



SLOVAK NATIONAL  
CENTRE FOR  
HUMAN RIGHTS

# Report on the Observance of Human Rights

Including the Principle of Equal Treatment  
in the Slovak Republic for the year 2021



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**Authors:** Collective of authors of the Slovak National Centre for Human Rights

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**Photos:** Jakub Kováč

**Graphics** Kovidesign

Kamila Černáková

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# Lits of Abbreviations

**Abortion** - induced termination of pregnancy

**Abortion Act** - Act No. 73/1986 Coll. on the Induced termination of pregnancy, as amended

**Act on Compensation for Severe Disability** - Act No. 447/2008 Coll. on Cash benefits for compensation for severe disability, and on amendments and supplements to certain Acts

**Act on Consumer Protection** - Act No. 250/2007 Coll. on Consumer protection, and on amendments to Act No. 372/1990 Coll. of the Slovak National Council on Offences, as amended

**Act on the Centre** - Act No. 308/1993 Coll. on the Establishment of the Slovak National Centre for Human Rights

**Act on the Right of Assembly** - Act No. 84/1990 Coll. on the Right of assembly

**Act on the Use of Languages of National Minorities** - Act No. 417/2021 Coll. amending Act No. 184/1999 Coll. on the Use of languages of national minorities, as amended

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**Advertising Act** - Act No. 147/2001 Coll. on Advertising, and on amendments and supplements to certain Acts

**Amendment to the Abortion Decree** - Decree No. 63/2021 amending Decree No. 74/1986 Coll. of the Ministry of Health of the Slovak Socialist Republic implementing Act No. 73/1986 Coll. of the Slovak National Council on Abortion, as amended

**Anti-Discrimination Act** – Act No. 365/2004 Coll. on Equal treatment in certain areas and on protection against discrimination, and on amendments and supplements to certain Acts (the Anti-Discrimination Act)

**Centre** - Slovak National Centre for Human Rights

**Childbirth Allowance Act** - Act No. 383/2013 Coll. on Childbirth allowance and allowance for multiple children born at the same time, and on amendments and supplements to certain Acts

**CJEU** - Court of Justice of the European Union

**Constitutional Court** - Constitutional Court of the Slovak Republic

**Constitution** - Constitution of the Slovak Republic

**Convention** – European Convention for the Protection of Human Rights and Fundamental Freedoms

**Council of Europe Commissioner** - Council of Europe Commissioner for Human Rights

**Decree 77 of the Public Health Authority** - Decree 77 of the Public Health Authority of the Slovak Republic imposing measures to restrict the operation of establishments and mass events in the case of a public health threat

**Decree No. 226/2021 GJ** - Decree No. 226/2021 Government Journal of the Public Health Authority of the Slovak Republic imposing measures in the case of a threat to public health, related to quarantine obligations of persons after they have entered the territory of the Slovak Republic

**Decree on Abortion** - Decree No. 74/1986 Coll. implementing the Slovak National Council Act No. 73/1986 Coll. on Abortion, as amended

**Decrees** - Decrees of the Public Health Authority of the Slovak Republic issued due to the COVID-19 pandemic

**Directive on the reduction of the impact of plastic products on the environment** - Directive 2019/904 of the European Parliament and of the Council of 5 June 2019 on the Reduction of the impact of certain plastic products on the environment

**Draft Housing Policy** - Draft Housing Policy of the Slovak Republic until 2030

**ECDPC** - European Centre for Disease Prevention and Control

**ECHR** - European Court of Human Rights

**Government Council for Human Rights, National Minorities and Gender Equality** - Council of the Government of the Slovak Republic for Human Rights, National Minorities and Gender Equality

**Government Council for Mental Health** - Council of the Government of the Slovak Republic for Mental Health

**Government Council for the Recovery and Resilience Plan** - Council of the Government of the Slovak Republic for the Recovery and Resilience Plan of the Slovak Republic

**Slovak Government** - Government of the Slovak Republic

**Government Resolution No. 808** - Resolution No. 808 of the Government of the Slovak Republic of 31 December 2020

**Healthcare Act** - Act No. 576/2004 Coll. on Health care, services related to the provision of health care, and on amendments and supplements to certain Acts, as amended

**Human Rights Report** - Report on the Observance of Human Rights Including the Principle of Equal Treatment in the Slovak Republic

**IMCP** - inter-ministerial commentary procedure

**Labour Code** - Act No. 311/2001 Coll. on the Labour Code

**Ministry of Education** - Ministry of Education, Science, Research and Sport of the Slovak Republic

**Ministry of Health** - Ministry of Health of the Slovak Republic

**Ministry of Health's Measure** - Ministry of Health's Measure No. 07045/2003 - OAP of 30 December 2003 establishing the scope of price regulation in the health sector (Notice No. 588/2003 Coll.), as amended

**Ministry of Labour** - Ministry of Labour, Social Affairs and Family of the Slovak Republic

**NCZI** - National Centre for Health Information

**NR SR** - National Council of the Slovak Republic

**Pregnant Women Assistance Bill** - proposal by a group of MPs for a bill on assistance to pregnant women

**Preliminary Opinion** - Regular Preliminary Opinion of the Ministry of Labour, Social Affairs and Family of the Slovak Republic on the draft Directive of the European Parliament and of the Council to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms

**Public Health Authority** - Public Health Authority of the Slovak Republic

**School Act** - Act No. 245/2008 Coll. on Education and training (School Act), and on amendments and supplements to certain Acts, as amended

**Waste Act** - Act No. 79/2015 Coll. on Waste, and on amendments and supplements to certain Acts, as amended

**WHO** - World Health Organization



## Introduction

The Slovak National Centre for Human Rights (hereinafter referred to as “the Centre”) is a national institution established for the promotion and protection of human rights, and at the same time a national equality body. The National Council of the Slovak Republic (hereinafter referred to as “NR SR”) established the Centre by adopting Act No. 308/1993 Coll. on the Establishment of the Slovak National Centre for Human Rights (hereinafter referred to as the “Act on the Centre”) which entered into force on 1 January 1994. The aforementioned establishment Act of the Centre was a result of the Agreement between the Government of the Slovak Republic and the United Nations Organization on the Establishment of the Slovak National Centre for Human Rights, published in the Notification of the Ministry of Foreign Affairs of the Slovak Republic No. 29/1995 Coll.

The Centre performs indispensable tasks in two important areas of social and legal relations. The first one is its mission to protect and promote human rights and fundamental freedoms. The other one is

defined primarily by the provisions of Act No. 365/2004 Coll. on Equal treatment in certain areas and on the protection against discrimination, and on amendments and supplements to certain Acts (the Anti-Discrimination Act) (hereinafter referred to as the “Anti-Discrimination Act”). In accordance with its mandate, it monitors and evaluates the observance of human rights, fundamental freedoms and the principle of equal treatment. Every year by 30 April, it prepares and publishes on its website a Report on the Observance of Human Rights Including the Principle of Equal Treatment in the Slovak Republic for the previous calendar year (hereinafter referred to as the “Human Rights Report”).

The aim of the 2021 Human Rights Report is to provide the public with a comprehensive assessment of the status of selected human rights and fundamental freedoms in Slovakia and at the same time formulate recommendations for improving the protection and implementation of human

rights and fundamental freedoms. The year 2021 continued to be marked by the COVID-19 pandemic which had a significant impact on the level of protection and promotion of human rights and fundamental freedoms. In such difficult and complicated times it became clear that it was essential to focus not only on the ongoing crisis and the short-term responses to it, but above all on the long-term horizon of expected human rights impacts and consequences. The primary responsibility of the state is to ensure the protection of the life and health of citizens, but the exercising of other rights, in particular the right to equal treatment, must not be neglected under any circumstances, even during times of pandemics.

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In addition to the COVID-19 pandemic, several criteria determine the content of the 2021 Human Rights Report. Social discourse is particularly relevant in this context. At the same time, it includes topics which have shown deficiencies in practice or have aggravated problems that the Centre has been addressing systematically and for a long time.

The present 2021 Human Rights Report is divided into four chapters: The first two chapters reflect the continuing impact of the COVID-19

pandemic on the enjoyment of human rights and fundamental freedoms and emphasize the appropriateness of upholding human rights and constitutional standards regardless of exceptional social circumstances. The first chapter responds to the fact that vaccination was a dominant topic in the context of the COVID-19 pandemic in 2021. The content of the second chapter presents the impact of the COVID-19 pandemic on selected human rights and fundamental freedoms. The third chapter reflects on the repeated efforts to restrict the access to safe abortion, which is a natural part of the right to health as well as the right to private and family life. In the fourth chapter the Centre assesses the legislator's reflection on the Centre's call for action expressed in the introduction to the 2020 Human Rights Report by closely monitoring the legislative initiatives and processes that occurred in the past calendar year. The Centre already criticised the legislator for neglecting the legislative process in the context of the protection and promotion of minority rights in the 2020 Human Rights Report. These are four particularly resonant topics where, in addition to describing the situation, the Centre makes value judgements supported by legal reasoning.





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# 1. Vaccination against COVID-19

The differentiation of persons according to vaccination sparked an increasingly intense debate in society about favouring the vaccinated and discriminating against the unvaccinated.

In 2021, vaccination was a dominant topic in the context of the COVID-19 pandemic. The first vaccines against COVID-19 became available in the Slovak Republic in late 2020.<sup>1</sup> Due to the initial limited quantity of vaccines, the Ministry of Health of the Slovak Republic (hereinafter referred to as the “Ministry of Health”) adjusted the order of vaccination by decrees.<sup>2</sup> Selected professions were given a vaccination priority. Other criteria determining the order for vaccination were age and health condition. In June 2021, vaccination was made available to the entire population aged 12+.<sup>3</sup>

In the past year there were two waves of the COVID-19 pandemic in the Slovak Republic. In the sec-

ond wave the alpha variant had the largest representation, while in the third wave it was the delta variant.<sup>4</sup> Scientific studies and practical experience have demonstrated the effectiveness of all vaccines used in the Slovak Republic in protecting against hospitalisation, symptom severity, death and infection for both variants.<sup>5</sup>

As vaccination progressed, different public opinions began to emerge about this medical procedure. Slovakia has long been ranked very low in the statistics of vaccination coverage of the population of European Union countries.<sup>6</sup> In an effort to increase the vaccination coverage of the population, the Government of the Slovak Republic

1 Information available in Slovak language at <https://www.slovenskoproticovidu.sk/aktuality/ockovanie-proti-COVID-19-na-slovensku-sa-zacalo>

2 Decree of the Ministry of Health No. 10/2021 Coll. available in Slovak language at <https://www.slovlex.sk/pravne-predpisy/SK/ZZ/2021/10/20210120.html>

Decree of the Ministry of Health No. 58/2021 Coll. available in Slovak language at <https://www.slovlex.sk/pravne-predpisy/SK/ZZ/2021/58/20210212>

Decree of the Ministry of Health No. 93/2021 Coll. available in Slovak language at <https://www.slovlex.sk/pravne-predpisy/SK/ZZ/2021/93/20210227>

Decree of the Ministry of Health No. 96/2021 Coll. available in Slovak language at <https://www.slovlex.sk/pravne-predpisy/SK/ZZ/2021/96/20211221>

3 Information on the extension of the vaccination option for children aged 12+ is available in Slovak language at <https://www.slovenskoproticovidu.sk/aktuality/moznost-ockovania-sa-rozsirila-aj-pre-deti-od-12-rokov>

4 Information on the representation of individual variants in the sequenced samples is available in Slovak language at <https://gis.ecdc.europa.eu/portal/apps/opsdashboard/index.html#/25b6e879c076412aaa9ae7adb78d3241>

5 Information on the effectiveness of vaccines is available in Slovak language e.g. at [https://www.uvzs.sk/index.php?option=com\\_content&view=article&id=4714:vaccines-against-COVID-19-in-practice-confirm-high-uinnos&catid=56:tlaove-spravy&Itemid=62](https://www.uvzs.sk/index.php?option=com_content&view=article&id=4714:vaccines-against-COVID-19-in-practice-confirm-high-uinnos&catid=56:tlaove-spravy&Itemid=62), <https://www.healthdata.org/covid/COVID-19-vaccine-efficacy-summary>, [https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-\(COVID-19\)-vaccines](https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-(COVID-19)-vaccines), <https://www.ecdc.europa.eu/en/COVID-19/latest-evidence/vaccines>

6 Statistics on the vaccination coverage in European Union countries, e.g. available at <https://www.statista.com/statistics/1218676/full-covid-19-vaccination-uptake-in-europe/>, <https://vaccinetracker.ecdc.europa.eu/public/extensions/COVID-19/vaccine-tracker.html#uptake-tab>, <https://tvnoviny.sk/koronavirus/clanok/140032-slovensko-je-na-chvoste-eu-mame-tretiu-najmensiu-zaockovanost>, <https://dennikn.sk/minuta/2475954/>

(hereinafter referred to as the “Slovak Government”) has resorted to various forms of incentives, whether an intermediary bonus, a vaccination lottery or a financial contribution for vaccination paid to persons aged 60+. In late 2021, some government officials admitted the possibility of introducing mandatory vaccination. Many private-law entities also expressed their support for vaccination, some of which have chosen to provide specific benefits to vaccinated persons.

The differentiation of persons according to vaccination sparked an increasingly intense debate in society about favouring the vaccinated and discriminating against the unvaccinated. In its monitoring, the Centre noted the use of such terms in a wrong legal sense, including by some members of the professional public. It published press releases

on such topic<sup>7</sup>, which were intended to contribute to the correct application of the anti-discrimination legislation. Exercising its statutory mandate, it also dealt with a number of complaints relating to alleged differential treatment on the grounds of non-vaccination.

The inclusion of a chapter on vaccination against COVID-19 in the 2021 Human Rights Report is thus a natural outcome of the monitoring and evaluation of compliance with the principle of equal treatment in 2021. In addition to the assessment itself, it aims to provide a comprehensive view of the issue. As a national human rights institution, the Centre also considers it important to comment on the considerations on compulsory vaccination that resonated in society at the end of 2021.

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<sup>7</sup> Press release of 27 September 2021, available in Slovak language at <https://www.snsip.sk/wp-content/uploads/TS-zvyhodnovanie-ockovanych-zakonom-nemusi-byt-diskriminacne-1.pdf>  
 Press release of 23 July 2021, available in Slovak language at <https://www.snsip.sk/wp-content/uploads/TS-test-diskriminacie-a-zvyhodnovanie-zaockovanych-osob-statom.pdf>

## 1.1 Compliance with the principle of equal treatment in relation to vaccination against COVID-19

The basic national source of anti-discrimination legislation is the Anti-Discrimination Act which regulates the application of the principle of equal treatment and provides for legal remedies if such principle is violated. The Anti-Discrimination Act also transposes legally binding directives of the European Union.<sup>8</sup> Interpretation of such directives by the Court of Justice of the European Union (hereinafter referred to as the “CJEU”) is therefore also relevant in assessing a possible breach of the prohibition of discrimination.

