination on the ground of sexual orientation	7
A.2. Judicial review and implementation of Article 9(2) of the Directive 2000/78/EC	12
A.3. Other remedies and sanctions	13
B. Freedom of movement.....	15
B.1. Right to entry	15
B.2. Temporary residence	16
B.3. Permanent residence.....	16
B.3.1. ‘Permanent residence for five years’	16
B.3.2. ‘Permanent residence for unlimited time period’	17
B.3.3. Tolerated residence.....	18
B.4. Statistics and case law	18
C. Asylum and subsidiary protection	20
C.1. Persecution of LGBT individuals as a ground for asylum.....	20
C.2. Family members in the context of asylum procedure	21
C.3. Statistics and case law	22
D. Family reunification	23
D.1. Aliens.....	23
D.2. Refugees	23
D.3. Statistics and case law	25
E. Freedom of assembly	26
F. Criminal law, hate speech	29
F.1. Hatespeech	29
F.2. Homophobic motivation of crime.....	30
F.3. Hate speech by public officials	31
F.4. Statistics and case law	33
G. Transgender issues.....	34
G.1. Change of name.....	34
G.2. Change of identification number	35
G.3. Other legislative issues	35
G.4. Statistics and case law	37
H. Status of ‘intersex’ persons.....	38
H.1. Status of intersex persons in national legislation	38
H.2. Surgical and medical interventions.....	38
I. Miscellaneous	40
J. Good practice	42
Annex 1 –Case law	43
Annex 2 – Statistics	44

Executive Summary

Implementation of Employment Directive 2000/78/EC

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 were no changes over 2010 – 2013 in anti-discrimination legislation.

In 2012 *Výbor pre práva LGBTI osôb* [The Committee for the rights of LGBTI persons] was founded. It is a permanent expert body for the Governmental Council for human rights, national minorities and gender equality. It deals mainly with legislative proposals to the Governmental Council to increase protection of LGBT people. There are not too many activities to be reported since it has been active only since 2013.

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

Freedom of movement is basically regulated by the Act on Residence of Aliens¹ according to which the term 'family member' of an EU citizen applies to spouses, dependants, including direct relatives and other dependant family members or members of the household and to his/her partner with whom the EU citizen has properly authorised relationship.

¹ Slovakia, The Act on Residence of Aliens (Zákon o pobyte cudzincov), 404/2011, 21 October 2011).

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.

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**. There are no special implications for LGBT partners unless they prove, that their permanent residence will be in the interest of Slovakia. Nevertheless, there are no case studies providing more thoroughly practical implications for LGBT partners.

Furthermore, foreigners are subject of so-called '**tolerated residence**'. It is 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.

Asylum and subsidiary protection

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 fulfil 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

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. There is no relevant case law.

Freedom of assembly

The Right to freedom of assembly² is granted to LGBT individuals on the same basis as it is to anyone else. The legislation does not lay down any special restrictions for LGBT individuals when holding any kind of assemblies, gatherings or marches. 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. There is no specific case law in this respect.

Between 2000 and 2007, only a few public gatherings in favour of tolerance to LGBT individuals took place, but the number of public gatherings has increased slightly in recent years. During years 2010 – 2013 there were annual public meetings (marches) in support of LGBT community, in 2013 there were even two of such gatherings. This data about marches is unofficial data gained from

² Slovakia, The Assembly Right Act (Zákon o zhromažďovanom práve), 84/1990, 27 March 1990).

interviews with active members of the community, media monitoring and responses to the information request sent to eight county municipalities.

Since 2010 there are ‘Marches for family’ as an opposite to the Rainbow Prides. Such marches took place in various cities around Slovakia. Participants of the Marches for family refuses LGBT marches and homosexual relationships as such.

Criminal law, hates speech

LGBT individuals facing **hate speech** are partially protected by the **Criminal Code**³ or by the **Act on Minor Offence**.⁴ Until 2013 none of these laws recognised any crime or offence aiming at specifically protecting LGBT individuals. Amendment to the Criminal Code in 2013 widened special motives of crimes. Hatred to other sexual orientation is now among aggravating circumstances and such crimes shall be punished more severely. LGBT individuals can be considered as members of a specific group and thus subject to criminal act ‘Violence against a group of people and the individuals’.

Provisions concerning defamation and libelling stipulated in the Civil Code⁵ 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 mostly cases of abuse and/or humiliation and they are examples of general hostility towards LGBT individuals in Slovakia. This illustrates the relationship and condemning perception of majority towards LGBT persons. The situation has not changed as for the year 2013. There are no official statistics on filed defamation cases, since the statistics only track validly finished cases.

Transgender issues

Legislation regarding transgender individuals stipulates that discrimination due to their sexual or gender identification is considered as discrimination on the ground of sex (the Anti-Discrimination Act).⁶

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.⁷

There were some legislative changes in the area of name change which shall on one side make it

³ Slovakia, The Criminal Code (Trestný zákon), 300/2005, 20 May 2005).

⁴ Slovakia, The Misdemeanor Act (Zákon o priestupkoch), 372/1990, 28 August 1990).

⁵ Slovakia, The Civil Code (Občiansky zákonník), 40/1964, 26 February 1964).

⁶ Slovakia, The Anti-Discrimination Act (Zákon o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou – antidiskriminačný zákon), 365/2004, 20 May 2004).

⁷ Information provided on phone call to National Centre of Medical Information, 18.02.2014.

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.

Status of intersex persons

Intersex persons are not specifically recognised in Slovak legislation. Intersex discrimination is not explicitly mentioned in non-discrimination law, therefore only general non-discrimination provisions can be applied. The law also does not allow that children remain without a gender marker on their birth certificate. Surgical and medical interventions on intersex people are not explicitly regulated by the law, but are not forbidden in Slovakia.

Miscellaneous

Legislation and social attitude in Slovakia are mostly unfavourable towards LGBT individuals. The situation has slightly changed since 2010 with changes in criminal protection of LGBT community members as well as in recognition of LGBT persons as a family member of an EU citizen. Political parties are rather reluctant towards proposing relevant legislative changes promoting registered partnership of LGBT individuals, except for solitary proposal in 2012 (which was, however, not successful).

There is no official statistic data on discrimination on the grounds of sexual orientation available. Nevertheless this lack of data does not prove the absence of such discrimination. There was a research on discrimination conducted in 2002. Then there was another survey in 2009 initiated by the “Initiative Otherness”.

Good practice

There are very few examples of good practices in Slovak legislation concerning the rights of LGBT individuals. The good examples may be found in Anti-discrimination Act (as amended in 2008)⁸ and in Criminal Code (as amended in 2013).⁹ Some changes were adopted by the Act on Residence of Aliens.¹⁰ In 2012 there was created Výbor pre práva LGBTI osôb [The Committee for the Rights of LGBTI persons] as a permanent expert body for the Governmental Council for human rights, national minorities and gender equality. Nevertheless, these legal updates and other practices can hardly be considered to go above EU standards.

⁸ Slovakia/zákon 85/2008 (14.02.2008)

⁹ Slovakia, The Amendment to the Criminal Code (Zákon, ktorým sa mení a dopĺňa Trestný zákon) 204/2013, 25 June 2013).

¹⁰ Slovakia, The Act on Residence of Aliens (Zákon o pobyte cudzincov), 404/2011, 21 October 2011).

A. Implementation of Employment Directive 2000/78/EC

The principle of equal treatment is guaranteed under Article 12 of the Constitution of the Slovak Republic¹¹, 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.¹²

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)¹³ 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,
- 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 Code¹⁴ 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-

¹¹ Slovakia, Act No. 460/1992 Coll. Constitution of the Slovak Republic (*Zákon č. 460/1992 Zb. Ústava Slovenskej republiky*), 01 September 1992, available at: http://www.epi.sk/8056/Ústava-Slovenskej-republiky-Obsah--Constitution-of-the-Slovak-Republic-Content_45065.aspx.

¹² 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.

¹³ Slovakia, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination (Antidiscrimination Act) as amended (*Zákon č. 365/2004 Z.z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou*), 24 June 2004.

¹⁴ Slovakia, Act No. 311/2001 Coll. Labour Code as amended (*Zákon č. 311/2011 Z.z. zákonník práce*), 02 July 2001.

discrimination Act itself.¹⁵ The Act on Higher Education¹⁶ as well as the School Act¹⁷ were amended¹⁸. Sexual orientation is stipulated as one of the grounds of discrimination explicitly prohibited by these acts.

Similarly, the Act on Providers of Health Care¹⁹, 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 amendment²⁰ 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 Act²¹ 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.²²

The original wording of the Anti-discrimination Act provided specific grounds of discrimination for different areas of legal relationships (social care, health 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.²³ 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.²⁴ Moreover, the amendment more generally defines

¹⁵ Slovakia, Act No. 85/2008 Coll. amending Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination (Antidiscrimination Act) as amended (*Zákon č. 365/2004 Z.z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou*), 14 February 2008

¹⁶ Slovakia, *Zákon č. 131/2002 o vysokých školách* (21 February 2002).

¹⁷ Slovakia, *Zákon č. 29/1984 o výchove a vzdelávaní* (2. March 1984).

¹⁸ Slovakia, *Zákon 363/2007, ktorým sa mení a dopĺňa zákon č. 131/2002 Z. z. o vysokých školách a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a o zmene a doplnení niektorých zákonov* (03.July.2007).

¹⁹ Slovakia/*zákon 578/2004 o poskytovateľoch zdravotnej starostlivosti, zdravotníckych pracovníkoch, stavovských organizáciách v zdravotníctve a o zmene a doplnení niektorých zákonov*, 21. October 2004).

²⁰ Slovakia, Act No. 85/2008 Coll. amending Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination (Antidiscrimination Act) as amended (*Zákon č. 365/2004 Z.z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou*), 14 February 2008

²¹ Slovakia, Act No. 85/2008 Coll. amending Slovakia, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination (Antidiscrimination Act) as amended (*Zákon č. 365/2004 Z.z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou*), 14 February 2008

²² Slovakia, Act No. 85/2008 Coll. amending Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination (Antidiscrimination Act) as amended (*Zákon č. 365/2004 Z.z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou*), Article 1, Paragraph (1), 14 February 2008

²³ Slovakia, Act No. 85/2008 Coll. amending Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination (Antidiscrimination Act) as amended (*Zákon č. 365/2004 Z.z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou*), Article 1, Point (1), 14 February 2008.