In its provisions the Anti-Discrimination Act defines what compliance with the principle of equal treatment consists of, defines the grounds for which it prohibits discrimination, defines its various forms and lists the areas to which it applies. Not every difference in treatment may thus be automatically qualified as a failure to comply with the principle of equal treatment. The assessment of whether or not the prohibition of discrimination has been violated in a par-

ticular case is preceded by an examination of the fulfilment of individual elements of discrimination and their relationship. Only if all the elements are fulfilled, while they must also be in a mutually conditional relationship, may a reasonable conclusion be drawn that the prohibition of discrimination has been infringed upon.

Over the past year the Centre saw a significant increase in the use of the term “discrimination” by both the professional and lay public in relation to the COVID-19 vaccination. It has become a criterion for establishing different rights and obligations of persons in several spheres of life. In this chapter, the Centre will assess compliance with the principle of equal treatment in private legal relations, namely in the area of employment and similar legal relationships and in the area of the provision of goods and services, where it has noticed the highest number of complaints and possible publicised violations of the Anti-Discrimination Act.

### 1.1.1 General background

The primary issue is whether the differentiating criterion of vaccination against COVID-19 can be con-

sidered a prohibited discriminatory ground. Only if the answer is “yes”, it is possible to consider whether

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<sup>8</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (special edition of OJ, chap. 20/vol. 01; OJ L 180, 19.7.2000).

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (special edition of OJ, chap. 05/vol. 04; OJ L 303, 2.12.2000).

Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21.12.2004). Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ L 204, 26.7.2006).

the prohibition of discrimination may have been violated in specific cases.

Prohibited grounds of discrimination are listed in Section 2 (1) of the Anti-Discrimination Act. These are sex, religion or belief, race, nationality or ethnic group, disability, age, sexual orientation, marital and family status, skin colour, language, political or other opinion, national or social origin, property, birth or other status, and reporting a crime or other anti-social activity. This is not an exhaustive list, as the Act also prohibits discrimination on the grounds of different opinion and different status. Such grounds allow the set of prohibited discriminatory grounds to be expanded to include other grounds not explicitly listed in the Act, which arise ad hoc from the assessment of individual discriminatory situations. In the case of the COVID-19 vaccination criterion, it may be included under the prohibited discriminatory ground of “other status”. Such ground is not defined by any legislation and its content is gradually being shaped by the case-law of the most important judicial authorities.

The European Court of Human Rights (hereinafter referred to as “ECHR”) has addressed the meaning of the prohibited discriminatory ground of “other status” in a num-

ber of its decisions, overwhelmingly adopting an extensive interpretation. This is demonstrated by decisions which have subsumed e.g. different military ranks<sup>9</sup>, different categories of owners divided on the basis of size of property or land<sup>10</sup>, health condition (including disability)<sup>11</sup>, division of prisoners on the basis of the length of their imprisonment<sup>12</sup>, and others under the ground of “other status”. In its decision in the case of Kiyutin v. Russia, ECHR stated that Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the “Convention”): *“...does not prohibit any difference in treatment, but only one which is identifiable, objective or based on the personal characteristics of the complainant or his status, on the basis of which it is possible to distinguish between persons or groups of persons.”* The Constitutional Court of the Slovak Republic (hereinafter referred to as the “Constitutional Court”) has also interpreted the prohibited discriminatory ground of “other status” in its rulings. Its previous case-law shows that: *“...other status must in all circumstances be linked to human uniqueness, which means that there must be such previously given characteristics which are immanent to a man as a human being and which distinguish him from*

9 Engel and others v. the Netherlands, 8 June 1976, available at <https://hudoc.echr.coe.int/eng?i=001-57479>

10 James and others v. the United Kingdom, § 74, 21 February 1986, available at <https://hudoc.echr.coe.int/eng?i=001-57507>

11 Kiyutin v. Russia, §§ 56-58, 10 March 2011 or Glor v. Switzerland, § 80, 30 April 2009, available at <https://hudoc.echr.coe.int/eng?i=001-103904> and <https://hudoc.echr.coe.int/eng?i=001-92525>

12 Clift v. the United Kingdom, §§ 55-63, 13 July 2010, available at <https://hudoc.echr.coe.int/eng?i=001-99913>



*other human beings. This does not mean, however, that the protection afforded by this provision is limited to different treatment based on characteristics that are personal in the sense of being innate or immutable; there may also be reasons based on personal choices reflecting personality traits...*"<sup>13</sup> The Constitutional Court also added that: *"...the constitutionally envisaged differential criterion, and this also applies to the criterion of 'other status', must always be at least latently known in advance and must be one of the causes of or reasons for unequal treatment. The prohibition of discrimination inherently has a certain comparative aspect and can be defined in the most general terms as a prohibition of unjustifiable different treatment on the basis of a certain criterion which must not be detrimental."*<sup>14</sup>

In connection with vaccination, the Constitutional Court has received several petitions for declaring the legislation incompatible with the Constitution of the Slovak Republic (hereinafter referred to as the "Constitution"). They objected, inter alia, that the constitutional prohibition of discrimination against unvacci-

nated persons had been violated, while the claimants identified "other status" as a prohibited ground of discrimination.<sup>15</sup> By 31 December 2021, the Constitutional Court did not issue any ruling assessing the possibility of subsuming the criterion of non-vaccination against COVID-19 under the prohibited discriminatory ground of "other status".

As the national equality body, the Centre takes the legal view, referring to the available case-law, that the criterion of vaccination against COVID-19 can be subsumed under the prohibited discriminatory ground of "other status" in certain circumstances. It reasons that this is a clearly identifiable, pre-known and objective criterion which is the cause of different treatment of persons. Vaccination against COVID-19 is a medical procedure that interferes with the physical integrity and privacy of an individual. The free choice of whether or not to be vaccinated is therefore an exercise of the fundamental right to the integrity of the person and his or her privacy guaranteed in Article 16 (1) of the Constitution and the right to respect for private and family life guaranteed in Article 8 of the

<sup>13</sup> Ruling of the Constitutional Court of the Slovak Republic Case No. PL. CC 8/2014 of 27 May 2015, available at [https://www.ustavnsud.sk/docDownload/9185f195-5f8b-4b17-b4d1-f30d73e04ed0/%C4%8D%202%20-%20PL%20%C3%9AS%208\\_2014.pdf](https://www.ustavnsud.sk/docDownload/9185f195-5f8b-4b17-b4d1-f30d73e04ed0/%C4%8D%202%20-%20PL%20%C3%9AS%208_2014.pdf)

<sup>14</sup> Ibid.

<sup>15</sup> Resolution of the Constitutional Court of the Slovak Republic No. PL. CC 10/2021-38 of 13 July 2021, available in Slovak language at [https://www.ustavnsud.sk/documents/10182/133899656/PL\\_+US+10\\_2021-Division-forward.pdf](https://www.ustavnsud.sk/documents/10182/133899656/PL_+US+10_2021-Division-forward.pdf)

Resolution of the Constitutional Court of the Slovak Republic No. PL. CC 11/2021-55 of 27 July 2021, available in Slovak language at [https://www.ustavnsud.sk/documents/10182/991963/PL\\_+%C3%9AS+11\\_2021\\_rozhodnutie.pdf/e182afc0-e18f-4b8c-8896-e558d0257e7c](https://www.ustavnsud.sk/documents/10182/991963/PL_+%C3%9AS+11_2021_rozhodnutie.pdf/e182afc0-e18f-4b8c-8896-e558d0257e7c)

Resolution of the Constitutional Court of the Slovak Republic No. PL. CC 14/2021-52 of 27 October 2021, available in Slovak language at [https://www.ustavnsud.sk/ussr-intranet-portlet/docDownload/7bb9f0bd-5c65-4517-ab0d-13e259b0a4a8/Rozhodnutie-Uzneseniezpredbe%C5%BEn%C3%A9hopererokovaniaPL.%C3%9AS14\\_2021.pdf](https://www.ustavnsud.sk/ussr-intranet-portlet/docDownload/7bb9f0bd-5c65-4517-ab0d-13e259b0a4a8/Rozhodnutie-Uzneseniezpredbe%C5%BEn%C3%A9hopererokovaniaPL.%C3%9AS14_2021.pdf)

Convention. The exercising of such rights cannot be detrimental in the current legal situation, i.e. with no legislation mandating vaccination. However, the Centre also notes that the possibility of subsuming the vaccination criterion under the prohibited discriminatory ground of “other status” must always be assessed on a case-by-case basis, taking into account the specific facts of the case. In particular, the objective of the difference in treatment and the relevance of the application of the vaccination criterion in relation to the rights and obligations to be differentiated on the basis of it will be decisive. These will be different in the case of the actions of public authorities, which have responsibilities and competences in relation to the protection of public health, and in the case of the actions of private-law entities.

Another important step in assessing whether a particular action has violated the principle of equal treatment is to determine whether it has been done in the form defined by the Anti-Discrimination Act. The individual forms are defined in the Anti-Discrimination Act in its Section 2a.<sup>16</sup> In the context of the vaccination against COVID-19, the Centre has only recorded cases of possible violations in the form of direct discrimination. According to Section 2a (2) of the Anti-Discrimination Act, direct discrimination is an act or omission whereby a person is treated less favourably than another

person in a comparable situation is, has been or could be treated. It is therefore clear from the definition of direct discrimination that, in addition to the identification of the less favourable treatment itself, it requires identification of a comparator - a person who is in a comparable situation to the person alleging discrimination. Thus, any treatment that a person subjectively perceives as being less favourable is not a violation of the prohibition of discrimination. It must always be examined in the context of treatment of another person or persons in a comparable situation that either is occurring, has occurred or could theoretically occur. At the same time, the necessity of a causal link between the individual legal elements of discrimination requires that the motive for the less favourable treatment must be a prohibited ground of discrimination. Direct discrimination is thus, in simplified terms, unequal treatment of persons who are in a relatively equal situation, or in the same or similar way meet the requirements for the exercising of a certain right or for the provision of a certain social benefit, where the only reason for such unequal treatment is one or more of the prohibited characteristics of discrimination, which, however, are objectively irrelevant for obtaining the benefit.<sup>17</sup> The Anti-Discrimination Act prohibits the violation of the principle of equal treatment in the form of direct discrimination and does not allow for

<sup>16</sup> The forms of discrimination defined in Section 2a of the Anti-Discrimination Act are: direct discrimination, indirect discrimination, harassment, sexual harassment, instruction to discriminate, incitement to discriminate, and victimisation.

<sup>17</sup> DEBRECÉNIOVÁ, J., *Anti-Discrimination Act, Commentary*. Bratislava: Citizen and Democracy, 2008, p. 36.

the possibility of justifying it.<sup>18</sup> However, Section 8 regulates when different treatment is permissible.

## 1.1.2 Employment and similar legal relationships

One of the areas of legal relations covered by the obligation to comply with the principle of equal treatment under Section 3 (1) of the Anti-Discrimination Act<sup>19</sup> is the area of employment and similar legal relationships. In relation to this area, the anti-discrimination legislation constitutes general legislation. A special legal regulation which takes precedence is contained *inter alia* in Act No. 311/2001 Coll. the Labour Code (hereinafter referred to as the “Labour Code”) which regulates the issue of compliance with the principle of equal treatment already at the beginning of its wording in its

basic principles. In accordance with the principle of equal treatment laid down in the Anti-Discrimination Act, it grants natural persons the right to work, free choice of employment, fair and satisfactory working conditions and protection against arbitrary dismissal from employment.<sup>20</sup> This right of natural persons corresponds to the employer’s obligation laid down in Section 13 (1) of the Labour Code to treat employees in accordance with this principle.<sup>21</sup> Section 13 (2) of the Labour Code also specifies the prohibited grounds of discrimination; they correspond to the list of

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<sup>18</sup> To compare, this is the definition of indirect discrimination contained in Section 2a (3) of the Anti-Discrimination Act which can be justified if the legal conditions are met: *“indirect discrimination is a seemingly neutral regulation, decision, instruction or practice which disadvantages or is likely to disadvantage a person in comparison with another person; indirect discrimination does not exist if such regulation, decision, instruction or practice is objectively justified by the pursuit of a legitimate interest and is proportionate and necessary for the achievement of such interest.”*

<sup>19</sup> According to Section 3 (1) of the Anti-Discrimination Act, everyone is obliged to comply with the principle of equal treatment in employment and similar legal relationships, social security, health care, provision of goods and services, and education.

<sup>20</sup> According to Article 1 of the Labour Code, natural persons have the right to work and to free choice of employment, to fair and satisfactory working conditions and to protection against arbitrary dismissal from employment in accordance with the principle of equal treatment established for the field of employment relationships by a special Act which is the Anti-Discrimination Act. They enjoy such rights without any restrictions or discrimination on the grounds of sex, marital or family status, sexual orientation, race, skin colour, language, age, bad health condition or disability, genetic characteristics, belief, religion, political or other opinion, trade union activity, national or social origin, nationality or ethnic background, property, birth or other status, except where the difference in treatment is justified by the nature of the activities carried out in the employment or by the circumstances under which such activities are carried out, where that ground constitutes a genuine and overriding requirement for the employment, provided that the aim is legitimate and the requirement appropriate.

<sup>21</sup> According to Section 13 (1) of the Labour Code, the employer is obliged to treat employees in employment relationships in accordance with the principle of equal treatment established for the area of employment relations by a special Act which is the Anti-discrimination Act.

the prohibited grounds of discrimination under the Anti-Discrimination Act and are expanded to include the grounds of a bad health condition, genetic characteristics or trade union activity. The criterion of vaccination against COVID-19 may therefore be considered to fall under only the prohibited discriminatory ground of 'other status' also in the area of employment and similar legal relationships. As a state administration body in the field of labour inspection within the meaning of Section 3 of Act No. 125/2006 Coll. on Labour inspection, and on amendments and supplements to Act No. 82/2005 Coll. on Illegal work and illegal employment, and on

amendments and supplements to certain Acts, the National Labour Inspectorate<sup>22</sup> has also expressed its opinion in favour of subsuming the vaccination criterion under the prohibited ground of "other status".

In connection with the vaccination against COVID-19, the Centre has noted possible violations of the prohibition of discrimination against unvaccinated persons in the area of employment and similar legal relationships, namely in the provision of benefits to vaccinated persons and in the application of the above-mentioned criterion in the recruitment process.

## Provision of benefits to vaccinated employees

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In an effort to motivate employees to get vaccinated against COVID-19, some employers have decided to provide bonuses and other benefits to employees who have been vaccinated. One of the intentions of the employers' support for vaccination was to ensure the smooth operability of their businesses and to protect the health of their em-

ployees.<sup>23</sup>

The obligation to comply with the principle of equal treatment in remuneration is explicitly laid down in Section 6 (1), (2) (b) of the Anti-Discrimination Act.<sup>24</sup> The requirement to comply with the principle of equal treatment in this particular area is also regulated by the

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22 Statement of the National Labour Inspectorate on the vaccination of employees from the perspective of labour law, available in Slovak language at <https://www.ip.gov.sk/zamestnavatel-ockovanie-zamestnancov-z-pohladu-pracovneho-prava/>

23 Available in Slovak language at <https://www.ip.gov.sk/zamestnavatel-ockovanie-zamestnancov-z-pohladu-pracovneho-prava/>, <https://www.snsip.sk/wp-content/uploads/OS-Poskytovanie-benefitov-zaockovany-m-zamestnancom.pdf>

24 According to Section 6 (1) of the Anti-Discrimination Act, discrimination against persons on the grounds referred to in Section 2 (1) of the Act is prohibited in employment relationships, similar legal relationships and related legal relationships in accordance with the principle of equal treatment. According to Section 6 (2) (b) of the Anti-Discrimination Act, the principle of equal treatment under paragraph 1 applies only in conjunction with the rights of persons provided for by special Acts, in particular in the areas of performing work and working conditions, including remuneration, promotion and dismissal.

Labour Code in Section 82 (c), according to which, in addition to the obligations referred to in Section 81, managers are obliged in particular to ensure the remuneration of employees in accordance with the generally binding legislation, collective agreements and employment contracts, and to comply with the principle of equal pay for equal work or work of equal value pursuant to Section 119a. Section 119a of the Labour Code provides for the obligation to negotiate wage conditions without any discrimination on the basis of sex, and such provision applies to any remuneration for work as well as to any remuneration paid or to be paid in connection with employment under other provisions of such Act or under special regulations. The purpose of the provision is to ensure that employees are entitled to equal pay for equal work or work of equal value. Equal work or work of equal value under such provision is work of equal or comparable complexity, responsibility and exertion, which is performed under equal or comparable working conditions and with equal or comparable performance and results of work in the employment relationship with the same employer. According to Section 119a (4), such legal regulation also applies to employees of the same sex if they perform the same work or work of equal value.

The term “remuneration for work performed” is used in legal the-

ory and practice as an umbrella term for all forms of remuneration for work performed, regardless of the legal relationship in which the work is performed. Remuneration for work includes any consideration received by an individual in return for the work performed, whether he or she is a party to a labour-law, civil-law or commercial-law relationship. In the broad framework outlined above, remuneration for work covers not only wages and salary, but also severance pay, commissions, profit shares, royalties, gratification and other forms.<sup>25</sup> The existing case law of CJEU is rich in cases concerning remuneration, including special bonuses paid by employers or year-end bonuses.<sup>26</sup> CJEU emphasised that the legal form of such benefits was not important. They may have a basis in an employment or collective agreement, in legislation, or they may be provided voluntarily or at the initiative of the employer. The only decisive criterion is that the remuneration was provided to the employee in the context of their employment relationship. The concept of remuneration for work performed includes not only monetary but also in-kind remuneration from the employer for the performance of work, as well as corporate welfare benefits that are directly or indirectly related to the employment relationship.<sup>27</sup>

The area of remuneration covered by the obligation to comply with

25 BARANCOVÁ, H. et al.: Labour Code. Commentary. 1st edition. Bratislava: C. H. Beck, 2017, p. 879.

26 Judgment of CJEU in Case C-281/97 *Andrea Krüger v. Kreiskrankenhaus Ebersberg*, 9 September 1999, available at <https://eur-lex.europa.eu/legal-content/SK/TXT/?uri=CELEX:61997CC0281>

Judgment of CJEU in Case C-333/97, *Susanne Lewen v. Lothar Denda*, 21 October 1999, available at <https://eur-lex.europa.eu/legal-content/SK/TXT/?uri=CELEX%3A61997CJ0333>

27 BARANCOVÁ, H. et al.: Labour Code. Commentary. 1st edition. Bratislava: C. H. Beck, 2017, p. 880

the prohibition of equal treatment must therefore include all remuneration provided to an employee in an employment or similar legal relationship. The employer is therefore obliged to set non-discriminatory conditions for obtaining them. That means that the employer cannot make entitlement to them conditional on meeting a criterion that is a prohibited discriminatory ground. Since all remuneration provided to employees in connection with their employment has the nature of a reward for the work performed, the employer should only assess the employee's performance of work tasks when providing such remuneration. Regarding the provision of remuneration, all employees of the same employ-

er are thus in a comparable situation. That means that making the payment of remuneration or the receipt of any other benefits conditional upon having been vaccinated against COVID-19 constitutes less favourable treatment of unvaccinated employees on the prohibited discriminatory ground of "other status".

The Centre notes that in 2021 it did not receive a single complaint alleging a violation of the prohibition of discrimination in the area of remuneration based on a client not having been vaccinated against COVID-19. However, it observed employers' hypothetical considerations about providing such bonuses and other benefits.<sup>28</sup>

## COVID-19 vaccination as a requirement in the hiring process

In accordance with Section 6 (1), (2) (a) of the Anti-Discrimination Act<sup>29</sup>, the obligation to comply with the principle of equal treatment also applies in the areas of access to employment, occupation, other gainful activity or function, including the requirements for admission to employment and the conditions and manner in which the selection for employment is carried out. This obligation is also regulated separately by the Labour Code in the provisions of Section 41 (8) according to which an employer may not violate the principle of equal treat-

ment, as far as access to employment is concerned, when hiring a natural person (Section 13 (1) and (2)).

However, unlike the obligation to comply with the principle of equal treatment in the area of remuneration, the Anti-Discrimination Act allows for an exception to this obligation in the area of access to employment. According to Section 8 (1), discrimination is not a difference in treatment which is justified by the nature of the activities carried out in the employment or by

28 Available in Slovak language at <https://www.snspl.sk/wp-content/uploads/OS-Poskytovanie-benefitov-zaockovany-m-zamestnancom.pdf>

29 According to Section 6 (2) (b) of the Anti-Discrimination Act, the principle of equal treatment under paragraph 1 applies only in conjunction with the rights of persons provided for by special Acts, in particular in the areas of access to employment, occupation, other gainful activity or function (hereinafter referred to as "employment"), including the requirements for admission to employment, and the conditions and manner of hiring employees.

the circumstances under which such activities are carried out, where that ground constitutes a genuine and overriding requirement for the employment, provided that the aim is legitimate and the requirement appropriate.

It means that although the employer has the right to freely choose employees in accordance with Article 2 of the Labour Code<sup>30</sup>, the choice is limited by the framework of anti-discrimination legislation. Therefore, an employer may only choose to use such requirements for the selection of employees that are not prohibited discriminatory reasons within the meaning of Section 13 (2) of the Labour Code. The above-stated also applies to the vaccination against COVID-19, which can be subsumed under the prohibited discriminatory ground of “other status” in ad hoc cases. However, the employer may claim an exemption from such obligation. If the requirement to be vaccinated against COVID-19 was justified by the nature of the activities performed in the employment or by the circumstances in which such activities are performed, and if the vaccination constituted a genuine and overriding requirement for the employment, provided that the aim is legitimate and

the requirement appropriate, the employer was not in violation of the prohibition of discrimination by requiring vaccination against COVID-19 in the employee hiring process. However, the employer would have to prove that the conditions have been met. Otherwise, and if the employer nevertheless required the COVID-19 vaccination, the employer’s conduct would satisfy the elements of direct discrimination. In such a situation, persons not vaccinated against COVID-19 would be treated less favourably than vaccinated persons in the hiring process and, given the irrelevance of the vaccination criterion, job-seekers would be in a comparable situation.

In 2021, the Centre did not receive a single relevant complaint alleging a violation of the prohibition of discrimination in the employee hiring process based on a client not having been vaccinated against COVID-19. However, it noted employers’ statements where they admitted the possibility of such action.<sup>31</sup> It therefore concludes that any employer who actually took such a step, without being exempted from the obligation to comply with the principle of equal treatment in this area, violated the prohibition of discrimination.

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<sup>30</sup> According to Article 2, first sentence of the Labour Code, employment relationships under this Act may only be established with the consent of the natural person and the employer. The employer has the right to freely select the number and structure of employees and to determine the conditions and manner of exercising such right, unless otherwise provided by the Act, a special regulation or an international treaty by which the Slovak Republic is bound.

<sup>31</sup> Available in Slovak language at <https://e.dennikn.sk/2620019/firmy-si-uz-budu-overovat-kto-je-zaockovany-ziskaju-ludia-bez-vakciny-novu-pracu-tazsie/>

## 1.1.3 Provision of goods and services

The obligation to comply with the principle of equal treatment in the provision of goods and services is regulated in Section (1) of the Anti-Discrimination Act. According to Section 5 (2) (d) of the Anti-Discrimination Act, it applies only in conjunction with the rights of persons provided for by special Acts in the areas of access to and provision of goods and services, including housing, which are provided to the public by legal persons and natural persons - entrepreneurs. A special Act that obliges the seller to comply with the principle of equal treatment in relation to consumers is Act No. 250/2007 Coll. on Consumer Protection, and on amendments to Act of the Slovak National Council No. 372/1990 Coll. on Offences, as amended (hereinafter referred to as the "Consumer Protection Act").<sup>32</sup>

The legislation establishing the obligation to comply with the principle of equal treatment in the area of goods and services is the result of the transposition of European Union directives.<sup>33</sup> None of the direc-

tives defines the provision of goods and services. However, the preamble to Directive 2004/113/EC which states in paragraph 11 that "*Goods should be taken to be those within the meaning of the provisions of the Treaty establishing the European Community relating to the free movement of goods. Services should be taken to be those within the meaning of Article 50 of that Treaty*" might be helpful.<sup>34</sup> The concept of "goods" was initially defined by CJEU as "*objects which may be valued in money and which, as such, are capable of being the subject of commercial transactions*".<sup>35</sup> In Article 50 of the Treaty establishing the European Community services are defined as "*services which are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons. Services include in particular activities of an industrial character, activities of a commercial character, activities of craftsmen and activities of the professions*".<sup>36</sup>

32 According to Section 4 (3), first sentence of the Consumer Protection Act, the seller is obliged to comply with the principle of equal treatment in relation to consumers in the provision of products and services, as established by a special regulation.

33 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

34 DEBRECÉNIOVÁ, J., Anti-Discrimination Act, Commentary. Bratislava: Citizen and Democracy, 2008, p. 131.

35 Judgment of CJEU in Case 7/68 Commission of the European Communities v. Italian Republic, 10 December 1968, available at <https://eur-lex.europa.eu/legal-content/SK/ALL/?uri=CELEX%3A61968CJ0007>

36 DEBRECÉNIOVÁ, J., Anti-Discrimination Act, Commentary. Bratislava: Citizen and Democracy, 2008, p. 132.



## Providing discounts to consumers vaccinated against COVID-19

The Centre has observed activities of private-law entities that, in support of the vaccination campaign, offered consumers the possibility to obtain a discount on the price of goods or services by proving that they had been vaccinated against COVID-19.<sup>37</sup>

The rights provided for in the Consumer Protection Act include also the consumers' right to protection of their economic interests.<sup>38</sup> In the case of a remuneration-based legal relationship of obligation, this is undoubtedly also the consumer's interest in the lowest possible price by taking advantage of various discounts. Although pricing falls under the exclusive responsibility of the entrepreneur, with the exception of regulated industries, certain limits are set by the Consumer Protection Act in conjunction with the Anti-Discrimination Act. The above-stated Acts set out the seller's obligation to comply with the principle of equal treatment in relation to the consumer, which consists of the prohibition of discrimination on the grounds listed in the Anti-Discrimination Act. The prerequisite for compliance with this obligation is that if the seller decides to grant the consumer a discount on the price of goods or

services, the seller is obliged to condition the discount by a criterion which is not a prohibited discriminatory ground. The above-stated also applies to the criterion of vaccination which, as stated above, can be subsumed under the prohibited ground of "other status".

When goods and services are provided, a consumer contract is concluded between the consumer and the seller. In the case of the consumer, its purpose is to satisfy the customer's needs; in the case of the seller, its purpose is to make a profit. By entering into a consumer contract, both vaccinated and unvaccinated consumers became entitled to receive goods or services of the same or similar value and were therefore in a comparable situation. However, where the receipt of a discount on the price of goods or services was conditioned by having had the COVID-19 vaccination, they were required to pay a different price for such goods or services. Thus, the seller's less favourable treatment of unvaccinated consumers was causally related to a prohibited ground of discrimination. The Centre therefore concludes that the sellers' conditioning of the receipt of a discount on the price of goods or services by

<sup>37</sup> Available in Slovak language at: <https://bubo.sk/zlavy-pre-ockovanych>, <https://bratislava.dnes24.sk/pivo-zadarmo-aj-lakave-zlavy-niektore-bratislavske-podniky-odmenuju-zaockovanych-396336>, <https://www.snsip.sk/wp-content/uploads/OS-Diskriminacia-nezaockovanych-spotrebiteľov-cestovnou-kancelariou.pdf>

<sup>38</sup> According to Section 3 (1) of the Consumer Protection Act, every consumer has the right to products and services of ordinary quality, to make a complaint, to compensation for damages, to education, information, to protection of their health, safety and economic interests, and to lodge complaints and motions with the supervisory, oversight and control authorities (hereinafter referred to as the "supervisory authority") and with the municipality in the event of a violation of the consumer's rights granted by law.

the COVID-19 vaccination fulfilled the elements of a violation of the prohibition of discrimination in the form of direct discrimination.

## Restriction of access to establishments

On 25 July 2021, NR SR passed Act No. 304/2021 Coll. amending Act No. 355/2007 Coll. on the Protection, promotion and development of public health, and on amendments and supplements to certain Acts, as amended. A new letter (z) was inserted in Section 48 (4) after the letter (y) in the Act and it reads: *“(z) temporarily conditioning the entry into the operational premises of establishments where persons are assembled and entry to mass events by the obligation of the entering persons to prove that they have been vaccinated against COVID-19, that they have overcome COVID-19 or that they have tested negative for COVID-19; the proof that the person presents must be valid in accordance with the measure in force”*. The Act entered into force on 28 July 2021.

The explanatory memorandum to the Act states that the proposed legislation provides for the possibility of the Public Health Authority of the Slovak Republic (hereinafter referred to as the “Public Health Authority”) to reflect GreenPasses demonstrating vaccination against COVID-19, having overcome COVID-19 or testing negative for COVID-19 as a part of anti-epidemic measures.<sup>39</sup>

The first decree of the Public Health Authority issued on the basis of the adopted Act was Decree No. 240/2021 GJ SR dated 12 August 2021, effective from 16 August 2021<sup>40</sup>. The Decree regulated the right of the operator to require a person entering the interior or exterior premises of the establishment to present an appropriate document proving the completion of vaccination against, testing for or having overcome COVID-19. It also allowed the operator of a service establishment or retail establishment to choose one of the modes of entry into the establishment - “basic” mode in which entry into the establishment is not restricted; “OTP” mode in which entry into the establishment is restricted to persons who have been vaccinated against, tested for or who have overcome COVID-19; and the “O” mode in which entry into the establishment is restricted to fully vaccinated persons only. For the purposes of the Decree, a fully vaccinated person was defined as: a) a person at least 14 days after administration of the second dose of the COVID-19 vaccine with a two-dose scheme; b) a person at least 21 days after administration of the first dose of the COVID-19 vaccine with a one-dose scheme;

<sup>39</sup> Explanatory memorandum to Act No. 304/2021 Coll., available in Slovak language at <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=8307>

<sup>40</sup> Decree of the Public Health Authority No. 240/2021 GJ SR, available in Slovak language at [https://www.uvzs.sk/docs/info/ut/vyhlasaka\\_240.pdf](https://www.uvzs.sk/docs/info/ut/vyhlasaka_240.pdf)

c) a person at least 14 days after administration of the first dose of the COVID-19 vaccine if the first dose of the COVID-19 vaccine was administered within 180 days after the person overcame COVID-19; or d) a person under the age of 12. Decree of the Public Health Authority No. 259/2021 GJ SR dated 22 November 2021<sup>41</sup> changed the “O” mode to the “OP” mode, i.e. vaccinated persons and persons who have overcome COVID-19, with the “basic” and the “OTP” modes remaining unchanged. Due to the worsening of the epidemic situation, the subsequent Decree of the Public Health Authority No. 263/2021 GJ SR dated 25 November 2021<sup>42</sup> closed all retail and service establishments except for specified exemptions. Decree of the Public Health Authority No. 290/2021 GJ SR dated 9 December 2021<sup>43</sup> subsequently also allowed the opening of other retail and selected service establishments, but only in the “OP” mode.