²⁴ Slovakia, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination (Antidiscrimination Act) as amended (*Zákon č. 365/2004 Z.z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou*), Article 2a, Paragraph (11) a), 24 June 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

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 Act²⁵ 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.²⁶ 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.²⁷ Moreover, it can be more awkward and annoying 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.²⁸

However, no official or non-official data is available to support whether the above mentioned provisions caused some kind of discriminatory performance.²⁹

There is no case law related to alleged discrimination based on sexual orientation within labour law either.³⁰

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

Výbor pre práva LGBTI osôb [The Committee for the rights of LGBTI persons] was founded in 2012. It is a permanent expert body for the Governmental Council for human rights, national minorities and gender equality. It deals mainly with:

- Proposing legislative initiatives to the Governmental Council to increase protection of rights of LGBTI persons,
- Preparing reports for controlling mechanisms of international agreements on rights for equal treatment regarding sexual orientation and gender identity,

“gender reassignment” in the Anti-discrimination Act and this concept remains excluded.

²⁵ Slovakia, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination (Antidiscrimination Act) as amended (*Zákon č. 365/2004 Z.z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou*), 24 June 2004.

²⁶ There is no legislation on registered partnership or other officially recognised relationship of people of the same sex in Slovakia.

²⁷ Art. 141, paragraph 2(d) of the Labour Code.

²⁸ Art. 141, paragraph 2(b) of the Labour Code.

²⁹ <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 County and District Courts and by the research in database of case decisions run by Ministry of Justice (17.02.2014).

³⁰ Information was confirmed by the County Courts in February 2014.

- Participation on the adoption and monitoring of fulfilment of strategies and action plans in the area of LGBTI rights,
- Annual preparing of the report on state of discrimination on the basis of sexual orientation and gender identity in Slovakia,
- Cooperation with other bodies,
- Information dissemination within its competencies.³¹

The Committee has been active since 2013. It adopted an opinion with regards to the process of a preparation of a national strategy on protection and support of human rights in Slovakia, in which it expressed its concerns with low level of social acceptance of LGBTI persons in Slovakia.

This is the only equality body in Slovakia dealing exclusively with LGBTI rights, but not solely with the discrimination. Moreover, the Committee is not a legal entity, it is just a gathering of representatives of various ministries, state authorities and non-governmental organisations.

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.

Another 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,³² it has no arbitrament competencies. It is a supervising authority with advisory competence.

The duties of SNCHR were extended by the Anti-discrimination Act³³ 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, 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:

³¹ Slovakia, Office of Government (2013) *Štatút rady vlády pre práva LGBTI osôb*, available at: <http://www.justice.gov.sk/Stranky/Ministerstvo/Vybor%20pre%20prava%20LGTBI%20osob/Uvod.aspx> (17.02.2014)

³² Slovakia, Zákon Národnej rady Slovenskej republiky č. 308/1993 o zriadení Slovenského národného strediska pre ľudské práva, 15.december1993

³³ Slovakia, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination (Antidiscrimination Act) as amended (*Zákon č. 365/2004 Z.z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou*), 24 June 2004

- provide for legal assistance for victims of discrimination and expressions of intolerance,
- prepare expert opinions on compliance with the principle of equal treatment.³⁴

According to the latest amendment³⁵ of the Act on Slovak National Centre for Human Rights,³⁶ 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 Rights³⁷ 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 amendment³⁸ 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 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.³⁹ 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.⁴⁰ According to SNCHR, until 2010 there were three discrimination cases in which the Centre represented the victims.⁴¹ However, none of these cases dealt with discrimination on the ground of sexual orientation.⁴² SNCHR published reports on the observance of human rights annually until 2009. These reports, however, dealt with selected examples on the state of human rights in Slovakia, including activities of SNCHR in the field, but did not provide a comprehensive picture of the activities of SNCHR or of the state of human rights in the field of equal treatment.

During years 2010 – 2013 SNCHR did not represent any member of LGBT community in discrimination cases. During this period, however, it provided 21 legal consultations in cases of discrimination of LGBT persons.⁴³

During years 2008 – 2012 SNCHR adopted annual reports on media monitoring focusing on racism,

³⁴ Slovakia, Zákon Národnej rady Slovenskej republiky č. 308/1993 o zriadení Slovenského národného strediska pre ľudské práva, 15.december1993, Art 1, paragraph 2.

³⁵ Slovakia, Act No. 85/2008 Coll. amending Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination (Antidiscrimination Act) as amended (*Zákon č. 365/2004 Z.z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou*), 14 February 2008

³⁶ Slovakia, Zákon Národnej rady Slovenskej republiky č. 308/1993 o zriadení Slovenského národného strediska pre ľudské práva, 15.december 1993.

³⁷ Slovakia, Zákon Národnej rady Slovenskej republiky č. 308/1993 o zriadení Slovenského národného strediska pre ľudské práva, 15.december1993,

³⁸ Slovakia, Zákon č. 384/2008, ktorým sa mení a dopĺňa zákon č. 99/1963 Zb. Občiansky súdny poriadok v znení neskorších predpisov a o zmene a doplnení niektorých zákonov, 23. September 2008

³⁹ Slovakia, Zákon Národnej rady Slovenskej republiky č. 308/1993 o zriadení Slovenského národného strediska pre ľudské práva, 15.december1993.Art. 1, paragraph 3. Slovakia/zákon 308/1993

⁴⁰ Information was confirmed on 20.02.2014 by the SNCHR via telephone interview

⁴¹ This information was relevant in the beginning of 2008.

⁴² Information was confirmed by the Centre on 08.03.2010.

⁴³ Information was confirmed by the Centre on a phone call on 18.02.2014

xenophobia and anti-Semitism, but it did not monitor discrimination of LGBT persons.⁴⁴

Apart from above mentioned reports, SNCHR publishes Annual Reports on its activities.⁴⁵ No complaints objecting to discrimination based on sexual orientation were mentioned in the Annual Reports for the years 2004, 2005 and 2007. 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.⁴⁶

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 (Roma), 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.⁴⁷

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 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.⁴⁸

In the 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 gender 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.⁴⁹ 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

⁴⁴ Slovakia, Slovak National Centre for Human Rights (*Slovenské národné stredisko pre ľudské práva*) (2008 – 2010): *Annual reports on media monitoring focusing on racism, xenophobia and anti-Semitism*, available at: <http://www.snslp.sk/SnslpWeb.html#menu=1419> (18.02.2014)

⁴⁵ Slovakia, Slovak National Centre for Human Rights (*Slovenské národné stredisko pre ľudské práva*) (2004) *Annual report on activities of SNSLP.*, Slovakia, Slovak National Centre for Human Rights (*Slovenské národné stredisko pre ľudské práva*) (2005) *Annual report on activities of SNSLP.*

⁴⁶ The annual report for 2006 is not available anymore.

⁴⁷ Slovakia, Slovak National Centre for Human Rights (*Slovenské národné stredisko pre ľudské práva*) (2007) *Annual report on activities of SNSLP.* (01.03.2010).

⁴⁸ <http://www.snslp.sk/index.php/lang-en/monitoring-a-vyskum.html> (04.02.2014).

⁴⁹ Information provided telephonically by the Head of Legal department of the Slovak National Centre for Human Rights (20.02.2014).

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.⁵⁰ 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. Another important fact is the sensitivity of the cases and difficulty to prove motive of discrimination at the court hearing.⁵¹

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 often occurring cases of unequal treatment are present in loans and mortgages administration, in labour relationships in cases when *family members*⁴ 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.⁵²

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.⁵³

In the Report on Observance of Human Rights including the Principle of Equal Treatment in Slovakia in 2009 the SNCHR reported that homosexual couples in Slovakia do not have the right to enter into a registered partnership, and therefore they feel to be discriminated. Registered partnership should help this minority to approach the majority and achieve more rights in the area of mutual informing on the health conditions, inheritance issues duty to support and maintain in case the partners separate, or in case of loans which they could take under more favourable conditions as a registered couple. In everyday life, homosexuals face harassment, mobbing, and hostility. As employees, they often cannot take advantage of various benefits, since they do not meet “family” standards. Pursuant to the Report, civic initiative of Slovak gays and lesbians *Iniciatíva Inakosť* [Initiative Otherness] turned to the Ombudsman office seeking for assistance in implementing the content of the call of the European Parliament. The Ombudsman admitted that this topic opens room for a discussion on understanding equality guaranteed under the Constitution of the Slovak Republic. For the Ombudsman this

⁵⁰ Slovakia, Slovak National Centre for Human Rights (*Slovenské národné stredisko pre ľudské práva*) (2009) *Správa o dodržiavaní ľudských práv v Slovenskej republike*. (04.02.2014).

⁵¹ Information confirmed on 20.02.2014 by SNCHR via telephone interview.

⁵² Slovakia, Slovak National Centre for Human Rights (*Slovenské národné stredisko pre ľudské práva*) (2009) *Správa o dodržiavaní ľudských práv v roku 2008 v Slovenskej republike*, available at: http://www.snslp.sk/files/SNCHR_Report_Observance_of_Human_Rights_2008.pdf (05.02.2014).

⁵³ Slovakia, Slovak National Centre for Human Rights (*Slovenské národné stredisko pre ľudské práva*) (2009) *Správa o dodržiavaní ľudských práv v roku 2008 v Slovenskej republike*, available at: http://www.snslp.sk/files/SNCHR_Report_Observance_of_Human_Rights_2008.pdf (05.02.2014).

incentive was the first one regarding the discrimination based on the sexual orientation.⁵⁴ There was no further report on Observance of Human rights nor on the Principle of Equal Treatment issued by SNCHR since 2009.

In January 2014 SNCHR issued a statement to the reaction of Initiative Alliance for Family. The Initiative criticised IKEA Company for publishing a case of a homosexual couple with a child in its magazine Ikea Family Live. The Initiative was outraged by this example saying it is undermining “traditional family” and it claimed to withdraw the whole edition of the magazine. SNCHR replied that according to Article 2 of the Family Law there are more forms of family recognised and protected. Pursuant to SNCHR a “family” may be established by marriage but also by other acts, although a traditional family is considered to be established by a marriage of a man and woman. Nevertheless, the magazine does not undermine the meaning of a traditional family and is not in conflict with the Family Law.⁵⁵

There was no new relevant case law in 2010 – 2013. It is probably the implication of the hostility in society against LGBT people.

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 law⁵⁶ 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.

The amendment of the Anti-discrimination Act⁵⁷ adopted in September 2008 introduced a sort of

⁵⁴ Slovakia, Slovak National Centre for Human Rights (*Slovenské národné stredisko pre ľudské práva*) (2010) *Správa o dodržiavani ľudských práv v roku 2009 v Slovenskej republike*, available at: http://www.snslp.sk/files/SNCHR_Report_Observance_of_Human_Rights_2008.pdf (05.02.2014).