On the basis of the above-stated legislation, retailers restricted the entry of consumers into their establishments. They only allowed it for persons who met the criteria of the chosen mode. The Centre notes that, since the sellers were required to do so by law, the sellers did not breach the obligation to

comply with the principle of equal treatment by acting in accordance with that law. However, this does not mean that the prohibition of discrimination could not have been infringed upon by restricting the entry of consumers into the establishments. In this case, however, it is not the conduct of the individual sellers that will be assessed, but the compliance of the legislation itself which imposed such differential treatment with the constitutional prohibition of discrimination.

Pursuant to Article 12 (2) of the Constitution, fundamental rights and freedoms are guaranteed to everyone in the territory of the Slovak Republic regardless of sex, race, colour, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, descent or any other status. No one shall be aggrieved, discriminated against or favoured on any of these grounds. Article 12 (2) of the Constitution does not have the nature of an independent fundamental right, but is only an accessory right. This means that it can only be invoked in connection with another fundamental right or freedom provided for in the Constitution. At the same time, it is not an absolute right. Under the conditions laid

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41 Decree of the Public Health Authority No. 259/2021 GJ SR, available in Slovak language at [https://www.uvzsr.sk/docs/info/ut/vyhlasaka\\_259.pdf](https://www.uvzsr.sk/docs/info/ut/vyhlasaka_259.pdf)

42 Decree of the Public Health Authority No. 263/2021 GJ SR, available in Slovak language at [https://www.minv.sk/swift\\_data/source/verejna\\_sprava/vestnik\\_vlady\\_sr\\_rok\\_2021/vyhlasaka\\_263.pdf](https://www.minv.sk/swift_data/source/verejna_sprava/vestnik_vlady_sr_rok_2021/vyhlasaka_263.pdf)

43 Decree of the Public Health Authority No. 290/2021 GJ SR, available in Slovak language at [https://www.minv.sk/swift\\_data/source/verejna\\_sprava/vestnik\\_vlady\\_sr\\_rok\\_2021/vyhlasaka\\_290.pdf](https://www.minv.sk/swift_data/source/verejna_sprava/vestnik_vlady_sr_rok_2021/vyhlasaka_290.pdf)

down in Article 13 of the Constitution, it can be limited.<sup>44</sup>

In accordance with Article 125 of the Constitution, the Constitutional Court has the power to decide on the conformity of legislation with the Constitution. If non-compliance of a legal regulation with Article 12 (2) of the Constitution is contested, the Constitutional Court shall carry out a constitutional test of discrimination. It examines whether the contested legal regulation has resulted in the exclusion of a comparable individual or group (in particular in conjunction or in connection with the exercising of fundamental rights and freedoms), whether this has been done on the basis of a qualified criterion or a similar unjustifiable reason, whether the exclusion is to the detriment of the individual or group, and whether the exclusion cannot be justified either because there is no reason for the justification (public, legitimate interest) or because it is an inappropriate, disproportionate action.

In 2021, the Constitutional Court also received a proposal by a group of MPs to declare that the provision of the Act laying down the possibility of the Public Health Authority or a regional public health authority adopting measures conditioning entry into establishments by providing vaccination against COVID-19, negative testing for COVID-19 or having overcome COVID-19 is incompatible with the constitutional prohibition of discrimination. The MPs claimed that the legal regulation *inter alia* “...introduces positive discrimination of (favours) fully vaccinated persons and persons who have overcome COVID-19 by not restricting their fundamental rights and freedoms in any way, or by not making their exercise conditional upon the fulfilment of any obligation compared to persons who have not undergone vaccination”.<sup>45</sup> The final conclusion as to whether or not the contested legislation violates the prohibition of discrimination will thus be the subject of the decision of the Constitutional Court in such proceedings.<sup>46</sup>

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44 According to Article 13 (2) of the Constitution, limitations of fundamental rights and freedoms shall be regulated only by a law and under the conditions set in this Constitution. According to Article 13 (3) of the Constitution, legal restrictions of fundamental rights and freedoms shall be applied equally in all cases fulfilling the specified conditions. According to Article 13 (4) of the Constitution, when imposing restrictions on fundamental rights and freedoms, respect must be given to the essence and meaning of these rights and freedoms. Such restrictions shall be used only for the specified purpose.

45 Resolution of the Constitutional Court of the Slovak Republic No. PL. CC 14/2021-52 of 27 October 2021, available in Slovak language at [https://www.ustavnysud.sk/ussr-intranet-portlet/docDownload/7bb9f0bd-5c65-4517-ab0d-13e259b0a4a8/Rozhodnutie-Uzneseniezpredbe%C5%BEn%C3%A9hopererokovaniaPL:%C3%9AS14\\_2021.pdf](https://www.ustavnysud.sk/ussr-intranet-portlet/docDownload/7bb9f0bd-5c65-4517-ab0d-13e259b0a4a8/Rozhodnutie-Uzneseniezpredbe%C5%BEn%C3%A9hopererokovaniaPL:%C3%9AS14_2021.pdf)

46 At the time of preparing the Report, a press release from the Constitutional Court of 16 February 2022 was published announcing that the Constitutional Court had not admitted the claim of the group of MPs. Press release is available in Slovak language at [https://www.ustavnysud.sk/c/document\\_library/get\\_file?uuid=6853aa88-b14e-4787-ae87-2c9463b13c6c&groupId=10182](https://www.ustavnysud.sk/c/document_library/get_file?uuid=6853aa88-b14e-4787-ae87-2c9463b13c6c&groupId=10182)

## 1.2 Considerations about compulsory vaccination

The SARS-CoV-2 variants that were dominant during 2021 caused numerous infected persons to have severe symptoms of COVID-19. That placed significant pressure on the Slovak healthcare system and limited the provision of healthcare to other patients. In mid-November 2021, the number of patients in hospitals was increasing rapidly. The Ministry of Health stated that only 20 hospital beds remained available nationwide for new patients who would need artificial lung ventilation support.<sup>47</sup> Experts warned that the virus was still mutating and evolving, as evidenced by the highly infectious omicron variant that was confirmed in Slovakia in December 2021.<sup>48</sup>

Considerations about introducing compulsory vaccination started to emerge more often across the social and political spectrum at the end of 2021. The President of the Slovak Republic described the possibility of introducing such obligation as a last resort which we would probably not be able to avoid.<sup>49</sup> On 8 December 2021, the Slovak Government approved Resolution No. 736/2021 which obliged the Minister of Health, in cooperation with the Minister of Justice, to prepare and submit to the Prime

Minister an analysis of the options for introducing compulsory vaccination against COVID-19.<sup>50</sup> National legislators in several European Union Member States have approved mandatory vaccination against COVID-19. Some countries have made vaccination compulsory for people working in high-risk occupations, such as healthcare workers, and for selected age groups.<sup>51</sup> The relevance of considering the issue of introducing compulsory vaccination as a means of protecting public health is therefore obvious.

The issue of introducing compulsory vaccination is also directly linked to the issue of respecting human rights and fundamental freedoms. Its introduction would namely restrict some of them, in particular the right of every individual to integrity and privacy as defined in Article 16 (1) of the Constitution.

In its ruling under Case No. PL. ÚS 10/2013 of 10 December 2014 in relation to communicable diseases, the Constitutional Court stated that the legal basis for health protection in the Slovak Republic is laid down in Article 40 of the Constitution. It implies a positive commitment by the state to ensure health protection, which is implemented in

47 Press release of the Ministry of Health of 16 November 2021, available in Slovak language at <https://www.health.gov.sk/Clanok?COVID-19-16-11-2021-nemocnice-lozka>

48 Press release of the Public Health Authority of 11 December 2021, available in Slovak language at [https://www.uvzs.sk/index.php?option=com\\_content&view=article&id=4951:variant-omicron-confirmed-in-slovakia-in-three-cases&catid=56:tlaove-spravy&Itemid=62](https://www.uvzs.sk/index.php?option=com_content&view=article&id=4951:variant-omicron-confirmed-in-slovakia-in-three-cases&catid=56:tlaove-spravy&Itemid=62)

49 The President on TA3: Let's not question the opinions of experts, available in Slovak language at <https://www.prezident.sk/article/prezidentka-v-ta3-nespochybnujme-nazory-odbornikov/>

50 Government Resolution No. 736/2021, available in Slovak language at <https://rokovania.gov.sk/RVL/Resolution/19720/1>

51 K. Chren, Overview of countries that have approved mandatory COVID vaccination, available in Slovak language at [https://tvnoviny.sk/koronavirus/clanok/141582-prehľad-krajín-ktore-schválili-povinné-ockovanie-proti-covid-u?campaignsrc=tn\\_clipboard](https://tvnoviny.sk/koronavirus/clanok/141582-prehľad-krajín-ktore-schválili-povinné-ockovanie-proti-covid-u?campaignsrc=tn_clipboard)



individual's life and a compulsory medical intervention constitutes a limitation of the right to respect for private and family life as defined in Article 8 of the Convention.<sup>57</sup> The Court further stated that compulsory vaccination, as an involuntary medical act, constituted an interference with the right to respect for private and family life which includes the psychological and physical integrity of the individual.<sup>58</sup>

Adoption of legislation introducing compulsory vaccination would therefore undoubtedly interfere with the exercising of the fundamental right defined in Article 16 (1) of the Constitution, and thus with the physical integrity of the individual.

A proportionality test is applied to assess the proportionality of such intervention. It consists of precisely defined steps. In the case of interference with personal and political rights, a strict proportionality test is applied. Initially it is evaluated whether the restriction of the right has a legal base. The limitation of the right must pursue a legitimate aim approved by law. There must be a rational connection between the aim pursued and the restriction of the right, and it is further examined whether the restriction of the right can be seen as a necessary step in a democratic society. The last point consists of the appli-

cation of the proportionality test in the narrower sense.

The first step of the test is to assess whether the restriction was made by statute or by operation of law. When assessing individual complaints in which individuals alleged an interference with the right to respect for family and private life set out in Article 8 of the Convention, ECHR stated that it accepted measures restricting privacy regardless of the degree of the legal force of the legislation. However, it requires a certain level of quality of the legislation to be accessible to the person concerned and be compatible with the rule of law.<sup>59</sup>

No legislation was enacted in 2021 which would mandate vaccination against COVID-19. It can only be assumed how the legislator would regulate such an institute. An amendment to the Decree of the Ministry of Health No. 585/2008 Coll. which sets out details on the prevention and control of communicable diseases might be considered. Another alternative is to establish the institute of compulsory vaccination against COVID-19 by a decree of the Chief Hygienist based on Act No. 355/2007 Coll. on the Protection, promotion and development of public health, and on amendments and supplements to certain Acts, as amended. Another alternative is adoption of a separate

<sup>57</sup> *Y.F. v. Turkey*, (24209/94), 2003, § 33, available at

<https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-61247%22%7D>

<sup>58</sup> *Salveti v. Italy*, (42197/98), Decision on admissibility of the complaint, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-22636%22%7D>

<sup>59</sup> *Kopp v. Switzerland*, (13/1997/797/1000), 1998, § 55, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-58144%22%7D>

Act regulating the vaccination obligation.<sup>60</sup> We may thus state that, if the institute of compulsory vaccination were to be introduced in any of the above-stated ways, the legislation regulating such obligation would pass the legality test.

In the next step, a suitability and rational interconnection test is applied. The test of a sufficiently important aim, i.e. (i) the test of appropriateness, i.e. whether the interference is directed towards an aim that is sufficiently important to justify the interference; and (ii) the test of a rational interconnection between the restriction and the aim of the interference, i.e. whether the means (in this case limiting the right to privacy) can help achieve an acceptable aim (protecting the public from the spread of COVID-19 and thus protecting public health).<sup>61</sup>

If the institute of compulsory vaccination was introduced as a means of ensuring the protection of public health, it can be assumed that such intervention would pass the suitability test. Compulsory vaccination is not only the most efficient way to directly prevent the emergence and spread of communicable fatal diseases, but also a procedure that can eradicate such diseases.<sup>62</sup> It

would thus be possible to achieve the protection of public health against the spread of the disease by limiting the right to integrity and privacy.

Vaccination is the most effective way to prevent pandemic diseases, including COVID-19. It ensures the personal protection of the vaccinated person as well as the collective protection of society. However, in the case of COVID-19, more than 60-70% of the population needs to be vaccinated to achieve this.<sup>63</sup> The rational interconnection condition is satisfied.

The next step to be dealt with in assessing the restriction of a fundamental right is the test of necessity. Rights may only be limited in the necessary extent. In this context it is assessed whether the legitimate aim cannot be achieved in a less invasive way than by interfering with a fundamental right.

In relation to the above-stated, the Centre refers to a report published by the European Centre for Disease Prevention and Control (hereinafter referred to as “ECDPC”), according to which all viruses, including the virus that causes COVID-19, change over time. Changes in viruses occur when they circulate in the popula-

60 T. Hubinák, It is not so easy to mandate vaccination against COVID as is sometimes claimed, available in Slovak language at

<https://dennikn.sk/2651533/prikazat-povinne-ockovanie-proti-covidu-nie-je-take-jednoduch-e-ako-sa-niekedy-tvrdi/>

61 Ruling of the Constitutional Court of the Slovak Republic of 10 December 2014, Case No. PL ÚS 10/2013, available in Slovak language at [https://www.ustavnsud.sk/docDownload/ee48a4c5-6f74-4ac3-9aa6-e13d2b5dac3a/%C4%8D:%206%20-%20PL:%20C3%9A\\$%2010\\_2013.pdf](https://www.ustavnsud.sk/docDownload/ee48a4c5-6f74-4ac3-9aa6-e13d2b5dac3a/%C4%8D:%206%20-%20PL:%20C3%9A$%2010_2013.pdf)

62 Ibid.

63 Ministry of Health, National Strategy of Vaccination against COVID-19 in the Slovak Republic, available in Slovak language at [https://www.uvzsr.sk/docs/info/covid19/3\\_Vlastny\\_material\\_zapr\\_prip.pdf](https://www.uvzsr.sk/docs/info/covid19/3_Vlastny_material_zapr_prip.pdf)



tion. Some such changes may affect the characteristics of the virus. Most of the emerging mutations do not have a major impact on the spread of the virus, but other mutations or combinations of mutations may show increased transmissibility.<sup>64</sup> As early as on 21 January 2021 ECDPC concluded that the likelihood of the spread of SARS-CoV-2 variants to the European Union was very high. At the same time, it predicted higher rates of hospitalisation and mortality for people in all age groups, but particularly for those in the older age groups.<sup>65</sup>

During the calendar year 2021, several highly infectious variants of SARS-CoV-2, namely alpha, delta and omicron variants, emerged in the territory of the Slovak Republic. The predictions of experts came true and in October COVID-19 became the fourth leading cause of death. In October 439 people died as a result of COVID-19.<sup>66</sup>

Collective immunity is a way to protect people who are not vaccinated. To protect those who do not get vaccinated for health or other reasons, as many people as possible need to be vaccinated. Considering the percentage of vaccinated persons as well as the low uptake of the first dose of vaccine in 2021, achieving collective immunity through voluntary vaccination

is unlikely.

Based on the above-stated, the virus that causes the COVID-19 disease is changing and mutating. ECDPC notes that in the event of emergence of an aggressive variant of the coronavirus and its critical consequences for the health and life of the population, adoption of legislation introducing a general vaccination obligation would probably pass the necessity test. However, before the actual introduction of compulsory vaccination, the competent public authority would be obliged to follow the recommendations of the medical community. Vaccination should be considered effective and safe by the medical community.<sup>67</sup>

The fourth and final step is to apply the proportionality test in a narrower sense, which involves balancing conflicting rights and freedoms. Then, one of the two conflicting rights takes precedence. In this particular case, we can talk about the integrity and privacy of persons and the protection of public health.

The undeniable advantage of the possible introduction of a general vaccination obligation is the creation of collective immunity. Such step would ensure the protection of life and health even of persons with a contraindication to vaccination.

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64 European Union Agency, European Centre for Disease Prevention and Control, 2021, available at <https://www.ecdc.europa.eu/en/publications-data/covid-19-risk-assessment-spread-new-variants-concern-eueea-first-update>

65 Ibid.

66 Statistical Office of the Slovak Republic, The COVID-19 infection again increases the mortality rate in Slovakia; in October it was the fourth most common cause of death in Slovakia, 2021, available in Slovak language at <https://slovak.statistics.sk/>

67 Vavříčka and others v. Czech Republic, (47621/13 and 5 others), 2021, § 291, available at [https://hudoc.echr.coe.int/eng#\(22itemid%22:%22001-209039%22\)](https://hudoc.echr.coe.int/eng#(22itemid%22:%22001-209039%22))

As there is no consensus in the European area in relation to mandatory vaccination, the Council of Europe member states have significant discretion. The states enjoy such discretion because, with regard to the health situation in their territory and the resources at their disposal, they are in the best position to assess the most appropriate measures needed to protect public health. In the case *Vavříčka and others v. Czech Republic*, ECHR reiterated that national authorities

are best placed to prioritise, use the tools and address the needs of the society in matters relating to healthcare policy. The court stated that, in the particular case concerning compulsory vaccination of children, the discretion should be significant.<sup>69</sup>

If legislation introducing a general vaccination obligation were to be adopted, the argument in favour of such move is to safeguard the healthcare system and prevent it from being overloaded or prevent interventions from being postponed. On 16 November 2021, an order of the Minister of Health again restricted the so-called white medicine, i.e. scheduled interventions, the postponement of which should not lead to a deterioration of the health condition of the patients.<sup>70</sup>

The obvious advantage of making vaccination compulsory is also to stop the adoption of other anti-pandemic measures the application of which interferes with a number of fundamental rights and freedoms, e.g. the freedom of movement and residence, the right to peaceful assembly, the right to education and others.

However, there are also several disadvantages or uncertainties associated with the adoption of compulsory vaccination legislation. Doubts are related e.g. to the quality of vaccines or possible adverse effects as-

68 Ruling of the Constitutional Court of the Slovak Republic of 10 December 2014, Case No. PL ÚS 10/2013, available in Slovak language at [https://www.ustavnsud.sk/docDownload/ee48a4c5-6f74-4ac3-9aa6-e13d2b5dac3a/%C4%8D%206%20-%20PL%20C3%9AS%2010\\_2013.pdf](https://www.ustavnsud.sk/docDownload/ee48a4c5-6f74-4ac3-9aa6-e13d2b5dac3a/%C4%8D%206%20-%20PL%20C3%9AS%2010_2013.pdf)

69 *Vavříčka and others v. Czech Republic*, (47621/13 and 5 others), 2021, §§ 276 and 280, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%5B%22001-209039%22%5D%7D>

70 Press release of the Ministry of Health, available in Slovak language at <https://www.health.gov.sk/Clanok?covid-19-16-11-2021-nemocnice-lozka>

sociated with vaccine administration.<sup>71</sup> In this context we may mention a decision of the Ministry of Health to suspend vaccination with AstraZeneca's vaccine for those who wanted to be vaccinated with the first dose of the vaccine. One patient died after vaccination with AstraZeneca's vaccine. The link between the vaccination and the patient's subsequent death was described as probable by the State Institute for Drug Control.<sup>72</sup>

Another problematic issue in adopting a general vaccination obligation is the constantly changing and mutating nature of the virus. According to the Public Health Authority, new variants of the virus are associated with similar but also completely new symptoms. The more infectious delta variant spread more rapidly compared to the alpha variant and also manifested partially different symptoms.<sup>73</sup> Thus, the effectiveness of vaccines for different SARS-CoV-2 mutations is questionable.

In accordance with Article 40 of the Constitution, the state has a posi-

tive obligation to protect the health of the population.<sup>74</sup> In Slovakia, vaccination against ten communicable diseases is currently compulsory.<sup>75</sup> However, unlike COVID-19, the aforementioned diseases are very well known and have been known for a long time.

The Centre addressed the issue of the possibility of introducing compulsory vaccination in the wake of the worsening epidemiological situation at the end of the calendar year 2021, which sparked a debate across the social and political sphere on the possibility of introducing compulsory vaccination. No legislation was adopted in 2021 which would introduce such obligation. The Centre was thus working with a hypothetical situation or legislation. If the competent public authority introduced a general vaccination obligation, there would undoubtedly be an interference with the physical integrity of the natural person which is a part of the right of every individual to integrity and privacy in accordance with Article 16 (1) of the Constitution. The Centre applied a strict proportion-

71 Weekly statistics of the reports of suspected undesirable effects of the vaccines for the prevention of COVID-19 (May 7, 2021), available in Slovak language at [https://www.sukl.sk/hlavna-stranka/slovenska-verzia/media/tlacove-spravy/tyzdenna-statistika-hlaseni-podozreni-na-neziaduce-ucinky-vakcin-na-prevenciu-covid-19-7-5-2021?page\\_id=5597](https://www.sukl.sk/hlavna-stranka/slovenska-verzia/media/tlacove-spravy/tyzdenna-statistika-hlaseni-podozreni-na-neziaduce-ucinky-vakcin-na-prevenciu-covid-19-7-5-2021?page_id=5597)

72 Slovakia suspended vaccination with AstraZeneca vaccine, 2021, available in Slovak language at <https://www.slovenskoproticovidu.sk/aktuality/slovensko-pozastavilo-ockovanie-vakcinou-od-astrazenecy>

73 Press release, The delta variant of COVID-19 may have symptoms like a common cold, 2021, available in Slovak language at [https://www.uvzsr.sk/index.php?option=com\\_content&view=article&id=4801:delta-variant-illness-covid-19-moe-has-symptoms-like-benna-nadcha&catid=56:press-releases&Itemid=62](https://www.uvzsr.sk/index.php?option=com_content&view=article&id=4801:delta-variant-illness-covid-19-moe-has-symptoms-like-benna-nadcha&catid=56:press-releases&Itemid=62)

74 Ruling of the Constitutional Court of the Slovak Republic of 10 December 2014, Case No. PL ÚS 10/2013, available in Slovak language at [https://www.ustavnysud.sk/docDownload/ee48a4c5-6f74-4ac3-9aa6-e13d2b5dac3a/%C4%8D%206%20-%20PL%20C3%9AS%2010\\_2013.pdf](https://www.ustavnysud.sk/docDownload/ee48a4c5-6f74-4ac3-9aa6-e13d2b5dac3a/%C4%8D%206%20-%20PL%20C3%9AS%2010_2013.pdf)

75 Diseases against which vaccination is compulsory in the Slovak Republic, available in Slovak language at [https://www.uvzsr.sk/docs/info/ockovanie/Chorobnost\\_a\\_zaockovanost.pdf](https://www.uvzsr.sk/docs/info/ockovanie/Chorobnost_a_zaockovanost.pdf)

ality test to assess the appropriateness of such intervention. It cannot state with certainty whether or not the restriction of the right of every individual to integrity and privacy resulting from the introduction of compulsory vaccination would pass that strict test. However, the

Centre considers the results of the test, or rather the highlighting of certain facts, to be an important contribution to the professional debate on the institute of compulsory vaccination, the implementation of which was seriously considered in 2021.

## 1.3 Conclusion

The Centre assessed compliance with the principle of equal treatment in employment and similar legal relationships and in the provision of goods and services. In addition to the assessment itself, its aim was also to provide a comprehensive and coherent view of the issue. The Centre takes the legal view that the criterion of vaccination against COVID-19 can be subsumed under the prohibited discriminatory ground of “other status” in certain circumstances.

In connection with the vaccination against COVID-19, the Centre has noted possible violations of the prohibition of discrimination against unvaccinated persons in the area of employment and similar legal relationships, namely in the provision of benefits to vaccinated persons and in the application of the above-mentioned criterion in the recruitment process. The area of remuneration covered by the obligation to comply with the prohibition of equal treatment must include all benefits which are provided to employees in an employment or a similar legal relationship. Making the payment of remuneration or the receipt of any other benefits conditional upon having received vaccination against COVID-19 constitutes less favourable treatment of unvaccinated employees. The Centre notes that in 2021 it did not receive a single complaint alleging a violation of the prohibition of discrimination in the area of remuneration based on a client not having been vaccinated against COVID-19. However, it noted hypothetical considerations of employers about providing such bonuses and other benefits.

In accordance with Article 2 of the Labour Code, the employer has the right to freely select employees, though the choice is limited by the framework of anti-discrimination legislation. Therefore, an employer may only choose to use such requirements for the selection of employees that are not prohibited discriminatory reasons. However, the employer can claim an exemption from the obligation, but he or she would have to prove that the conditions for the exemption have been met. In 2021, the Centre did not receive a single relevant complaint alleging a violation of the prohibition of discrimination in the employee hiring process based on a client not having been vaccinated against COVID-19. However, it noted employers' statements where they admitted the possibility of such action. It therefore concludes that any employers who actually took such a step, without being exempted from the obligation to comply with the principle of equal treatment in this area, violated the prohibition of discrimination.

The Centre has observed activities of private-law entities that, in support of the vaccination campaign, offered consumers the possibility to obtain a discount on the price of goods or services by proving that they had been vaccinated against COVID-19. The sellers' less favourable treatment of those consumers who were not vaccinated was thus causally related to a prohibited ground of discrimination. The Centre therefore concludes that the sellers' conditioning of the receipt of a discount on the price of goods or services by the COVID-19 vaccination fulfilled the elements of a violation of the prohibition of

discrimination in the form of direct discrimination.

On the basis of decrees of the Public Health Authority ordering measures to restrict the entry of consumers into establishments in the event of a public health threat, sellers restricted the entry of consumers into their establishments. They allowed it only for persons who fulfilled the criteria of the chosen mode (basic, O, OP, OTP). The Centre notes that, since the sellers were required to do so by law, the sellers did not breach the obligation to comply with the principle of equal treatment by acting in accordance with that law.

In its capacity as a national institution for the protection and promo-

tion of human rights, the Centre assessed whether the adoption of legislation introducing compulsory vaccination against COVID-19 could be seen as a proportionate restriction of the right to integrity and privacy of persons as defined in Article 16 (1) of the Constitution in relation to the pursued aim which is the protection of life and health of the population. It applied a strict proportionality test to assess the appropriateness of such intervention. Having carried out the test, the Centre cannot state with certainty whether or not the restriction of the right of every individual to integrity and privacy resulting from the introduction of compulsory vaccination would pass that strict test.

## Recommendations

### The Centre recommends that:

- 1 Private-law entities in legal relationships do not use the criterion of vaccination against COVID-19 to impose different rights and obligations on persons in a comparable situation, unless they are entitled or required to do so by a generally binding legal regulation.
- 2 Labour inspectorates focus their inspection activities on compliance with generally binding legislation governing the obligation to observe the principle of equal treatment in employment and similar legal relationships with vaccinated and unvaccinated persons.
- 3 The Slovak Trade Inspection focus its inspection activities on compliance with generally binding legislation governing the obligation to observe the principle of equal treatment of vaccinated and unvaccinated consumers.
- 4 If a general vaccination obligation or an obligation for selected groups of the population were to be introduced, the National Council of the Slovak Republic, the Government of the Slovak Republic or the Public Health Authority of the Slovak Republic comprehensively assess the reasons for implementation of such institute by conducting a strict proportionality test.



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## 2. Impact of the COVID-19 pandemic on selected human rights and fundamental freedoms

The Centre evaluated the restrictions on the freedom of religious expression of worshippers in Slovakia and further pointed out a possible interference with the right to peaceful assembly.



The unfavourable epidemiological situation in 2021 brought *inter alia* a temporary suspension of public worship. As a result of restrictions on the attendance of religious services, the exercising of religious freedom became more difficult for many believers in Slovakia. On the basis of the above-stated restriction, we might assume that there was an interference with the freedom of religious expression. In the light of the above-stated, it is necessary to examine the proportionality of the restrictions adopted by the Public Health Authority in relation to the freedom of religious expression within the meaning of Article 24 (2) of the Constitution at the beginning of 2021 when the Slovak Government banned public worship.

With the Resolution of the Government of the Slovak Republic No. 808 of 31 December 2020<sup>76</sup> (hereinafter referred to as “Slovak Government Resolution No. 808”) which restricted the freedom of residence and movement through a lockdown, the Slovak Government suspended the attendance of religious services in all Slovak dioceses and

eparchies from 1 January 2021 until 24 January.<sup>77</sup> Decree 77 of the Public Health Authority of the Slovak Republic imposing measures to restrict the operation of establishments and mass events in the case of a public health threat<sup>78</sup> (hereinafter referred to as the “Decree 77 of the Public Health Authority”) which entered into force on 1 January 2021 ensured the implementation of the restrictions under Slovak Government Resolution No. 808 by prohibiting events that were not covered by an exemption from the lockdown. In accordance with Slovak Government Resolution No. 808 and Decree 77 of the Public Health Authority, priests were allowed to celebrate private services in churches without the participation of the worshippers, which could be broadcast online. The number of persons for the online broadcast of a private worship service was limited to the priest and no more than 5 other persons, based on the lockdown in effect at the time.