⁵⁵ Slovakia, Slovak National Centre for Human Rights (2014) ‘Vyjadrenie Slovenského národného strediska pre ľudské práva k reakcii na článok v zákazníckom magazíne spoločnosti IKEA’. 15 January 2014, Available at: <http://www.snslp.sk/#page=2385>.

⁵⁶ 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.

⁵⁷ Slovakia, Zákon č. 384/2008, ktorým sa mení a dopĺňa zákon č. 99/1963 Zb. Občiansky súdny poriadok

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 endangered⁵⁸

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.⁵⁹ However, there are a few active NGOs within the LGBT community in Slovakia which fulfil the conditions and can represent victims at the court trials:

- Civic association *Queer Leaders Forum* in Bratislava,⁶⁰
- Civic association *Ganymedes* based in Bratislava, Kosice, Prievidza,⁶¹
- Civic association *Iniciatíva Inakosť* [Initiative Otherness] based in Trnava,⁶²
- Civic association *MUSEION – združenie lesbických žien a sympatizujúcich občanov* [MUSEION – association of lesbian women and sympathising citizens] based in Bratislava.⁶³

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.

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 Code⁶⁴) have the authority to impose a fine of up to 100.000 EUR.⁶⁵ Relevant controlling bodies are *Národný inšpektorát práce* [National Labour Inspectorate] and *Inšpektoráty práce* [District Labour Inspectorates].⁶⁶ Similar controlling entities are established also for some other areas such as education - *Štátna školská inšpekcia* [State School Inspection]⁶⁷, or goods and services - *Slovenská obchodná inšpekcia* [Slovak Trade Inspection].

v znení neskorších predpisov a o zmene a doplnení niektorých zákonov

⁵⁸ Slovakia, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination (Antidiscrimination Act) as amended (*Zákon č. 365/2004 Z.z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou*) Article 9a, 24 June 2004

⁵⁹ Information was confirmed by the Slovak National Centre for Human Rights on 20.02.2014.

⁶⁰ www.qlf.sk (05.02.2014).

⁶¹ www.ganymedes.info (05.02.2014).

⁶² <http://www.inakost.sk> (05.02.2014).

⁶³ <http://www.lesba.sk/2008/> (05.02.2014).

⁶⁴ Slovakia, Zákon č. 311/2001 Zákonník práce, 7 July 2001

⁶⁵ Slovakia, Zákon č. 125/2006 o inšpekcii práce, 2 February 2006

⁶⁶ Slovakia, Zákon č. 125/2006 o inšpekcii práce, 2 February 2006

⁶⁷ Slovakia, Zákon 596/2003 o štátnej správe v školstve a školskej samospráve a o zmene a doplnení niektorých zákonov, 5 November 2003.

The amendment of the Anti-discrimination Act⁶⁸ expressly stipulates that everybody has the right to claim protection of his/her rights resulting from the Anti-discrimination Act via mediation.⁶⁹

⁶⁸ Slovakia, Act No. 85/2008 Coll. amending Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination (Antidiscrimination Act) as amended (*Zákon č. 365/2004 Z.z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou*), 14 February 2008.

⁶⁹ Slovakia, Act No. 85/2008 Coll. amending Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination (Antidiscrimination Act) as amended (*Zákon č. 365/2004 Z.z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou*), Article 9, Paragraph (5) 14 February 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 Aliens.⁷⁰

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 there is reasonable suspicion that such a person could threaten state security, public order or public health.

When an EU citizen or a family member does not have the necessary travel documents, such a person can prove by other means his/her identity and a family relationship to the EU citizen.⁷¹ The law does not specify what are 'other means'.

Pursuant to the Act on Residence of Aliens a '**family member**' of an EU citizen means a citizen of a third country, who is:

- the spouse⁷²
- child under the age of 21 or the dependants, and children of his/her spouse,
- dependent direct relatives and dependent direct relatives of the spouse,
- other dependent family members or members of his/her household,
- other family members dependent due to his/her serious health reasons, his/her partner in a partnership, which is legitimately approved,
- citizen of a third country with a residence permit in a country of a residence of an EU citizen.⁷³

A "partner" is considered a family member pursuant to the new Act on Residence of Aliens which is in forces since 01.01.2012. Before adoption of this law a "partner" was recognised only as a household member of an EU citizen.

The new Act on Residence of Aliens distinguishes between family members who are EU citizens and those who are third country nationals.

The Slovak definition of a 'family member' is equivalent to the wording of the Directive 2004/38/EC (29.04.2004).⁷⁴ Slovak legislation now recognises that a third country national as a family member of an EU citizen, if their relationship is registered partnership.⁷⁵ The Aliens Act recognises registered

⁷⁰ Slovakia, Zákon o pobyte cudzincov a o zmene a doplnení niektorých zákonov 404/2011, 21 October 2011.

⁷¹ Article 7, Slovakia, The Act on Residence of Aliens (Zákon o pobyte cudzincov) 404/2011, 21 October 2011).

⁷² 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'.

⁷³ Slovakia, Zákon o pobyte cudzincov a o zmene a doplnení niektorých zákonov 404/2011, 21 October 2011., Art 2 (5).

⁷⁴ Art. 2 and 3 of the Directive 2004/38/EC (29.04.2004).

⁷⁵ Art. 2 paragraph 5 (g), Slovakia, The Act on Residence of Aliens (Zákon o pobyte cudzincov) 404/2011, 21

partners, nevertheless there are specific conditions for granting particular forms of residence (especially forms of temporary residence). These conditions does not include LGBT partners (non-EU citizens) since they are bound to 'marital' relationship, not to relationship based on registered partnership. Therefore it is discriminating LGBT partners who are non-EU citizens.

B.2. Temporary residence

Temporary residence permission⁷⁶ allows a foreigner (third country citizen) 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, research and development. EU citizens can stay in Slovakia without any permission for a period not exceeding three months. For a longer period he/she must be registered and the police authority will issue a Registry identification which is valid for five years.

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 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. There are different types of a permanent residence permission:⁷⁷

- permanent residence for five years,
- permanent residence for unlimited period, and
- residence of a third country citizen who has a long-term residence permit within EU.

Slovak law does not provide any special provisions on permanent residence of LGBT people.

B.3.1. 'Permanent residence for five years'

The Act on Residence of Aliens⁷⁸ distinguishes between the residence of foreigners-EU citizens and their family members, and of foreigners-third country nationals.

October 2011.

⁷⁶ Art. 20 – 41, Slovakia, The Act on Residence of Aliens (Zákon o pobyte cudzincov) 404/2011, 21 October 2011.

⁷⁷ Art. 42 of The Act on Residence of Aliens (Zákon o pobyte cudzincov), 404/2011, 21 October 2011).

⁷⁸ Slovakia, Zákon o pobyte cudzincov a o zmene a doplnení niektorých zákonov 404/2011, 21 October 2011. Art 2 (5).

A foreigner (third country national with no ties to the EU) shall be granted permission for permanent residence for five years, 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.⁷⁹

LGBT partners (third country citizens) are not listed among family members who can be granted permanent residence for five years.

The new Act on Residence of Aliens established a special category of permanent residence for EU citizens who can be granted permanent residence for unlimited period.⁸⁰

B.3.2. 'Permanent residence for unlimited time period'

A foreigner (third country citizen) shall be granted permanent residence for unlimited period if he/she was granted the permanent residence for five years and his/her temporary residence has lasted for at least four years, or if he/she is a child under 18 years of age of a third country citizen with a permanent residence for unlimited period. Permanent residence for unlimited period can be granted also without above mentioned conditions:

- if it is necessary for protection and aid to a witness pursuant to a special law,
- to a person without citizenship,
- due to special reasons,
- due to security interests of Slovakia (upon proposal of Slovak Information Agency),
- to an adult with tolerated residence for minimum three years, during which he/she was studying within Slovakia.

Slovakia recognises registered partnerships only if one of the partners is an EU citizen. LGBT partners are thus considered family members only if their partner is an EU citizen. If they are both third country nationals, they are not considered family members for the sake of the Aliens Act. Therefore this provision is discriminating towards non-EU LGBT members living in registered partnership.⁸¹ If LGBT person (third country citizen) does not fulfill general conditions to gain permanent residence permission and such a person is living in registered partnership with other third country citizen, she/he may be granted permanent residence only if she/he fulfills the vague condition of special reasons, or if it is needed to protect a witness in a criminal proceedings, or such a person is without citizenship, or it is important for safety reasons of Slovakia. Special reasons are not defined in the law and there is no relevant case law.⁸²

⁷⁹ Slovakia, Zákon o pobyte cudzincov a o zmene a doplnení niektorých zákonov 404/2011, 21 October 2011. Art 2 (5)

⁸⁰ Art. 67 Slovakia/zákon 404/2011 (21.10.2011).

⁸¹ Article 2 paragraph 5 and Article 43 paragraph 1, Slovakia, The Act on Residence of Aliens (Zákon o pobyte cudzincov) 404/2011 (21 October 2011).

⁸² Article 46 paragraph 2, Slovakia, The Act on Residence of Aliens (zákon o pobyte cudzincov) 404/2011, 21 October 2011).

A person granted permanent residence for unlimited time period 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 family of an EU citizen and is fulfilling other conditions (duration of stay in Slovakia, etc.), he/she can obtain a permanent residence for unlimited time period.⁸³

B.3.3. Tolerated residence

The Slovak Act on Residence of Aliens⁸⁴ 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 Asylum⁸⁵,
- 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
- it is necessary for his/her private and family life
- if he/she was employed under specially exploiting working conditions and presence of such third country citizen within Slovak territory is necessary for criminal investigation.⁸⁶

Tolerated residence is an exceptional provision covering unexpected situations where it is impossible to expel the alien concerned. This provision, especially its 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.⁸⁷ Neither relevant data nor findings demonstrating the application of the quoted provisions in practice are available.⁸⁸

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,⁸⁹

⁸³Slovakia, Zákon o pobyte cudzincov a o zmene a doplnení niektorých zákonov 404/2011, 21 October 2011. Art 2 (5). Art. 71.

⁸⁴ Slovakia, Zákon č. 48/2002 o pobyte cudzincov a o zmene a doplnení niektorých zákonov, 13 December 2001.

⁸⁵ Slovakia, Zákon č. 480/2002 o azyle a o zmene a doplnení niektorých zákonov, 20 June 2002.

⁸⁶ Slovakia, Zákon o pobyte cudzincov a o zmene a doplnení niektorých zákonov 404/2011, 21 October 2011. Art. 58.

⁸⁷ Information was confirmed by the representative of the Migration Office of the Ministry of the Interior on 17.02.2014 by phone.

⁸⁸ Information was confirmed by the representative of the Migration Office of the Ministry of the Interior on 17.02.2014 by phone.