Although neither the Slovak Government Resolutions nor the Decrees of the Public Health Authority

<sup>76</sup> Resolution of the Government of the Slovak Republic No. 808 of 31 December 2020 on the proposal to amend the measures pursuant to Article 5 (4) of Constitutional Act No. 227/2002 Coll. on State security in times of war, state of war, state of exception and state of emergency, as amended by regulations adopted by the Resolution of the Government of the Slovak Republic No. 807 of 29 December 2020 on the Proposal to extend the duration of the state of emergency in accordance with Article 5 (2) of Constitutional Act No. 227/2002 Coll. on State security in times of war, state of war, state of exception and state of emergency, as amended, declared by Slovak Government Resolution No. 587 of 30 September 2020 and for the adoption of measures pursuant to Article 5 (4) of Constitutional Act No. 227/2002 Coll. on State security in times of war, state of war, state of exception and state of emergency, as amended, available in Slovak language at [https://www.slovaklex.sk/static/pdf/2020/453/ZZ\\_2020\\_453\\_20201231.pdf](https://www.slovaklex.sk/static/pdf/2020/453/ZZ_2020_453_20201231.pdf)

<sup>77</sup> Ban on public workshops from New Year's Day, available in Slovak language at <https://harichovce.kapitula.sk/?p=13714->

<sup>78</sup> Decree 77 of the Public Health Authority, available in Slovak language at [https://www.minv.sk/swift\\_data/source/verejna\\_sprava/vestnik\\_vlady\\_sr\\_2020/ciastka\\_38\\_2020.pdf](https://www.minv.sk/swift_data/source/verejna_sprava/vestnik_vlady_sr_2020/ciastka_38_2020.pdf)

issued due to the COVID-19 pandemic (hereinafter referred to as the “Decrees”) contained any explicit prohibition on the holding of religious services, they did contain restrictions on the freedom of movement and residence through lockdowns and restrictions in re-

lation to mass events, which were necessary to protect the life and health of the population against COVID-19. The restrictions applied regardless of whether the event was a commercial mass event or a mass event organised by a church or religious society.

## 2.1 Legal framework for the freedom of religion

The Convention which the Slovak Republic has ratified and which takes precedence over Acts, sets out in its Article 9 that everyone has the right to freedom of thought, conscience and religion.<sup>79</sup> When applying Article 9 of the Convention, both the Constitutional Court and ECHR distinguish between *forum internum* - the freedom to have one's own personal convictions in the form of an absolute human right, and *forum externum* - the freedom to manifest one's own personal convictions externally in the form of a relative human right with limited possibilities of restric-

tion within the scope and in the framework of Article 9 of the Convention.<sup>80</sup>

In addition to the above-stated, the Slovak Republic guarantees the freedom of religion also by Constitutional Act No. 23/1991 Coll. which states the Charter of Fundamental Rights and Freedoms as a constitutional Act of the Federal Assembly of the Czech and Slovak Federative Republic, namely in Article 16.<sup>81</sup>

The right to freedom of religion is among the fundamental rights and freedoms guaranteed by the

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<sup>79</sup> According to Article 9 (1) of the Convention, everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his or her religion or belief and freedom, either alone or in community with others and in public or private, to manifest his or her religion or belief, in worship, teaching, practice and observance.

According to paragraph 2 of the above-mentioned provision of the Convention, the freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

<sup>80</sup> OROSZ, L., SVÁK, J. et al: *Constitution of the Slovak Republic. Commentary. Volume I*. Bratislava: Kluwer Ltd, 2021, p. 309.

<sup>81</sup> According to Article 16 (1) of the Charter of Fundamental Rights and Freedoms, everyone has the right to freely manifest his or her religion or faith, either alone or in community with others, in private or public, through worship, teaching, practice, or observance.

According to paragraph 2 of the above-mentioned provision of the Charter of Fundamental Rights and Freedoms, churches and religious societies govern their own affairs; in particular, they establish their own bodies and appoint their clergy, as well as found religious orders and other church institutions, independently of state authorities.

According to paragraph 3 of the above-mentioned provision of the Charter of Fundamental Rights and Freedoms, the conditions under which religious instruction may be given at state schools shall be set by law.

According to paragraph 4 of the above-mentioned provision of the Charter of Fundamental Rights and Freedoms, the exercising of these rights may be limited by law in the case of measures necessary in a democratic society for the protection of public safety and order, health and morals, or the rights and freedoms of others.

Constitution in Article 24.<sup>82</sup> The first sentence of Article 24 (1) of the Constitution is a general guarantee for the creation of a free inner world (*forum internum*) and thus complements Article 17 of the Constitution which guarantees the physical freedom of the individual. The fourth sentence of the above-stated provision guarantees constitutional protection to the external manifestations of such inner world of man (*forum externum*). In contrast to the inner world in which the state may not interfere in any way, the outer world may be interfered with by the state principally in pursuit of the objectives defined in Article 24 (4) of the Constitution. However, in each case it must meet the condition of necessity of the intervention in a democratic society. A democratic society is a condition and a prerequisite for the freedom of the inner world of man, and at the same time it is a material criterion for interferences in the public

expression of his/her thinking. According to the Constitution, it is an individual public right.<sup>83</sup>

The fundamental issues of the relationship between the state and churches are regulated by Act No. 308/1991 Coll. on the freedom of religious belief and the status of churches and religious societies, as amended.<sup>84</sup> In addition to providing guarantees for respecting the freedom of conscience and religious belief and defining the status of churches, it regulates certain conditions for the registration of churches. The legal rules relevant to the assessment of the questions in this chapter regulate freedom of conscience or religious belief and provide guarantees for the observance of such human rights and fundamental freedoms. They are also an expression of binding acceptance of and respect for international obligations.<sup>85</sup>

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82 According to Article 24 (1) of the Constitution, freedom of thought, conscience, religion and belief shall be guaranteed. This right includes the possibility to change religion or belief. Everyone has the right to be of no faith. Everyone has the right to express his or her views publicly. According to paragraph 2 of the above-mentioned provision of the Constitution, everyone has the right to manifest freely his or her religion or belief either alone or in association with others, privately or publicly, in worship, religious acts, maintaining ceremonies or to participate in teaching. According to paragraph 3 of the above-mentioned provision of the Constitution, churches and ecclesiastical communities shall administer their own affairs themselves; in particular, they shall establish their bodies, appoint clergy, provide for theological education and establish religious orders and other clerical institutions independent of the state authorities. According to paragraph 4 of the above-mentioned provision of the Constitution, the exercising of rights under paragraphs 1 to 3 may be restricted only by a law if it is regarding a measure necessary in a democratic society for the protection of public order, health and morals or for the protection of the rights and freedoms of others.

83 OROSZ, L., SVÁK, J. et al: *Constitution of the Slovak Republic. Commentary. Volume I*. Bratislava: Wolters Kluwer s. r. o., 2021, p. 308.

84 Because of the complexity of the legal norms, it is also necessary to mention in this chapter the Vatican Treaty which regulates issues of Catholic education and upbringing, available in Slovak language at <https://www.minedu.sk/data/att/958.pdf>

85 MORAVČÍKOVÁ, M., LOJDA: *Religious freedom and its aspects, Islam in Europe*. Bratislava: Institute for the Relations between the State and Churches in cooperation with the Centre for European Policy, 2005, p. 11.

## 2.2 Proportionality of the restrictions of the Public Health Authority in relation to the freedom of religious expression

The right to the freedom of thought, conscience, religion and belief is relative within the *forum externum*. Public authorities can restrict it and private actors can do so as well, in the context of positive engagement. It is required to provide the maximum level of protection in relation to the freedom of religious expression. In addition to the general grounds legitimising the restriction of human rights and fundamental freedoms defined in Article 13 (2) and (4) of the Constitution, Article 24 (4) also defines special conditions allowing interferences with the freedom guaranteed by the Constitution which are identical to the grounds set out in Article 9 (2) of the Convention. These are one formal and two material conditions. The formal condition is that the rights protected by Article 24 (1) and (3) of the Constitution can be interfered with only on the basis of law, while the interpretation of the term “law” in the case law of ECHR in relation to the Convention is broader than in the case of the Con-

stitutional Court. Similarly to Article 13 (2) to (4) of the Constitution, not only the formal aspect of the law is assessed, but also its quality in terms of accessibility, clarity and content. In this case, the assessment of the law begins to overlap with the first material condition for the justification of the interference, which is fulfilment of at least one of the legitimate aims defined directly in Article 24 (4) of the Constitution and Article 9 (2) of the Convention. The second material condition is the necessity of the intervention. This is weighed by the criteria of a democratic society, which in the case of external expressions emanating from a person's inner world represents freedom, tolerance and plurality of opinions.

As with other relative human rights which may be interfered with, these are weighed based on the so-called five-step proportionality test in which the court assesses whether such interference:

- falls within the legal framework of the protection afforded by Article 24 (1) to (3) of the Constitution and Article 9 (1) of the Convention;
- was real and implemented;
- was in accordance with the principle of legality;
- fulfilled one of the legitimate aims set out in Article 24 (1) to (3) of the Constitution and Article 9 (1) of the Convention (protection of public order, health, morals, the rights and freedoms of others and, in the case of the Convention, public safety);
- was necessary “in a democratic society”, where the reasonableness of the interference with expression protected by Article 24 (1) to (3) of the Constitution and Article 9 (1) of the Convention is assessed.<sup>86</sup>

86 OROSZ, L., SVÁK, J. et al: *Constitution of the Slovak Republic. Commentary. Volume I*. Bratislava: Wolters Kluwer s. r. o., 2021, p. 324.

It is thus essential to determine whether the Constitution provides room for the assessed interference with the freedom of religious expression. The right to freely manifest one's religion or faith alone or in community with others, in private or public, through worship, practice or observance, is explicitly provided for in Article 24 (2) of the Constitution.

The interference with the freedom of religious expression was real and carried out by the state, namely by the Resolution of the Government of the Slovak Republic No. 808 which restricted the freedom of residence and movement by a lockdown and Decree 77 of the Public Health Authority.

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The legality test requires an assessment of whether the restriction on the freedom of religious expression was made on the basis of the law and within its limits. The examined period of prohibition of public worship from 1 January 2021 to 24 January 2021 was subject to Resolution of the Government of the Slovak Republic No. 808 which restricted the freedom of residence and movement by a lockdown according to Article 5 (4) of Constitutional Act No. 227/2002 Coll. on State security in times of war, state of war, state of exception and state of emergency, as amended. The legal basis for the adoption of the Decree 77 of the Public Health Authority which restricted mass events, including public religious services, was Act No. on the Protection, promotion and development of public health,

and on amendments and supplements to certain Acts, as amended.

The legitimate purpose of restricting religious expression during the above-stated period was to protect the life and health of persons from COVID-19. In addition to the test of suitability or fitness for purpose, the second subtest usually applies a test of rational connection between the restriction of the right and the objectives pursued by the restriction. It is used to determine whether an acceptable objective can be achieved by a particular means.<sup>87</sup> The case under review involves evaluation of the question whether by restricting the freedom of religious expression the state could have achieved public health protection against the spread of COVID-19. Measures prohibiting mass events resulting from Decree 77 of the Public Health Authority applied to all entities, not only to churches and religious societies. Restrictions regulated in the resolutions and decrees of the Slovak Government did not primarily interfere with the freedom of religion. Their aim was to restrict the movement of people and social contact. The intervention was allegedly necessary to protect life and health.<sup>88</sup> The Centre is of the opinion that the restrictions laid down in the Resolution of the Government of the Slovak Republic No. 808 and in Decree 77 of the Public Health Authority were capable of fulfilling the pursued purpose to protect the public against the spread of COVID-19. The rational connection test is satisfied in the present case.

87 KROŠLÁK, D. et al.: *Constitutional Law*. Bratislava: Wolters Kluwer s.r.o., 2016, p. 287.

88 Investigation of the petition by the Public Health Authority, pp. 11-12, available in Slovak language at [https://www.uvzsr.sk/docs/info/peticie/Peticia\\_c\\_2\\_2021.pdf](https://www.uvzsr.sk/docs/info/peticie/Peticia_c_2_2021.pdf)

The test of necessity consists of answering the question of whether in the particular circumstances there were less invasive means of restricting the freedom of religious expression while maintaining the need to fulfil the purpose. A legal rule should not restrict human rights and fundamental freedoms more than is necessary to achieve a legitimate aim. It is necessary to examine the efficiency of the purpose of the restriction or whether the public interest or the rights of third parties really require such intervention by the state. The most important criterion is to assess whether there are no other appropriate means to fulfil the purpose.<sup>89</sup> In the context outlined, the Centre draws attention to the experience of other European countries.

There was no public worship in Austria as of 21 January 2021. The bishops acceded to the government's request without a binding decision from the state authorities. According to the bishops' decision, a maximum of 10 people could attend private worship. At that time, a lockdown was in force in Austria, the exact rules of which were determined by the Ordinance of the Minister of Health on Emergency Measures against the Spread of COVID-19. According to such ordinance, an individual visit to a place of religious ceremony was one of the legitimate reasons for leaving the person's house. However, the ordinance did not apply to religious events. As of 21 January 2021, public worship was taking place in Germany, but it was necessary to comply with the hygiene rules is-

sued by the states. In France, public worship also took place during the period under review, but it was mandatory to maintain two-metre distancing between persons. The situation was similar in the UK but there were also other restrictions, such as restrictions on singing during religious ceremonies and on gathering afterwards. In the Czech Republic, public worship was held in compliance with the condition of not exceeding the occupancy of 10% of the seating capacity and following other rules - wearing a face mask, restriction of mass singing, etc. In Poland, public worship was held during the period under review in compliance with the condition of the presence of one person per 15 square metres and by keeping a distance of at least 1.5 metres between the attendees.<sup>90</sup>

During the period under review a state of emergency was in force in Slovakia. On the basis of Resolution of the Government of the Slovak Republic No. 808, freedom of residence and movement was restricted by a lockdown from 1 January 2021 to 24 January 2021. None of the exemptions from the lockdown laid down in the above-stated Resolution concerned an individual visit of a place of religious ceremony or a religious event. According to Section 4 (2) (a) of Decree 77 of the Public Health Authority R, during the period under review it was possible to conduct religious services as mass events of a one-off nature. At the time of the start of the mass event, the persons present were obliged to have a negative RT-PCR test or antigen test result for

<sup>89</sup> KROŠLÁK, D. et al.: *Constitutional Law*. Bratislava: Wolters Kluwer s.r.o., 2016, p. 287.

<sup>90</sup> Investigation of the petition by the Public Health Authority, pp. 2-3, available in Slovak language at [https://www.uvzsr.sk/docs/info/peticie/Peticia\\_c\\_2\\_2021.pdf](https://www.uvzsr.sk/docs/info/peticie/Peticia_c_2_2021.pdf)

COVID-19 no older than 12 hours. At the same time, the religious services had to be announced to the relevant regional public health office at least 48 hours before the start. Marriage ceremonies, baptism ceremonies and funeral ceremonies for up to 6 persons could be performed according to Article 4 (2) (b) of Decree 77 of the Public Health Authority.

In accordance with the above-stated Resolution of the Government of the Slovak Republic No. 808 and Decree 77 of the Public Health Authority, priests were allowed to hold private services in churches without the presence of the public. Such private services could be streamed online but the priest could only be assisted by the necessary assistants. The number of persons for the online broadcast of a private worship service was limited to the priest and no more than 5 other persons, based on the lockdown in effect at the time. At the same time, however, such exception could not be applied because of the strict restriction on movement at that time in the sense that different families were invited or registered for private services in the churches according to waiting lists, registered intentions, etc.