⁸⁹ Personal communication via e-mail on 08.02.2008. Information was confirmed by the Ministry of Justice on 18.02.2010 and by county and district courts on 17.02.2014.

judicial statistics do not provide specific data on the type of discrimination claimed. Slovak courts are obliged to publish judicial decisions through internet; however, this court cases register contains various categories of judgements from civil law, trade law, family law, administrative law and criminal law, however, there are no categories referring to discrimination, not to mention discrimination of LGBT community members. 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.⁹⁰ Members of the LGBT community were interviewed and they also confirmed that during the years 2000-2013, there were no judicial proceedings claiming protection against discrimination based on sexual orientation.⁹¹

⁹⁰ Information was confirmed by the County and district courts on 17.02.2014..

⁹¹ Information was confirmed by a member of the LGBT community in February 2014.

C. Asylum and subsidiary protection

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

Asylum procedure is regulated by the Act on Asylum⁹². 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.⁹³

Besides these conditions, the Ministry of the Interior can grant asylum for **humanitarian reasons without proving existence of any reason stated above**.⁹⁴ 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.⁹⁵

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.⁹⁶

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.⁹⁷ 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.⁹⁸ None of the respective authorities monitor the **reasons** for asylum seeking by the applicants.

⁹² Slovakia, Zákon č. 480/2002 o azyle a o zmene a doplnení niektorých zákonov, 20 June 2002.

⁹³ Slovakia, Zákon č. 480/2002 o azyle a o zmene a doplnení niektorých zákonov, 20 June 2002. Art. 8, .

⁹⁴ Slovakia, Zákon č. 480/2002 o azyle a o zmene a doplnení niektorých zákonov, 20 June 2002. Art. 9.

⁹⁵ Slovakia, Zákon č. 480/2002 o azyle a o zmene a doplnení niektorých zákonov, 20 June 2002. Art. 19a (4).

⁹⁶ 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 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. Information was confirmed on 17.02.2014.

⁹⁷ Information was confirmed by the Migration Office of the Ministry of the Interior on 17.02.2014.

⁹⁸ Statistics of the Migration Office of the Ministry of the Interior are available at: <http://www.minv.sk/?statistiky-20> (18.02.2014).

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 Interior⁹⁹ 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 of 18.¹⁰⁰

‘Spouse’ of a refugee is meant to be a marital partner of opposite sex. This interpretation is based on Family Law¹⁰¹ 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.

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.¹⁰²

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.¹⁰³ 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.¹⁰⁴ The first obstacle to apply this definition

⁹⁹ Information was received by phone interview on 18.02.2010 and confirmed by phone interview on 17.02.2014.

¹⁰⁰ Slovakia, Zákon č. 480/2002 o azyle a o zmene a doplnení niektorých zákonov, 20 June 2002. Art. 10,

¹⁰¹ Slovakia/zákon 36/2005 (19.01.2005).

¹⁰² Art. 31a. Slovakia, Zákon č. 480/2002 o azyle a o zmene a doplnení niektorých zákonov, 20 June 2002 (20.06.2002).

¹⁰³ Contributions received from GEG members, gathered by the European Commission.

¹⁰⁴ Article 116, Slovakia/zákon 40/1964 (26.02.1964).

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 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.¹⁰⁵

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 2013 – there are no such statistics¹⁰⁶ and the Migration Office has not dealt with such a case.¹⁰⁷

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.¹⁰⁸

¹⁰⁵ Art. 31a. Slovakia, Zákon č. 480/2002 o azyle a o zmene a doplnení niektorých zákonov, 20 June 2002.

¹⁰⁶ <http://www.minv.sk/?statistiky-20> (18.02.2014).

¹⁰⁷ Information provided by the representative of the Migration Office of the Ministry of the Interior on 18.02.2010, confirmed on 17.02.2014.

¹⁰⁸ Information provided by the representative of the Ministry of Justice on 18.02.2010, verified in the database of the court decision run by the Ministry of Justice on 16.02.2014.

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 Aliens a temporary residence permit is granted for the sake of family reunification¹⁰⁹ to:

- Family members of a third country residence with a temporary residence permit or a permanent residence permit,
- Relative in direct ascending line of the refugee under age of 18, or
- Dependant person pursuant to international treaty.

A family member of a third country citizen is:¹¹⁰

- a spouse if both of them are above the age of 18,
- an unmarried child under the age of 18 of a third country residence and his/her spouse,
- his/her unmarried child under the age of 18,
- unmarried child of his/her spouse under the age of 18,
- a dependant unmarried child above the age of 18 or dependant unmarried child above the age or 18 of his/her spouse, who is unable to take care of himself/herself due to long-term unpleasant health state,
- his/her parent or a parent of his/her spouse, who is dependent on his/her treatment, and who is not gaining adequate family support in his/her country of origin.¹¹¹

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 forces¹¹². 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;¹¹³ only children of LGBT individuals can enjoy advantages of temporary residence in Slovakia.

D.2. Refugees

Pursuant to the Asylum Act¹¹⁴ 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

¹⁰⁹ Article 27, Slovakia, The Act on Residence of Aliens (Zákon o pobyte cudzincov) 404/2011, 21 October 2011).

¹¹⁰ Article 2 paragraph 5, Slovakia, The Act on Residence of Aliens (Zákon o pobyte cudzincov) 404/2011, 21 October 2011).

¹¹¹ Art. 27. Slovakia/zákon 404/2011 (21.10.2011) .

¹¹² 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).

¹¹³ Article 2 and 27, Slovakia, The Act on Residence of Aliens (Zákon o pobyte cudzincov) 404/2011, 21 October 2011).

¹¹⁴ Slovakia/zákon 480/2002 (20.06.2002).

- 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.¹¹⁵

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 temporary or permanent residence permit. The conditions that must be fulfilled under this provision¹¹⁶ 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.

¹¹⁵ Art. 31a. Slovakia/zákon 480/2002 (20.06.2002).

¹¹⁶ Art. 27, Slovakia, The Act on Residence of Aliens (Zákon o pobyte cudzincov) 404/2011, 21 October 2011).

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.¹¹⁷ The same applies to case law. Efforts to obtain case law is further explained in Annex I.

¹¹⁷ Information was confirmed by the Migration Office on 17.02.2014.

E. Freedom of assembly

The right to freedom of assembly is guaranteed by Article 28 of the Constitution of the Slovak Republic.¹¹⁸ Conditions for exercising this right are set forth in the Act on the Right to Assembly.¹¹⁹ 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.¹²⁰

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).¹²¹ 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.¹²²

Any person violating a legally called assembly can face a minor offence procedure according to the Act on Assembly. If any person shall infringe 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.¹²³

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

¹¹⁸ Slovakia, Act No. 460/1992 Coll. Constitution of the Slovak Republic (Zákon č. 460/1992 Zb. Ústava Slovenskej republiky), 01 September 1992, available at: http://www.epi.sk/8056/Ustava-Slovenskej-republiky-Obsah--Constitution-of-the-Slovak-Republic-Content_45065.aspx

¹¹⁹ Slovakia/zákon 84/1990 (27.03.1990).

¹²⁰ Art. 10, Slovakia/zákon 84/1990 (27.03.1990)..

¹²¹ Art. 10, Slovakia/zákon 84/1990 (27.03.1990).

¹²² Art. 6, Slovakia/zákon 84/1990 (27.03.1990).

¹²³ Art. 195 of the Criminal Code.

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.¹²⁴ 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. There was a Rainbow Pride in Bratislava in May 2010 and then each year until 2013, in 2013 there was a Rainbow Pride also in Kosice.¹²⁵

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. Based on the unofficial information of a representative of the LGBT community, there were no other assemblies in 2008 and 2009, but there were Prides in 2010 – 2013. The aim of the Rainbow Prides was to give attention to the community of non-heterosexual persons, to get closer different groups of people regardless of their sexual orientation and gender identity and to equalize members of LGBT community with majority.¹²⁶

There were little information and data available concerning demonstrations against tolerance for LGBT individuals until 2010. 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, 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. Nevertheless, agendas hostile towards LGBT individuals can be found on programmes of illegal or semi-legal meetings of ultra-right-wing 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.¹²⁷ Despite posters stating that ‘homosexuals have no rights’, this march was not banned.

Since 2010 there are ‘Marches for family’ as an opposite to the Rainbow Prides. Participants of the Marches for family refused Gay Prides and homosexual relationships as such. They were chanting slogans against homosexuals and some of the posters were saying “homosexual marriages – moral decline of society”.¹²⁸

There are no official reports of physical 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, but also openly in Marches for family.¹²⁹ Each of the Rainbow Pride during 2010 – 2013 was guarded by police and accompanied by radicals, whose occasional attacks were subdued by police.¹³⁰ The issue of homosexual partnership raised also during presidential campaign at the beginning of

¹²⁴ Interview with a member of LGBT community.

¹²⁵ <http://www.duhovypride.sk/en/> (18.02.2014).

¹²⁶ Interview with a member of the LGBT community on 08.03.2010.

¹²⁷ Sme daily (2013), ‘Protestný pochod proti homosexuálom bol riadne ohlásený’, 18. March 2013, available at: <http://www.sme.sk/c/3303573/protestny-pochod-proti-homosexualom-bol-riadne-ohlaseny.htm>

¹²⁸ Aktuality.sk (2010) VIDEO: Pochod za rodinu, proti Gay Pride, 15 May 2010, available at:

<http://www.aktuality.sk/clanok/163462/video-pochod-proti-gay-pride/>

¹²⁹ See, for instance: Queer Leaders Forum Blog, available at: <http://qlf.blog.sme.sk/>

¹³⁰ Sme daily (2010), ‘Dúhový pochod stopli extrémisti’, 22 May 2010, available at: <http://www.sme.sk/c/5387434/duhovy-pochod-stopli-extremisti.html>

2014. Most of the presidential candidates expressed open support to March for family as an opposite to the Rainbow Pride.¹³¹

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 media monitoring, and responses of eight county cities to requests of information filed by the author of this study.¹³²

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,¹³³ judicial statistics do not provide specific data on the type of discrimination claimed.¹³⁴ Furthermore, Slovak courts are obliged to publish judicial decisions through internet; however, there is no special category of judgements on discrimination of LGBT community members.¹³⁵

¹³¹Sme daily (2014) 'Ľišli by ste radšej na Pride alebo na Pochod za rodinu? (prezidentská anketa)', 21 January 2014, available at: <http://www.sme.sk/c/7075244/isli-by-ste-radsej-na-pride-alebo-na-pochod-za-rodinu-prezidentska-anketa.html#ixzz2usabfKsU>

¹³² Information was confirmed by a member of the LGBT community on 20.02.2014.

¹³³ Personal communication via e-mail on 08.02.2008, confirmed by county and some District courts on 17.02.2014.

¹³⁴ Information was confirmed by the Ministry of Justice on 18.02.2010, by county and some District courts on 17.02.2014.

¹³⁵ <http://www.justice.gov.sk/Stranky/Sudne-rozhodnutia/Sudne-rozhodnutia.aspx> (19.02.2014).

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 Code¹³⁶. 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
- an individual or a group of people for their race, nationality, skin colour, ethnicity, lineage, due to its confession or due to its lack of confession,

shall be liable to imprisonment for one year to three years.’

Art. 423 paragraph 2 of the Criminal Code stipulates stricter punishment in case of certain aggravating circumstances, including a “special motive”. Amendment of the Criminal Code of 2013 widened list of special motives in Article 140 (f).¹³⁷ A special motive shall be applied on crime if it is committed due to national, ethnic or race hatred, hatred due to skin colour, hatred due to sexual orientation.

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, lineage or their religion, 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.’

A special motive pursuant to above mentioned Art. 140 (f) can be applied and thus increase the punishment up to two to six years of imprisonment.

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.’

A special motive can be applied as well and thus increase the punishment up to six months to three years.

¹³⁶ Slovakia/zákon 300/2005 (20.05.2005).

¹³⁷ Slovakia, Zákon 204/2013, ktorým sa mení a dopĺňa zákon č. 300/2005 Z. z. Trestný zákon v znení neskorších predpisov a o zmene a ktorým sa menia a dopĺňajú niektoré zákony (25.06.2013).

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.’

LGBT individuals can be specifically protected from hate speech by applying “a special motive” on the crime, which also includes hatred due to sexual orientation. Applying special motive can increase the punishment for such a crime. Thus LGBT individuals can be also protected 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.¹³⁸ 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.¹³⁹

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 official data on plaintiffs and merits of the cases. The statistics refer to general information on the number of defamation cases.¹⁴⁰

F.2. Homophobic motivation of crime

General provisions of the Criminal Code encompass general rules on crimes, including various types of aggravating circumstances or other so called special conditions that allow more moderate or more

¹³⁸ Slovakia/zákon 40/1964 (26.02.1964)

¹³⁹ K. Knap, J. Švestka, O. Jehliška, P. Pavlík, V. Plecítý (1996) *Ochrana osobnosti podle občanského práva*, Praha: Linde, pp. 265-266.

¹⁴⁰ Slovakia, Ministry of Justice (2014) Court Statistics, available at: <http://www.justice.gov.sk/h.aspx?pg=r30&htm=http://www.justice.gov.sk/stat/09/index.htm> (15.02.2014).

stringent punishment of criminals. Special provisions provide for definitions of respective crimes. Crimes against LGBT individuals (based on their sexual orientation) are 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 in its general provisions also recognises so called 'special motives' which are used to define more serious actions of relevant crimes. Among them there are national, ethnic or racial hatred, hatred due to skin colour and hatred due to sexual orientation (Art. 140 of the Criminal Code) – which was added by amendment to the Criminal Code in 2013.¹⁴¹ Applying a special motive can increase the punishment also in cases of crimes against LGBT community members..

Before amendment to the Criminal Code of 2013, crimes against LGBT individuals were covered mostly by other general provisions of the Criminal Code. There were certain circumstances when attacks due to sexual orientation could be considered as more severe, especially if they could 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 made it more difficult to seek fair satisfaction and remedy for a victim of such crime. After amendment to the Criminal Code LGBT individuals can be protected more effectively.¹⁴²

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.¹⁴³ 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 2008 and 2009, nor in 2010 - 2013. The General Prosecution Office of the Slovak Republic does not keep separate information regarding homophobic hate speech.¹⁴⁴

Some of the attacks against LGBT individuals might be judged as minor- offences in accordance with the Act on Minor Offences¹⁴⁵ like harm to honour by insulting or ridiculing, threat to health, or threat with harm to health. 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.

¹⁴¹ Slovakia, The amendment to the Criminal Code (zákon, ktorým sa mení a dopĺňa Trestný zákon) 204/2013 (25. June 2013).

¹⁴² Slovakia, Zákon 204/2013, ktorým sa mení a dopĺňa zákon č. 300/2005 Z. z. Trestný zákon v znení neskorších predpisov a o zmene a ktorým sa menia a dopĺňajú niektoré zákony (25.06.2013).

¹⁴³ Slovakia, General prosecution (2014) 'Statistics of General prosecution', available at: , <http://www.genpro.gov.sk/statistiky-12c1.html> (09.02.2014).

¹⁴⁴ <http://www.genpro.gov.sk/statistiky-4801/43441s> (08.03.2010).

¹⁴⁵ Slovakia/zákon 372/1990 (28.08.1990) (Zákon č. 372/1990 Zb. o priestupkoch v znení neskorších predpisov).

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)]¹⁴⁶ 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’.¹⁴⁷ Another member of CDM, Peter Muransky (Member of Parliament) stated: ‘In my opinion, homosexuality is social exhibitionism’.¹⁴⁸

Generally, the worst statements have been made by Jan Slota, the former 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 paedophiles. He has also mentioned a ‘disgusting sexual orgy’ when talking about LGBT individuals. These publicly resented statements were cited by media¹⁴⁹ but they are also mentioned on the official web page of the Slovak National Party.¹⁵⁰

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’.¹⁵¹ SNCHR has issued a statement (12.03.2007) observing that the statement of Gabura does not represent a violation of the Anti-discrimination Act¹⁵² 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.¹⁵³ There were no other official statements issued by SNCHR regarding hate speech by public officials.

In recent years (2011 – 2013) more politicians expressed in public their opinion on homosexuals. Those expressions were usually reaching the point of hate speech pursuant to Criminal Code, nevertheless they are clearly considering homosexual orientation as threat to “traditional” family. E.g. Jozef Miklosko, member of Parliament (Christian-Democratic Movement) said that propagation of homosexual life style is not right and that he would not like to see his children and grandchildren participating at Rainbow Pride. He also expressed his dislike towards possibility of adoption of children or teaching at schools by homosexuals.¹⁵⁴ Similar opinions expressed another member of Parliament and former leader of Christian-Democratic Movement Pavol Hrusovsky, who said that “*marriage of two men and two women is not natural and I cannot imagine such a “family” to raise children. And I am very sorry that in this topic are “human rights” used as a line of reasoning.*”¹⁵⁵

¹⁴⁶ Praca (18.08.2000), http://www.ganymedes.info/qarchiv_2002/blackbox/vyroky.html (07.02.2008). <http://diskriminacia.sk/sexualna-orientacia/historia/> (19.02.2014)

¹⁴⁷ Praca (18.08.2000), http://www.ganymedes.info/qarchiv_2002/blackbox/vyroky.html (07.02.2008). <http://diskriminacia.sk/sexualna-orientacia/historia/> (19.02.2014)

¹⁴⁸ Praca (01.03.2001), http://www.ganymedes.info/qarchiv_2002/blackbox/vyroky.html (07.02.2008).

¹⁴⁹ http://spravy.pravda.sk/slotov-luxus-jachta-lietadlo-aj-vila-dv5-/sk_domace.asp?c=A090531_163000_sk_domace_p29 (18.02.2014)

¹⁵⁰ <http://www.sns.sk/aktuality/slota-v-relacii-tv-markiza-sito/> (18.02.2014).

¹⁵¹ <http://www.sns.sk/aktuality/slota-v-relacii-tv-markiza-sito/> (18.02.2014).

¹⁵² Slovakia, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination (Antidiscrimination Act) as amended (*Zákon č. 365/2004 Z.z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou*), 24 June 2004

¹⁵³ Available at <http://www.snslp.sk/#page=1564> (19.02.2014).

¹⁵⁴ Sme daily (2012) Aktivisti pochodovali proti pochodu homosexuálov, 26 May 2012, available at: <http://bratislava.sme.sk/c/6392380/aktivisti-pochodovali-proti-pochodu-homosexualov.html#ixzz2uENSszF7>

¹⁵⁵ Postoy.sk (2013) Anketa: Čo si myslia prezidentskí kandidáti, 16 September 2013, available at: http://www.postoy.sk/pochod_za_zivot_gay_pride_prezidentski_kandidati.

More candidates for a president office (elections are on March 2014) expressed their opinion that homosexual pairs should not have right to adopt children.¹⁵⁶ Despite of these examples of hate speech there were no criminal prosecutions and / or no politicians charged with a criminal sanctions.¹⁵⁷

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.¹⁵⁸

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 request¹⁵⁹ judicial statistics do not provide specific data on the type of discrimination claimed. Slovak courts are obliged to publish judicial decisions through internet, including criminal law cases, but this database does not provide any judgements in discrimination cases.¹⁶⁰

¹⁵⁶ Postoy.sk (2013) Anketa: Čo si myslia prezidentskí kandidáti, 16 September 2013, available at: http://www.postoy.sk/pochod_za_zivot_gay_pride_prezidentski_kandidati.

¹⁵⁷ Information provided by LGBT community member on 20.02.2014.

¹⁵⁸ Information was confirmed on 18.02.2010.

¹⁵⁹ Personal communication via e-mail on 08.02.2008. Information was confirmed on 18.02.2010 and on 14.02.2014 by county and some District courts.

¹⁶⁰ Slovakia, Ministry of Justice (2014) 'Database of Court Decisions', available at: <http://www.justice.gov.sk/Stranky/Sudne-rozhodnutia/Sudne-rozhodnutia.aspx>. (14.02.2014)

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 Act¹⁶¹ 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.¹⁶² The latest significant amendment of the Anti-discrimination Act of February 2008¹⁶³ 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,¹⁶⁴ 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.¹⁶⁵ 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.¹⁶⁶

The amendment to the Act on Name and Surname adopted in November 2008¹⁶⁷ 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.¹⁶⁸ Despite of the fact that the law uses a term ‚shall permit‘, the 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.¹⁶⁹

¹⁶¹ Slovakia, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination (Antidiscrimination Act) as amended (*Zákon č. 365/2004 Z.z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou*), 24 June 2004

¹⁶² Slovakia, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination (Antidiscrimination Act) as amended (*Zákon č. 365/2004 Z.z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou*), Article 2a, Paragraph 11, 24 June 2004

¹⁶³ Slovakia, Act No. 85/2008 Coll. amending Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination (Antidiscrimination Act) as amended (*Zákon č. 365/2004 Z.z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou*), 14 February 2008

¹⁶⁴ Slovakia/zákon 300/1993 (24.09.1993).

¹⁶⁵ Art. 7. Slovakia/zákon 300/1993 (24.09.1993).