The proportionality test consists of ascertaining whether a legal rule is proportionate to the achievement of the intended objective, i.e. whether the relevant legislative measure restricting human rights and fundamental freedoms with its negative consequences cannot outweigh the positive effects of the promotion of the public interest pursued by the measure. The pros and cons are weighed regarding whether the

restriction of one interest will bring into conflict the other interest, and vice versa: the pros and cons are assessed regarding what the prioritisation of the other interest (right) might bring. A fair balance is sought between the right and freedom of an individual and the opposing purpose of the restriction in the form of a public interest or the rights and freedoms of third parties. The so-called relative social significance of the limited fundamental right in question, i.e. the interference with the essence of the limited right or only its periphery, or the urgency of the public interest, is also a factor to be considered.<sup>91</sup> According to the Centre, it is necessary to assess whether the negative consequences of the ban on public worship during the period in question could have outweighed the positive effects of the public interest pursued by the measure. The negative consequences of the restriction of the freedom of religious expression within the meaning of the Article 24 (2) of the Constitution include the impossibility to confess one's faith in God together with others and to worship Him in community. The aim of the restriction of public worship during the period in question was to protect the life and health of persons against COVID-19, which is a positive thing represented in pursuing the public interest. The Centre concludes that there was no interference with the very essence of religion or belief, as the worship services during the period in question could be televised or streamed online as a mass event of a one-off nature under the conditions laid down in Section 4 (2) (a) of Decree 77 of the Public Health Authority.



## 2.3 Constitutional plurality of religions and restrictions formulated for specific religious acts

The Constitution recognises the plurality of religions and guarantees the right to choose one's religion within the meaning of Article 24 (1).<sup>92</sup> The external manifestation of such guarantees is the plurality of registered churches and religious communities. They are equal. The above-stated must always be taken into account when regulating exceptions to the restrictions on the right to manifest a common religion or when regulating the conditions for the exercising of such right. The conditions of restrictions and exceptions to them should not be formulated for specific religious acts or events of one or only some religious communities, but in general so as to allow all religious communities and churches to carry out mass religious events and acts on equal terms. The principle of equality and the prohibition of discrimi-

nation also apply to restrictions on human rights and fundamental freedoms, including the freedom of religion and the right to collective religious expression. The formulation of the measures in question and the approach to defining exceptions to the restrictions on mass and collective manifestations must meet the requirements of the principle of equality and non-discrimination in relation to smaller registered churches and religious communities.<sup>93</sup>

The decrees from the period under review which regulated the prohibition on holding mass events also defined exceptions to the prohibition on holding mass events which were *inter alia* religious services, religious or civil versions of a marriage ceremony, a funeral ceremony or a baptism ceremony.<sup>94</sup>

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<sup>92</sup> According to Article 24 (1) of the Constitution, freedom of thought, conscience, religion and belief shall be guaranteed. This right includes the possibility to change religion or belief. Everyone has the right to be of no faith. Everyone has the right to express his or her views publicly.

<sup>93</sup> Report on the activities of the Public Defender of Rights for 2020, pp. 37-38, available in Slovak language at [https://vop.gov.sk/wp-content/uploads/2021/10/VOP\\_VS20\\_SK\\_1.pdf](https://vop.gov.sk/wp-content/uploads/2021/10/VOP_VS20_SK_1.pdf)

<sup>94</sup> E.g. Decree 223 of the Public Health Authority of the Slovak Republic imposing measures to restrict mass events in the case of a public health threat, available in Slovak language at [https://www.uvzsr.sk/docs/info/ut/vyhlasaka\\_223.pdf](https://www.uvzsr.sk/docs/info/ut/vyhlasaka_223.pdf)

## 2.4 Exercise of the right to peaceful assembly

In 2021, issues of protests and demonstrations against vaccination, testing and government action aimed at combating the COVID-19 pandemic resonated in society. It was argued that the right of assembly was absolute and could not be limited.<sup>95</sup> To explain the context, we must state that the 2021 protests took place both during the state of emergency and assembly ban declared by the Slovak Government, and during less stringent measures, reflecting the degree of threat under the COVID automat in force.

The Centre therefore examined whether it was possible to prohibit the exercise of the right to freedom of peaceful assembly which is a fundamental right and is inalienable, imprescriptible, non-barred and irrevocable, and whether citizens have an unrestricted right to assemble.

The Slovak Government has repeatedly restricted the right to freedom of peaceful assembly by resolutions published in the Collection of Laws. That happened for the first time in September 2020 when, in connection with the second wave of the COVID-19 pandemic,

the Slovak Government declared a state of emergency under the Constitutional Act on State Security, with effect from 1 October 2020 (Resolution of the Government of the Slovak Republic No. 587 of 30 September 2020 on the Proposal to declare a state of emergency).<sup>96</sup> One of the measures that followed the declared state of emergency was also a ban on the “exercise of the right to freedom of peaceful assembly in numbers exceeding 6 persons”, with the exception of “persons living in the same household”, effective from 13 October 2020 (Resolution of the Government of the Slovak Republic No. 645/2020 of 12 October 2020 and also Resolution of the Government of the Slovak Republic No. 718 of 11 November 2020).<sup>97</sup>

The state of emergency lasted continuously from 1 October 2020 until the Slovak Government decided to abolish it on 14 May 2021 (Resolution of the Government of the Slovak Republic No. 260 of 14 May 2021).<sup>98</sup> The end of the state of emergency meant the loss of the government’s authority to restrict the freedom of movement and residence and the right to freedom of peaceful assembly, which in practice meant

<sup>95</sup> See e.g. the Centre’s press release “The right to peaceful assembly is not limitless in a democratic society”, available in Slovak language at <https://www.snslp.sk/wp-content/uploads/TS-Pravo-na-pokojne-zhromazdovanie-nie-je-v-demokratickej-spolocnosti-bezhranicne.pdf>, and the article “Do we have an unlimited right to assembly?” available in Slovak language at <https://www.tyzden.sk/komentare/75660/mame-neobmedzene-zhromazdovacie-pravo/>

<sup>96</sup> Resolution of the Government of the Slovak Republic No 587 of 30 September 2020, available in Slovak language at <https://rokovania.gov.sk/RVL/Resolution/18730/1>

<sup>97</sup> Resolution of the Government of the Slovak Republic No. 645/2020 of 12 October 2020 and Resolution of the Government of the Slovak Republic No. 718 of 11 November 2020, available in Slovak language at <https://rokovania.gov.sk/RVL/Resolution/18788/1> and <https://rokovania.gov.sk/RVL/Resolution/18874/1>

<sup>98</sup> Resolution of the Government of the Slovak Republic No. 260 of 14 May 2021, available in Slovak language at <https://rokovania.gov.sk/RVL/Resolution/19232/1>

the shutdown of the COVID automat in such parts.<sup>99</sup> According to the COVID automat, the measures implemented by the Slovak Government to stop the spread of COVID-19 were automated according to the current epidemic situation in the particular region.<sup>100</sup>

The Slovak Government declared a state of emergency again from 25 November 2021 for a period of 90 days on the entire territory of the Slovak Republic and pursuant to Article 5 of the Constitutional Act on State Security it prohibited the exercising of the right to freedom of peaceful assembly in numbers exceeding 6 persons, except for persons living in the same household (Resolution of the Government of,

the Slovak Republic No. 695 of 24 November 2021 on the Proposal to declare a state of emergency), with effect from 25 November 2021.<sup>101</sup>

Resolution of the Government of the Slovak Republic No. 772 of 14 December 2021 on the Proposal to update the measures according to Article 5 (4) of the Constitutional Act on State Security, according to which, with effect from 17 December 2021, it was forbidden within the declared state of emergency to assemble in numbers exceeding 6 persons, except for persons living in the same household, was also fundamental from the point of view of the exercising of the right to freedom of peaceful assembly.<sup>102</sup>

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99 Background material from the Ministry of Justice of the Slovak Republic to the proposal of the Government of the Slovak Republic for the consent of the National Council of the Slovak Republic to the repeated extension of the state of emergency declared due to the threat to life and health of persons in causal connection with the emergence of the pandemic. Available in Slovak language at <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=491805>

100 An example of a protest held in disregard of the state of emergency was the protest on the anniversary of the Velvet Revolution on 17 November 2021. According to media reports, thousands of people attended. Mass events were considerably limited in the red colour which applied to Bratislava according to the COVID automat at that time. However, such restriction did not apply to protests because they were not considered mass events unless they included a cultural programme.

101 Resolution of the Government of the Slovak Republic No. 695 of 24 November 2021, available in Slovak language at <https://rokovania.gov.sk/RVL/Resolution/19679/1>

102 Resolution of the Government of the Slovak Republic No. 772 of 14 December 2021, available in Slovak language at <https://rokovania.gov.sk/RVL/Resolution/19738/1>

## 2.5 Legal framework of the right to freedom of peaceful assembly

The right to freedom of peaceful assembly is one of the fundamental rights and freedoms guaranteed by the Constitution in its Article 28.<sup>103</sup> It is also a political right, with constitutional guarantees for the protection of the right to freedom of peaceful assembly being indispensable in a democratic country. The freedom of assembly and the right to express one's views through it are among the primary values of society.<sup>104</sup> The right to assembly can be closely linked to the right to vote, religious freedom, the right to property, the right to judicial protection or the protection of one's physical integrity, and the prohibition of discrimination. An essential aspect is that the Constitution guarantees protection for the peaceful exercise of the right of assembly, thereby implicitly excluding disorderly, aggressive or violent assembly.<sup>105</sup> The conditions for ex-

ercising the right to assembly are regulated by Act No. 84/1990 Coll. on the Right of Assembly (hereinafter referred to as the "Act on the Right of Assembly"). This is an atypical regulation of a fundamental right, as the exercising of the right is left entirely to regulation by the implementing Act.<sup>106</sup>

In its Article 11, the Convention<sup>107</sup> provides that the right to peaceful assembly may be restricted only in accordance with the law if it is necessary in a democratic society and one of the objectives defined in this article is pursued (e.g. in the interests of national security, health or morals, etc.).<sup>108</sup>

The Act on the Right of Assembly regulates a number of practical aspects of the exercising of the right to peaceful assembly. The purpose of its exercise is for citizens to freely

103 Article 28 (1) of the Constitution guarantees the right to peaceful assembly. According to Article 28 (2) of the Constitution, the conditions under which this right may be exercised shall be provided by a law in cases of assemblies held in public places, if it is regarding measures necessary in a democratic society for the protection of the rights and freedoms of others, for the protection of public order, health and morals, property or of national security. An assembly shall not be subject to permission from a body of public administration.

104 Ruling of the Constitutional Court, Case No. I. ÚS 193/03 of 30 March 2004, available in Slovak language at <https://www.slov-lex.sk/judikaty/-/spisova-znacka/1%252E%2B%25C3%259A%2B193%252F03>

105 OROSZ, L., SVÁK, J. et al: *Constitution of the Slovak Republic. Commentary. Volume I*. Bratislava: Wolters Kluwer SR s. r. o., 2021, 892 pp.

106 DRGONEC, J.: *Constitution of the Slovak Republic. Theory and practice. 2nd revised and expanded edition*. Bratislava: C. H. Beck, 2019, 1792 pp.

107 The same concept has been adopted by the Charter, see Article 12 (1).

108 According to Article 11 (1) of the Convention, everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his or her interests. According to Article 11 (2) of the Convention, no restrictions shall be placed on the exercising of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercising of these rights by members of the armed forces, of the police or of the administration of the state.

express their opinions. Assemblies are not subject to approval as this would be an unreasonable restriction; however, the convener is required to give the municipality at least 5 days' notice of the assembly. Although assemblies are not subject to any permission, it is not possible to hold any kind of assembly, and some types of assemblies are prohibited. However, not all reasons are mandatory. The municipality shall prohibit an assembly if any of the six grounds defined in the Act on the Right of Assembly occurs.<sup>109</sup> Such prohibition can only apply when the assembly is announced.

The first three grounds are related to the purpose of the announced assembly and, should any of these occur, the municipality must prohibit the assembly in advance. These are assemblies the aim of which is a call to restrict the rights

of others or to incite hatred and intolerance towards others because of their nationality, gender, race, origin, political and other views, religion and social status, a call to commit violence or gross indecency, or a call to violate the Constitution, laws or binding international treaties. The other three grounds relate to the inappropriateness of the venue of the assembly. These may or may not be prohibited by the municipality. The above-stated list of reasons for which the municipality must or may prohibit an assembly is exhaustive.

The Act on the Right of Assembly also regulates the prohibition of assembly *ex lege*, i.e. directly by law. Within the meaning of Section 1 (5) of the Act on the Right of Assembly, *"assemblies are forbidden within a radius of 50 m from the buildings of the legislature or places where*

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<sup>109</sup> Section 10

*(1) The municipality to which the assembly has been notified shall prohibit the assembly if the notified purpose of the assembly would be to incite to:*

*(a) deny or restrict the personal, political or other rights of citizens on account of their nationality, sex, race, origin, political or other opinion, religion or social status, or to stir up hatred and intolerance on these grounds;*

*(b) commit violence or gross indecency;*

*(c) otherwise violate the Constitution, constitutional Acts, Acts and international treaties by which the Slovak Republic is bound and which take precedence over the laws of the Slovak Republic.*

*(2) The municipality shall also prohibit the assembly if*

*(a) it is to be held in a place where there would be a serious danger to the health of the participants;*

*(b) an assembly is to be held at the same time and place according to an earlier notice and no agreement has been reached between the conveners to adjust the time of the assembly; if it cannot be determined which notice was received earlier, the decision shall be taken by drawing lots in the presence of the representatives of the conveners;*

*(c) it is to be held at the same place and at the same time where a public cultural or sporting event has already been permitted under the legislation in force. 1a)*

*(3) A municipality may prohibit an assembly if it is to be held at a place where the necessary restriction of traffic and supplies would be seriously contrary to the interests of the public, if the assembly can be held elsewhere without undue hardship without defeating the stated purpose of the assembly.*

*(4) A municipality may not prohibit an assembly on the grounds set out in subsections (2) and (3) above if the convener has accepted the municipality's proposal under Section 8.*

*the legislature is in session”.*

If an assembly is held although it has been prohibited by the municipality or directly by law, it is the duty of the municipality to call upon the convener to terminate the assembly, to be followed by the peaceful dispersal of the participants in the assembly. If this is not done, the municipality's representative or police force shall end the assembly. In accordance with Act No. 171/1993 Coll. on the Police Force, if the participants do not disperse then and have been warned of the consequences that may result from disobeying such call, the police are entitled to intervene and disperse the participants also with motor vehicles and horses or through use of water cannons.<sup>110</sup> The police may also use such means if the assembly is not peaceful.

In the event that an assembly is

already being held, it may be dissolved. In its Section 12, the Act on the Right of Assembly provides an exhaustive list of grounds for dissolving an assembly. The first reason is that the assembly is taking place despite the fact that it has been banned. Dissolution of the assembly in the case of its prior prohibition is formulated by the Act as mandatory. However, an assembly may also be dissolved without a prior decision to ban it. This may be the case if the assembly was to be held without notice and, at the same time, if circumstances arose during the course of the assembly which would otherwise justify its prohibition. An ongoing assembly may also be prohibited if, although it has been announced and has not been prohibited, over time it has departed substantially from its announced purpose in such a way that one of the circumstances justifying its prohibition has arisen.