¹⁶⁶ Annex, Item 19. Slovakia/zákon 145/1995 (22.06.1995).

¹⁶⁷ Slovakia/zákon 564/2008 (28.11.2008).

¹⁶⁸ Article 6 paragraph 6, Slovakia/zákon 300/1993 (24.09.1993).

¹⁶⁹ Article 13a, Slovakia/zákon 300/1993 (24.09.1993).

There was a draft law¹⁷⁰ in the Parliament (National Council of the Slovak Republic), proposing amendment to the Act on Name and Surname.¹⁷¹ The draft law was submitted by a Member of Parliament and its purpose was to guarantee that all official documents issued before the change of name of a person should be changed accordingly with the name change. These documents were intended to include school certificates, permits and other administrative decisions, and other necessary documents. The draft law was accepted in the first reading in the Parliament, however it was later decided that the amendment will not proceed to further procedure and was not adopted.¹⁷²

G.2. Change of identification number

According to the Act on Identification Number¹⁷³, 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.¹⁷⁴

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.). It is the responsibility of an interested individual to inform relevant authorities.¹⁷⁵

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 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.¹⁷⁶

The same applies to legislation dealt with in remainder of this study. Apart from the Anti-discrimination Act¹⁷⁷, 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 2008¹⁷⁸ extended the protection of transgender individuals

¹⁷⁰ <http://www.nrsr.sk/Default.aspx?sid=zakony/zakon&MasterID=3273> (17.02.2014).

¹⁷¹ Slovakia/zákon 300/1993 (24.09.1993).

¹⁷² <http://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=3273>

¹⁷³ Slovakia/zákon 301/1995 (14.12.1995).

¹⁷⁴ Art. 9. Slovakia/zákon 301/1995 (14.12.1995).

¹⁷⁵ Article 10 and 11, Slovakia/zákon 224/2006 (16.03.2006), Article 22 Slovakia/zákon 580/2004 (21.10.2004), Article 235 Slovakia /zákon 461/2003 (30.10.2003)

¹⁷⁶ 18.02.2014

¹⁷⁷ Slovakia, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination (Antidiscrimination Act) as amended (*Zákon č. 365/2004 Z.z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou*), 24 June 2004.

¹⁷⁸ Slovakia, Act No. 85/2008 Coll. amending Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination (Antidiscrimination Act) as amended (*Zákon č. 365/2004 Z.z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou*), 14 February 2008.

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.¹⁷⁹

Slovak law is silent concerning consequences of gender operation leading to a change of the sex of a person. For example, the Slovak Family Act¹⁸⁰ 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. Therefore according to Slovak law, such couple should be divorced, though the law does not explicitly says so.¹⁸¹ 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 fulfil 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.

As far as the author of this study is informed, there were no marches or assemblies of transgender individuals in the observed period till 2009. Since 2010 The LGBT community organises a Rainbow Pride annually as a march for LGBT equalisation, i.e. including transgender individuals. The first Rainbow Pride took place in May 2010 in Bratislava¹⁸² and then it was repeated till 2013, when it was held also in Kosice. 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.¹⁸³ 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.¹⁸⁴

¹⁷⁹ Article 2a paragraph 11, 365/2005 (19.01. 2005).

¹⁸⁰ Slovakia/zákon 36/2005 (19.01.2005).

¹⁸¹ Article 1 and Article 22, Slovakia, Family Act (zákon o rodine) 36/2005, 19.01.2005.

¹⁸² <http://www.duhovypride.sk/en/> (17.02.2014).

¹⁸³ Information was confirmed by the Statistics Office of the Slovak Republic on 19.02.2014.

¹⁸⁴ L. Sobotová (2007) 'Zmena mena', in: SME ženy (02.01.2007). Available at:

<http://zena.sme.sk/c/3076717/Zmena-mena.html> (18.02.2014).

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.¹⁸⁵ The same applies to case law, as further explained in Annex I.

¹⁸⁵ Information was confirmed by the Statistics Office of the Slovak Republic on 08.03.2010 and by the National Centre of Medical Information on 17.02.2014.

H. Status of 'intersex' persons

H.1. Status of intersex persons in national legislation

Intersex people are not specified under national non-discrimination legislation nor in legal cases/jurisprudence or in non-discrimination policies. Discrimination on ground of 'intersex' is not covered by the law.

Intersex discrimination is not explicitly mentioned in non-discrimination law. The Anti-discrimination Act provides that equal treatment means discrimination on ground of gender. Nevertheless, the Anti-discrimination Act provides for protection against discrimination based on 'other status' and thus its provisions can be applied on the protection of intersex persons accordingly.¹⁸⁶

The Anti-discrimination Act stipulates that discrimination on the ground of sexual orientation is prohibited.¹⁸⁷ The Anti-discrimination Act provides for protection from discrimination due to sex, lineage or any other status. The Act stipulates that discrimination due to sex is a discrimination due to pregnancy or maternity, as well as a discrimination due to sexual or gender identification.¹⁸⁸ There is no relevant case law so far.¹⁸⁹

It is not possible that children remain without a gender marker on their birth certificates in Slovakia. The Act on Registers stipulates that gender identification is obligatory information on birth certificate. The information shall be provided to the registry within three working days (by the medical doctor or parents of a child). Only mother of the child can provide information to the registry after the stipulated time limit (the time limit for mother is not specified).¹⁹⁰

H.2. Surgical and medical interventions

Surgical and medical interventions on intersex people are not explicitly regulated by legislation in Slovakia. But such interventions may be executed¹⁹¹ since these are not prohibited and the Constitution stipulates that everybody can act in a way that is not prohibited by the law.¹⁹²

The law stipulates that surgical / medical change of sex (gender) is a medical category and if such an intervention is executed abroad, relevant health insurance company shall provide approval in order to cover the expenses.¹⁹³

Change of gender identity is not regulated by the law. The law only regulates change of name¹⁹⁴ and

¹⁸⁶ Slovakia, Anti-discrimination Act (Antidiskriminačný zákon), 365/2004, 20.05.2004.

¹⁸⁷ Art. 2 Slovakia, Anti-discrimination Act (Antidiskriminačný zákon), 365/2004, 20.05.2004.

¹⁸⁸ Art. 2a paragraph 11(a) Slovakia, Anti-discrimination Act (Antidiskriminačný zákon), 365/2004, 20.05.2004.

¹⁸⁹ The information based on phone calls with District and County Courts and on the database of judgements operated by the Ministry of Justice available at <http://www.justice.gov.sk/Stranky/Sudne-rozhodnutia/Sudne-rozhodnutia.aspx> (17.02.2014).

¹⁹⁰ Art. 19 paragraph 1 (d) Slovakia, Birth Registry Act (zákon o matrikách), 154/1994, 27.05.1994.

¹⁹¹ Information sustained by the representative of the National Centre of Medical Information on a phone call on 19.02.2014.

¹⁹² Art. 2 paragraph 3 Slovakia, The Constitution of the Slovak Republic (Ústava Slovenskej republiky) 460/1992, 01.09.1992.

¹⁹³ Annex Slovakia, Ministry of Health Decree (Vyhláška Ministerstva zdravotníctva) 341/2013, 23.10.2013.

¹⁹⁴ Art. 6 paragraph 6 Slovakia, The Act on Name and Surname (zákon o mene a priezvisku), 300/1993, 24.09.1993.

birth identification number¹⁹⁵ due to change of sex.

There is no relevant legislation providing special conditions of medical interventions of intersex people.¹⁹⁶

There are only very general, short and superficial procedures that can apply on transgender people. In order to perform surgical / medical interventions consent of experts is inevitable. Each transgender person must undergo two-years process and during that time experts must sustain that he/she is not a homosexual, schizophrenic or is not handicapped by any other disorder. Exclusion of homosexuality of such person is a precondition of such surgery.¹⁹⁷ The law does not provide any more details and there are not data available publicly on this issue.

There is only general legislation regulating requirements of fully informed consent, it does not mention surgical / medical interventions on intersex people.¹⁹⁸ Before informative consent is given a patient must be informed about purpose, character, consequences and risks of respective healthcare procedures. A patient must be informed about possibilities to choose proposed procedures and about risks in case of refusal of such healthcare. Information must be provided by the respective medical worker (the law does not explicitly stipulates it must be a doctor). Information must be provided in clear and comprehensible way, without any pressure and a patient must be given sufficient time period to take a decision. Informative consent must be in written in case of intensive intervention in total or local anaesthesia. Informative consent is given by a patient or his/her legitimate representative. If a legitimate representative refuses to provide informative consent and a patient is incapable and ineligible to provide such consent, the court must decide before the medical intervention is applied. Informative consent can be withdrawn by its author.¹⁹⁹

¹⁹⁵ Art. 8 Slovakia, The Act on Birth Number (zákon o rodnom čísle), 301/1995, 14.12.1995.

¹⁹⁶ Information based on phone call to National Centre of Medical Information on 19.02.2014.

¹⁹⁷ www.pluska.sk/plus-7-dni/zahranicie/pri-zmene-pohlavia-preplacaju-liecbu-plasticke-operacie-zdravotne-poistovne.html (21.09.2013).

¹⁹⁸ Article 6 Slovakia, The Health Care Act (zákon o zdravotnej starostlivosti), 576/2004, 21.10.2004.

¹⁹⁹ Article 6 Slovakia, The Health Care Act (zákon o zdravotnej starostlivosti), 576/2004, 21.10.2004.

I. Miscellaneous

Legislative and judicial research showed that there are hardly any provisions or good practices towards LGBT individuals. Nevertheless, since 2010 the situation has significantly changed in criminal protection of LGBT community members as well as in recognising a “partner” as a member of family of an EU citizen of which such a partner is allowed to enter Slovak territory (this provision is applicable only on non-Slovak citizens and only if one of the partners is an EU citizen). In other areas the situation is more or less the same.

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 until 2010.²⁰⁰

Freedom and Solidarity was the only political party promoting legislative establishing of homosexual partnership.²⁰¹ The party proposed a draft of an Act on registered partnerships by the end of 2012, however, this proposal was approved only by 14 members of Parliament and the law was rejected.²⁰²

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 2002.²⁰³ 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

²⁰⁰ H. Fábry (2007) ‘Diskriminácia gejev a lesieb – existuje?’ Available at: <http://www.lesba.sk/view.php?cisloclanku=2007011801> (14.01.2008).

²⁰¹ SaS (2012) Volebný program SaS pre budúce generácie. Available at: <http://www.strana-sas.sk/file/1376/Program%20SAS%2025.02.2012.pdf>

²⁰² TA3 (2012) ‘Registrované partnerstvá nebudú, SaS poslancov nepresvedčila.’ 6 November 2012, available at: <http://www.ta3.com/clanok/1009013/registrovane-partnerstva-nebudu-sas-poslancov-nepresvedcila.htm> (18.02.2014)

²⁰³ M.Šípošová, P. Jójart, A. Daučíková (2002) Správa o diskriminácii lesbických žien, gejev, bisexuálov a bisexuálok na Slovensku, Bratislava: Q archív.

45 per cent would support the idea of institutionalised registered partnership and 41 per cent would oppose such idea. Sixteen per cent of respondents had no opinion on the issue.²⁰⁴ 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.

²⁰⁴ <http://www.diskriminacia.sk/?q=node/958> (08.03.2010)

J. Good practice

There are only few examples of good practices in Slovak legislation concerning the rights of LGBT individuals.²⁰⁵ Among them there was the latest amendment of the Anti-discrimination Act²⁰⁶, which was approved on 14.02.2008²⁰⁷ 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 was 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 prohibited 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.²⁰⁸

Among other positive steps there was an amendment of the Criminal Code in 2013 which incorporated hatred based on sexual orientation among motives of crimes, which can be considered as an aggravating circumstances and punished by more severe punishment.²⁰⁹

New Act on Residence of Aliens²¹⁰ is also important – it now recognises a “partner” to be a family member of an EU citizen, and thus such a person is allowed to enter Slovak territory.

In 2012 there was created *Výbor pre práva LGBTI osôb* [The Committee for the rights of LGBTI persons] as a permanent expert body for the Governmental Council for human rights, national minorities and gender equality. It should be proposing legislative drafts to increase protection of the rights of LGBT persons, monitoring and preparing reports on discrimination based on sexual orientation and gender identity in Slovakia.²¹¹

As to general understanding of ‘good practice’ – the above mentioned legal updates and other practices can hardly to be considered going above EU standards. They are innovative only in terms of Slovak realities. It must be underlined that beneficiaries and/or stakeholders are involved in the design, planning, review, assessment and implementation only in a very limited way.

²⁰⁵ As stated in Chapter H, there is no case law regarding discrimination based on sexual orientation.

²⁰⁶ Slovakia, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination (Antidiscrimination Act) as amended (Zákon č. 365/2004 Z.z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou), 24 June 2004

²⁰⁷ Slovakia, Act No. 85/2008 Coll. amending Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination (Antidiscrimination Act) as amended (Zákon č. 365/2004 Z.z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou), 14 February 2008

²⁰⁸ Articles 9 to 12, Slovakia, The Anti-Discrimination Act (Antidiskriminačný zákon), 365/2004, 20.05.2004

²⁰⁹ Slovakia, Zákon 204/2013, ktorým sa mení a dopĺňa zákon č. 300/2005 Z. z. Trestný zákon v znení neskorších predpisov a o zmene a ktorým sa menia a dopĺňajú niektoré zákony (25.06.2013).

²¹⁰ Slovakia, Zákon o pobyte cudzincov a o zmene a doplnení niektorých zákonov 404/2011, 21 October 2011.

²¹¹ Slovakia, Office of Government (2013) *Štatút rady vlády pre práva LGBTI osôb*, available at: <http://www.justice.gov.sk/Stranky/Ministerstvo/Vybor%20pre%20prava%20LGTBI%20osob/Uvod.aspx> (20.02.2014)

Annex 1 –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 request²¹², 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 were obliged to publish certain judicial decisions through internet till the end of 2011; however, this court cases register was limited only to some civil cases and trade law cases. Criminal law cases or administrative law cases were not obligatorily published. The scope of published case law was limited by the ministerial instruction of the Ministry of Justice of the Slovak Republic.²¹³ It is important to highlight that the obligation to publish case law by the courts was established only in 2005 (by the ministerial instruction mentioned in previous sentence).

The Act on Courts was adopted in 2011 and established the obligation to publish almost all judicial decisions on the internet.²¹⁴ The database of the court decisions is accessible via pages of the Ministry of justice.²¹⁵ It does not provide special category on discrimination cases, however it is possible to use full text search in database. Nevertheless, there were not found any cases on protection of rights of LGBT community members.

The courts are now obliged to publish almost all their decisions, but they do not do it properly and many (in some extent most) of the cases are not published.²¹⁶

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.²¹⁷

This information was confirmed by members of the LGBT community. According to their statements during the years 2000-2013, there were no judicial proceedings claiming protection against discrimination based on sexual orientation.²¹⁸ 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.

²¹² Personal communication via e-mail on 08.02.2008. Information was confirmed by the Ministry of Justice on 18.02.2010, and by County and some District Courts on 17.02.2014.

²¹³ Slovakia/inštrukcia 21/2005 (28.11.2005)

²¹⁴ Art. 82/a Slovakia/zákon 757/2004 (09.12.2004)

²¹⁵ Slovakia, Office of Government (2013) *Štatút rady vlády pre práva LGBTI osôb*, available at: <http://www.justice.gov.sk/Stranky/Ministerstvo/Vybor%20pre%20prava%20LGTBI%20osob/Uvod.aspx> (20.02.2014)

²¹⁶ Via Iuris (2013) 'Súdne rozhodnutia nie sú zverejňované.' 19 December 2013, available at: <http://www.viaiuris.sk/aktualne/430-sudne-rozhodnutia-nie-su-zve.html>

²¹⁷ Information was confirmed by the Ministry of Justice on 18.02.2010 and by County and District courts on 17.02.2014.

²¹⁸ Information was confirmed by a member of LGBT community on 08.03.2010 and on 20.02.2014, as well as by SNCHR on 20.02.2014

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

	2010	2011	2012	2013
Complaints filed to the Slovak National Centre for Human Rights concerning discrimination	<u>2</u>	<u>4</u>	<u>2</u>	<u>6</u>

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

Number of demonstrations in favour of tolerance for LGBT individuals,	1	1	1	2
Number of demonstrations against tolerance for LGBT	data not available	data not available	data not available	3 ²¹⁹

²¹⁹ According to media there were three marches for family or for life in Bratislava, Kosice and Povazska Bystrica in September 2013: see, for instance Magnificat Slovakia blog, available at: <http://www.magnificat.sk/2013/09/pochod-zdruzenia-za-rodiny-v-bratislave-bez-policialnej-ochrany/>, Pochod za život invitation, available at: <http://pochodzazivot.sk/program/> and Spoločenstvo svätého Jozefa invitation, available at: <http://ssvj.webnode.sk/news/pozvanka-na-pochod-za-rodinu-v-povazskej-bystrici/>

Table 1: Requirements for rectification of the recorded sex or name on official documents

	Intention to live in the opposite gender	Real life test	Gender dysphoria diagnosis	Hormonal treatment/ physical adaptation	Court order	Medical opinion	Genital surgery leading to sterilisation	Forced/ automatic divorce	Unchangeable	Notes
AT	✓	✓	✓	✓		✓	✗ court decision	✗ court decision		Legal changes expected to confirm court decisions
BE	✓			✓		✓	✓			Rectification of recorded sex
BE	✓			✓		✓				Change of name
BG				?	✓	✓	?	✓	✓ (birth certificate)	Only changes of identity documents are possible (gap in legislation)
CY						✓	✓	?		
CZ	✓	✓	✓	✓		✓	✓	✓		These requirements are not laid down by law, but are used by medical committees established under the Law on Health Care
DE	✓		✓		✓	✓				Small solution: only name change
DE	✓		✓	✓	✓	✓	✓	✗ court decision and law		Big solution: rectification of recorded sex
DK	✓	✓				✓	✓	?		Rectification of recorded sex
DK			✓			✓				Change of name
EE	✓	✓				✓	✓	?		
EL					✓	✓	✓	?		
ES			✓	✓		✓				
FI	✓	✓	✓			✓	✓	✓		Name change possible upon simple notification, also before legal recognition of gender reassignment
FR			✓	✓	✓	✓	✓	✓		Requirements set by case law, legal and medical procedures uneven throughout the country
HU						✓		✓		No explicit rules in place. Requirements descend from praxis, but unclear what is necessary in order to obtain a medical opinion. After 1 January 2011 a marriage can be transformed into a registered partnership
IE									✓ (name change possible by Deed Poll and under Passports Act 2008)	Further changes expected following court case <i>Lydia Foy</i> (2007)
IT			✓	✓	✓	✓	✓	✓		
LT									✓ (personal code)	Legal vacuum due to lack of implementing legislation, courts decide on an ad hoc basis.
LU										No provisions in force, praxis varies.
LV						✓	✓ Change of name is possible after gender reassignment			Medical opinion is based on an intention to live in the opposite gender and on a diagnosis of gender dysphoria. For rectification of the recorded sex, currently the Ministry of Health decides case-by-case (parameters not specified). Amendments to the law were proposed but not adopted.
MT	✓	✓	✓	✓	✓	✓	✓	(only unmarried, divorce not possible)		Requirements unclear, decided by Courts on an ad hoc basis
NL	✓	✓	✓	✓	✓	✓	✓			According to Article 28a of the civil code, the requirement of physical adaptation does not apply if it would not be possible or sensible from a medical or psychological point of view. Changes are

										underway, forced sterilisation might be removed.
PL				✓	✓	✓	✓	✓		No legislation in place, requirements set by court practice
PT	✓		✓	✓	✓	✓	✓			Case-by-case decisions by courts, new act expected
RO				✓	✓	✓	✓			
SE	✓	✓			?	✓	✓	✓		Decision issued by forensic board
SI										No formalities for change of name
SK							✓	?		The relevant state authority (county bureau) shall permit change of name simply upon application accompanied by a confirmation by the medical facility. The question mark stands for lack of legislation.
UK										Change of name requires no formalities
UK	✓	✓	✓			✓		✓		Rectification of the recorded sex

Notes: This is not a table about the requirements for accessing gender reassignment treatment. This means, in particular, that gender dysphoria diagnosis might be in practice required by medical specialists as a pre-condition for a positive opinion. This situation is not captured by this table, which illustrates the conditions for legal recognition of gender reassignment.

✓ = applies; ? = doubt; * = removed; change since 2008

Table 2: Discrimination on grounds of sexual orientation in legislation: material scope and enforcement bodies

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED ²²⁰	All areas of RED*		
AT		✓		✓	Two of nine provinces have not extended protection to all areas covered by RED: Vorarlberg and Lower Austria. Vorarlberg extended protection to goods and services in 2008.
BE			✓	✓	
BG			✓	✓	
CY	✓			✓	
CZ			✓		New anti-discrimination legislation adopted
DE			✓	✓	
DK	✓			✓	New equality body set up
EE	✓			✓	New anti-discrimination legislation adopted
EL	✓			✓	
ES			✓		
FI		✓			
FR	✓			✓	
HU			✓	✓	
IE		✓		✓	
IT	✓				
LT		✓		✓	
LU		✓		✓	
LV		✓		✓	
MT	✓				
NL		✓		✓	
PL	✓				
PT	✓				
RO			✓	✓	
SE			✓	✓	
SI			✓	✓	

²²⁰ Employment discrimination is prohibited in all EU Member States as a result of Directive 2000/78/EC. Directive 2000/43/EC (Racial Equality Directive) covers, in addition to employment and occupation, also social protection (including social security and healthcare), social advantages, education and access to and supply of goods and services which are available to the public, including housing.

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED ²²⁰	All areas of RED*		
SK			✓	✓	
UK			✓	✓	The Equality Act 2010 replicates the sexual orientation protection offered in the Equality Act (Sexual Orientation) Regulations 2007 and the Employment Equality (Sexual Orientation) Regulations 2003 and expands protection in a number of ways. The new Equality Act is expected to enter into force October 2010.
TOTAL	9	7	11	20	

Note: ✓ = Applies; ? = doubt; x = removed; **change since 2008**

Table 3: Discrimination on grounds of gender reassignment or identity in national legislation

Country Codes	Form of “sex” discrimination	Autonomous ground	Dubious/unclear	Comments
AT	✓			Legal interpretation and explanatory memorandum
BE	✓			Explicit provision in legislation or <i>travaux préparatoires</i>
BG			✓	
CY			✓	
CZ	✓			The new Antidiscrimination Act makes reference to ‘gender identification’.
DE			✓	Constitutional amendment proposal by opposition (‘sexual identity’)
DK	✓			Decisions by the Gender Equality Board
EE			✓	The Gender Equality and Equal Treatment Commissioner has dealt with one application and took the view that the Gender Equality Act could apply to ‘other issues related to gender’.
EL			✓	
ES			✓	The Constitutional Court held that gender identity is to be read in among the prohibited grounds of discrimination in Article 14 of the Constitution. Together with the adoption of several regional laws, a trend can be noted towards the protection of gender identity.
FI	✓			Committee for law reform proposes to explicitly cover transgender discrimination in equality legislation.
FR	✓			Case law and decisions by the equality body
HU		✓		
IE	✓			The Employment Equality Act 1998-2004 is interpreted in accordance with the case law of the Court of Justice of the EU.
IT			✓	
LT			✓	
LU			✓	
LV			✓	
MT			✓	
NL	✓			Case law and opinions of the Equal Treatment Commission
PL			✓	
PT			✓	
RO			✓	
SE	✓	✓		Discrimination on grounds of gender reassignment is still considered ‘sex’ discrimination. The new ground ‘transgender identity or expression’ now covers other forms of gender variance, regardless of gender reassignment.
SI			✓	The Act Implementing the Principle of Equal Treatment contains an open clause of grounds of discrimination.
SK	✓		✓	The Act on Anti-discrimination recognises discrimination on the base of sexual orientation, where discrimination due to “sex” also includes discrimination due to sexual and gender identification. There is no special provision protecting gender reassignment.
UK		✓		The Equality Act 2010 replicates the ‘gender reassignment’ protection offered in the Sex Discrimination Act since 1999, but removes the requirement to be under “medical supervision” and expands protection in several ways. The new

Country Codes	Form of "sex" discrimination	Autonomous ground	Dubious/unclear	Comments
				Equality Act is expected to enter into force in October 2010.
TOTAL	10	3	15	

Note: ✓ = applicable; positive development since 2008

Table 4: Criminal law provisions on ‘incitement to hatred’ and ‘aggravating circumstances’ covering explicitly sexual orientation

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
AT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
BE	✓	✓	
BG			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
CY			General provisions could extend to LGBT people.
CZ			New Criminal Code in 2009 contains no explicit recognition of homophobic hate crimes. LGBT could fall under the category ‘group of people’, but as the law entered into force in January 2010 there is no case law yet. The explanatory report of the law also does not define the term.
DE			Hate speech legislation does not explicitly extend to homophobic motive, but extensive interpretation has been confirmed by courts.
DK	✓	✓	
EE	✓		
EL		✓	Article 23 of Law 3719/2008 provides for an aggravating circumstance in cases of hate crime based on sexual orientation.
ES	✓	✓	
FI		✓	According to the pertinent preparatory works, LGBT people could fall under the category ‘comparable group’. A working group has proposed that the provision on incitement be amended to explicitly cover sexual minorities (2010).
FR	✓	✓	
HU			LGBT people could fall under the category ‘groups of society’. Penal Code was amended to include hate motivated crimes against ‘certain groups of society’. Case law has shown this includes the LGBT community.
IE	✓		Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
IT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
LT	✓	✓	Homophobic motivation was included in the list of aggravating circumstances in June 2009.
LU			General provisions could extend to LGBT people.
LV			Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
MT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
NL	✓	✓	The 2009 Public Prosecution Service’s Bos/Polaris Guidelines for Sentencing recommend a 50% higher sentence for crimes committed with discriminatory aspects.
PL			General provisions could extend to LGBT people
PT	✓	✓	
RO	✓	✓	Art. 317 of the Criminal Code sanctions only hate speech as ‘incitement to discrimination’, but includes sexual orientation. Article 369 on incitement to hatred does not mention sexual orientation explicitly, but covers incitement against a ‘category of persons’, without further specification. The new Criminal Code will enter into force on 1 October 2011.
SE	✓	✓	

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
SI	✓		Article 297 of the new Penal Code concerning provoking or stirring up hatred, strife or violence, or provoking other inequality explicitly includes sexual orientation. Homophobic intent is only considered an aggravating circumstance in the case of murder.
SK		✓	Article 140 of the Criminal Code was amended in 2013 incorporating “hatred due to sexual orientation” among so called “special motives”. If a crime is committed with a special motives, such a crime is considered to be harsher, and thus the punishment shall be more severe. “Special motive” is not listed among aggravating circumstances, but its effect is the same.
UK (N-Ireland)	✓	✓	
UK (England & Wales.)	✓	✓	The Criminal Justice and Immigration Act 2008, extending provisions on incitement to racial or religious hatred to cover the ground of sexual orientation, came into force on 23.03.2010. It applies to Scotland as well.
UK (Scotland)	✓	✓	In June 2009, the Offences (Aggravation by Prejudice) (Scotland) Act was passed, entry into force on 24 March 2010, also indicating homo- and transphobic motive as an aggravating circumstance.

Note: ✓= applicable; positive development since 2008

Table 5 - Definition of ‘family member’ for the purposes of free movement, asylum and family reunification

Country Codes	Free movement ²²¹		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
AT		✓		✓		✓	Article 59 of the Registered Partnership Act (BGBl. I, No. 135/2009) modifies Article 9 of the Settlement and Residence Act, which now stipulates that the definition of ‘family member’ includes a registered partner. Article 57 of the Registered Partnership Act modifies Article 2/1 of the Asylum Act [Asylgesetz], which now stipulates that the definition of ‘family member’ includes a registered partner, provided that the registered partnership had already existed in the country of origin. Same-sex spouses are likely to be treated as registered partners.
BE	✓	✓	✓	✓	✓	✓	
BG							Article 7 of the new Family Code (01.10.2009) confirms that marriage is a mutual agreement between a man and a woman.
CY							
CZ		✓		✓		✓	Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DE		✓		✓		✓	Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DK	✓	✓	✓	✓	✓	✓	
EE							The new Family Law Act (entry into force 01.07.2010) defines marriage as a different-sex institution only and considers marriage between persons of the same sex invalid. Family reunification possible when the partner can prove that he/she is economically or socially dependent.
EL							
ES	✓	✓	✓	✓	✓	✓	Organic Law 2/2009 of 11 December (Spain/Ley Orgánica 2/2009 (11.12.2009)) has modified Organic Law 4/2000 in order to grant couples who have an affective relationship similar to marriage the right to family reunification. Implementing regulations to this law have not been adopted, thus the meaning of the requirement that the ‘affective relationship’ be ‘duly attested’ remains to be clarified. Article 40 of the Law 12/2009 of 30 October on the right to asylum and subsidiary protection [del derecho de asilo y de la protección subsidiaria] replaces Law 5/1984 of 26.03.1984 and, by transposing the EU acquis, confirms the notion that a family member includes the de facto partner having an affective relationship similar to marriage.
FI	✓	✓	✓	✓	✓	✓	
FR	?	?	?	?	?	?	As a result of the entry into force on 14.05.2009 of a new Article 515-7-1 of the French Civil Code, inserted by law 2009-526 of 12.05.2009, foreign registered partnerships are recognised in France; the repercussions of this change for the purposes of free movement of EU citizens are still unclear. Family reunification of third country nationals depends upon the authorities’ discretion, which may require additional conditions. No information available on refugees.
HU		✓		✓		?	Entry and residence rights for free movement are also granted for the unmarried <i>de facto</i> partner, subject to conditions.
IE		✓		✓		✓	Adoption of Civil Partnership Act in 2010. Immigration, Residence and Protection Bill not yet enacted, but the government intends to treat registered partners in the same way as spouses.
IT							
LT							
LU		✓		✓		✓	The new law on free movement and immigration (29.08.2008) recognises as a family member a spouse or registered partner provided the conditions set forth in article 4 of the partnership law (09.07.2004) are fulfilled. Rights concerning family reunification and asylum are restricted to registered partnerships. Same-sex spouses are likely to be treated as registered partners.
LV		✓					Article 3.4 of the Cabinet of Ministers Regulation No. 586 on Entry and Residence includes in its definition of family member a person who is a dependant of a Union citizen or his or her spouse and who has shared a household with a Union citizen in their previous country of domicile.
MT							
NL	✓	✓	✓	✓	✓	✓	
PL							
PT	✓	✓	✓		✓		Allows same-sex couples to enter into a marriage since June 2010.
RO		?					The new Civil Code (2009) includes a prohibition of same-sex partnership and marriage, including denial of recognition of partnerships and marriages concluded in other countries.
SE	✓	✓	✓	✓	✓	✓	Allows same-sex couples to enter into a marriage since May 2009.
SI							Provides a legal scheme for registered partnership in domestic law, but without granting entry and residence rights to registered partners
SK	✓	✓	✓		✓		
UK	✓	✓	✓	✓	✓	✓	

²²¹ In the vast majority of the Member States, no clear guidelines are available concerning the means by which the existence either of a common household or of a ‘durable relationship’ may be proven for the purposes of Art. 3 (2) of the Free Movement Directive.

Country Codes	Free movement ²²¹		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
TOTAL	8	15	8	13	8	12	

Note: ✓ = applicable; ? = doubtful/unclear; positive changes since 2008; other developments since 2008.