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<sup>110</sup> Section 54 *Dispersing with motor vehicles and horses*

*Police officers may disperse participants in an assembly, sports and public cultural events (hereinafter referred to as “the event”) with motor vehicles or horses if*

*(a) the peaceful conduct of the event is being disturbed and the convener, organiser or promoter has failed to ensure a remedy;*

*(b) the participants do not disperse peacefully at the end of the event;*

*(c) the participants in the event are committing criminal offences and redress cannot be secured in any other way, in particular by taking action against individual offenders.*

*Section 57 Use of a special water cannon*

*A special water cannon may be used by police officers to disperse participants in an event under the conditions set out in Section 54.*

## 2.6 Prohibition on the exercise of the right to peaceful assembly during a state of emergency

The nature of the COVID-19 pandemic justifies the potential use of the restriction on the right to peaceful assembly, primarily on the basis of the declaration of a state of emergency, which is a tool to restrict residents from gathering

- the Constitution, namely by law, if it is necessary for the protection of health, where such restriction by law meets the requirements for such a legal rule set by the Constitution and the case-law of the Constitutional Court - i.e. generality, regulative nature, binding force and enforceability by the state;
- a constitutional Act, in a state of emergency declared due to a threat to the life and health of persons causally related to the emergence of the pandemic, namely to the extent and for the duration necessary according to the severity of the threat.

Neither the freedom of movement and residence nor the right to peaceful assembly can be restricted by a normative legal Act.<sup>111</sup>

In the event of a state of emergency, the Constitutional Act on State Security pursuant to Article 5 3 (h) also entitles, depending on the gravity of the threat, restriction or prohibition of the exercise of the right to peaceful assembly or to make public assembly subject to authorisation, provided that the conditions of the necessary extent and the necessary duration are met. In doing so, it is necessary to weigh the different colliding rights, in this case the right to peaceful assembly and the protection of life and health. No right is absolute. It results from the above-mentioned legal possibilities to restrict the

with each other and in busy public places. As this is a fundamental interference with human rights and fundamental freedoms, the right to peaceful assembly can only be restricted on the basis of:

right of assembly and it has also been confirmed by the Constitutional Court: *“The right of assembly under Article 28 of the Constitution or according to Article 11 of the Convention is not an absolute right; it may be limited in a constitutionally compliant manner. An interference with (restriction of) the fundamental right to freedom of peaceful assembly may be justified only if the restriction has been provided for by law, corresponds to an established legitimate aim and is necessary in a democratic society to achieve the aim pursued, i.e. it is justified by the existence of a pressing social need and by a reasonably (fairly) balanced relationship between the means employed and the aim pursued (i.e. the restriction is in accordance with the principle of proportionality).”*<sup>112</sup>

<sup>111</sup> Background material from the Ministry of Justice of the Slovak Republic to the proposal of the Government of the Slovak Republic for the consent of the National Council of the Slovak Republic to the repeated extension of the state of emergency declared due to the threat to life and health of persons in causal connection with the emergence of the pandemic. Available in Slovak language at <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=491805>

<sup>112</sup> Ruling of the Constitutional Court, Case No. I. ÚS 193/03 of 30 March 2004, available in Slovak language at <https://www.slov-lex.sk/judikaty/-/spisova-znacka/1%252E%2B%25C3%259A%2B193%252F03>

Any restriction on the right of assembly must therefore be lawful and must not deny the very existence of the right to peaceful assembly. The Centre points out that, in the case of the restriction of the freedom of movement and residence by a lockdown, a precise time period for such restriction was set (in both the second and third waves of the COVID-19 pandemic), but no time limit was set in the case of the restriction of the right to freedom of peaceful assembly. From a constitutional point of view, this is an interference which must be subject to a strict proportionality test in terms of its intensity (including in terms of time).<sup>113</sup> The stricter proportionality test, which is also applied to political rights, consists of four sub-tests: legality, suitability, necessity and a proportionality test in the narrower sense.<sup>114</sup>

The test of legality consists of examining whether there has been a restriction of a human right or fundamental freedom on the basis of the law. In the event of a restriction on the right to peaceful assembly during a state of emergency, the requirement of legality is guaranteed by the Constitutional Act on State Security.

The content of the suitability test is an assessment of the relevant legal rule in terms of its fulfilment of the intended purpose. It also includes a test of rational connection between the legal rule and the objective (purpose) of the legal regulation, where it is examined whether an acceptable objective can be achieved

by a particular means. The threat to life and health of persons causally linked to the emergence of the COVID-19 pandemic may constitute a sufficiently important objective to justify an interference with fundamental rights and freedoms, but its importance is limited by the rational connection between the interference and the objective. The essential fact that the connection is dynamic and was changing during the state of emergency cannot be overlooked.

In the test of necessity it is required to find out whether in the particular circumstances there were less severe or more lenient means of restricting fundamental rights so as to achieve the purpose of the restriction. The prohibition of peaceful assembly, with specified exceptions, applied to everyone in the territory of the Slovak Republic. In the Centre's legal opinion, the prohibition of peaceful assembly is questionable in terms of necessity, as its necessity did not always correspond to the then-current epidemic situation in 2021. It is also questionable whether in a period of minimal increase in the number of infected persons the prohibition of the right to peaceful assembly was necessary to achieve the objective of protecting human life and health in a causal connection with the emergence of the COVID-19 pandemic.

The final step of the proportionality test is the proportionality test in a narrower sense. This test determines whether *"the relevant legal*

<sup>113</sup> SVÁK, J.: *The constitutionality of emergency Acts to combat COVID-19*. Available at <https://www.pravniprostor.cz/clanky/ustavni-pravo/ustavnost-mimoriadnych-zakonov-covid19>

<sup>114</sup> KROŠLÁK, D. et al.: *Constitutional Law*. Bratislava: Wolters Kluwer, s. r. o., 2016, 804 pp.



*rule is proportionate in relation to the intended objective, i.e. whether the relevant legislative measure restricting fundamental rights or freedoms with its negative consequences cannot outweigh the positives represented in the promotion of the public interest pursued by the measure.*<sup>115</sup> Freedom of assembly is one of the pillars of a democratic state and a pluralistic society. Its purpose (along with the freedom of speech) is to ensure free debate and expression of views on matters of public interest and, in a certain way, also to informally check the state authority. However, in order to protect life and health, the ban on peaceful assembly (with specified exceptions) prevented citizens from responding to the political situation. It is at least questionable whether the right to protection of life and health were compromised during the period of the ban on peaceful assembly. According to the Centre's legal opinion, from the point of view of proportionality in the restriction of fundamental rights and freedoms, a review of such intervention by the Constitutional Court would be ideal.

The Centre stresses that only the Constitutional Court can review and intervene in a restriction on the right of assembly if it considers it to be either manifestly excessive or if it concludes that it is likely to be abused. However, it can act only

based on a motion of one of the authorized entities, namely at least 30 members of NR SR, the President, the Attorney General and the Government of the Slovak Republic.<sup>116</sup> In 2021, none of the authorized entities turned to the Constitutional Court regarding this case.

From the point of view of the protection of constitutionality in the future, the situation which arose in 2021 may be a lesson for actively legitimate entities to file a motion under Article 129 (6) of the Constitution to use their authority in a similar case and give the Constitutional Court an opportunity to review serious interferences in fundamental rights and freedoms during a state of emergency.<sup>117</sup>

The Centre also notes that if restrictions on fundamental rights during a state of emergency are decided upon by the Slovak Government within the intent of the Constitutional Act on State Security, the public defender of rights cannot review such restrictions due to a lack of power in relation to the Slovak Government. He/she is also limited in such cases in relation to the competence to bring a petition to the Constitutional Court, because the procedure for compliance with the decision on declaring a state of emergency is subject to a specific regime under Article 129 (6) of the Constitution, and in this case the law did not include the public defender of rights among the actively

<sup>115</sup> Decision of the Constitutional Court of the Slovak Republic, Case No. PL. ÚS 9/09. In KROŠLÁK, D. et al.: *Constitutional Law*. Bratislava: Wolters Kluwer, s. r. o., 2016, 804 pp.

<sup>116</sup> Article 129 (6) of the Constitution of the Slovak Republic.

<sup>117</sup> BUJŇÁK, V.: *Prohibition on the exercise of the right to peaceful assembly: How many exceptions are there?*. Available in Slovak language at <https://comeniusblog.flaw.uniba.sk/2020/06/08/zakaz-uplatnovania-prava-pokojne-sa-zhromazdovat-kolko-vynimiek-existuje/>

legitimated entities.<sup>118</sup> The Centre stresses that the public defender of rights enters the public debate in order to protect the rule of law principles and fundamental rights and freedoms. In the event of their violation during a state of emergency, the public defender of rights

should be the closest partner for the Constitutional Court, especially because of the need for the public defender of rights to play an active role in the protection of human rights and fundamental freedoms even during a pandemic.

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<sup>118</sup> Report on the activities of the Public Defender of Rights for 2020, available in Slovak language at <https://www.nrsr.sk/web/Dynamic/Download.aspx?DocID=493062>

## 2.7 Suspension of the effectiveness of a decree of the Public Health Authority by the Constitutional Court

In 2021, the Constitutional Court received several petitions to declare legislation incompatible with the Slovak Constitution in the context of vaccination against COVID-19. One of them was a proposal of a group of 31 members of the NR SR to initiate the procedure under Article 125 (1) (b) of the Constitution on the compliance of Decree of the Public Health Authority of the Slovak Republic No. 226/2021 GJ imposing measures in the case of a threat to public health, related to quarantine obligations of persons after they have entered the territory of the Slovak Republic<sup>119</sup> (hereinafter referred to as the “Decree No. 226/2021 GJ”), which imposes measures in the case of a threat to public health, related to quarantine obligations of persons after they have entered the territory of the Slovak Republic, published on 2 July 2021, with the Constitution of.

On 13 July 2021, at a closed session of the plenary, the Constitutional Court ruled in the case filed under Case No. PL. ÚS 10/2021<sup>120</sup> and accepted the proposal for further proceedings. At the same time, it suspended the effectiveness of the Decree No. 226/2021 GJ, published on 2 July 2021, as amended by Decree of the Public Health Authority of the Slovak Republic No. 227/2021

GJ amending Decree of the Public Health Authority of the Slovak Republic No. 226/2021 GJ imposing measures in the case of a threat to public health, related to quarantine obligations of persons after they have entered the territory of the Slovak Republic<sup>121</sup>, published on 8 July 2021. It also restored the validity and effectiveness of Decree of the Public Health Authority of the Slovak Republic No. 218/2021 GJ imposing measures in the case of a threat to public health, related to quarantine obligations of persons after they have entered the territory of the Slovak Republic, published on 10 June 2021.

The Constitutional Court has emphasized several times in its decision-making practice that suspension of an Act is a serious interference with the competence of the legislative body. It is therefore an exceptional action taken if there is a sufficiently specific threat to fundamental rights and freedoms or a threat of economic damage or other irreparable harm. It must be apparent from the circumstances of the case that such consequences can be regarded as proven and therefore justified, in particular by the nature of the legislation, or part or individual provision thereof, challenged in the conformity pro-

<sup>119</sup> Decree No. 226/2021 GJ, available in Slovak language at [https://www.uvzsr.sk/docs/info/ut/vyhlasaka\\_226.pdf](https://www.uvzsr.sk/docs/info/ut/vyhlasaka_226.pdf)

<sup>120</sup> Ruling PL. CC 10/2021 of 13 July 2021, available in Slovak language at [PL\\_+US+10\\_2021-Rozhodenie-predbezne.pdf \(ustavnysud.sk\)](https://www.usud.sk/rozhodenie-predbezne.pdf)

<sup>121</sup> Decree of the Public Health Authority of the Slovak Republic No. 227/2021 GJ amending Decree of the Public Health Authority of the Slovak Republic No. 226/2021 GJ imposing measures in the case of a threat to public health, related to quarantine obligations of persons after they have entered the territory of the Slovak Republic, available in Slovak language at [https://www.uvzsr.sk/docs/info/ut/vyhlasaka\\_227.pdf](https://www.uvzsr.sk/docs/info/ut/vyhlasaka_227.pdf)

cedure.<sup>122</sup>

According to the above-stated Decrees, new rules for passengers arriving from abroad to Slovakia were in force from 9 July 2021. However, the state set different conditions for the vaccinated and the unvaccinated. Fully vaccinated persons did not have to undergo quarantine according to the Decrees; they were only obliged to register in advance via the eHranica form. However, unvaccinated persons were required to undergo a 14-day quarantine which could be terminated on the basis of a negative RT-PCR test no earlier than on the fifth day.

The definition of a “fully vaccinated person” appeared discriminatory. A person was considered fully vaccinated at least 14 days and no more than 12 months after administration of the second dose of a two-dose vaccine and at least 21 days and no more than 12 months after admin-

istration of a single-dose vaccine or at least 14 days and no more than 12 months after administration of the first dose of a vaccine, if administered within 180 days after the person overcame COVID-19. Also, a person was temporarily considered fully vaccinated until 9 August 2021 after the first dose of a COVID-19 vaccine was administered with a single-dose or two-dose schedule immediately after the first dose was administered.

In the case in question, on 7 July 2021 the Constitutional Court received a petition from a group of 31 members of the NR SR to initiate proceedings under Article 125 (1) (b) of the Constitution on the compliance of the Decree No. 226/2021 GJ, published on 2 July 2021, with Article 12 (1), (2) and (4), Article 23 (1) and (4) and Article 35 (3) of the Constitution. The applicants argued that the contested legislation discriminates against:

- unvaccinated persons compared to vaccinated persons in the exercising of their constitutional right to the freedom of movement and residence, and the right to free entry to the territory of the Slovak Republic;
- unvaccinated persons compared to vaccinated persons who are citizens of the Slovak Republic with permanent or temporary residence in the territory of another Member State of the European Union and who are employed in the Slovak Republic or are employed in another Member State of the European Union (so-called cross-border commuters) in the exercising of their fundamental right to work.<sup>123</sup>

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<sup>122</sup> Ruling of the Constitutional Court of the Slovak Republic PL. CC 10/2014 of 29 April 2015, available in Slovak language at [https://www.ustavnysud.sk/documents/10182/992035/PL\\_+%C3%9AS+10\\_2014.pdf](https://www.ustavnysud.sk/documents/10182/992035/PL_+%C3%9AS+10_2014.pdf)

<sup>123</sup> See also the resolution of the Constitutional Court, Case No. PL. ÚS 11/2021-55 of 27 July 2021 and the resolution of the Constitutional Court, Case No. PL. ÚS 14/2021-52 of 27 October 2021.

They also argued that the contested legislation discriminates against persons on the protected ground of “other status” and does not pass the tests of legality, legitimacy or proportionality.<sup>124</sup> “Other status” was perceived by the petitioners through the personal choice of persons not to be vaccinated, which gives such persons the status of unvaccinated persons and, compared to vaccinated persons, deprives them of the full enjoyment of their constitutional rights and freedoms.

In its resolution in Case No. PL. ÚS 10/2021, the Constitutional Court also referred to Regulation (EU) 2021/953 of the European Parliament and of the Council of 14 June 2021 on a Framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic, according to which *“It is necessary to prevent direct or indirect discrimination against persons who are not vaccinated, for example because of medical reasons, because they are not part of the target group for which the COVID-19 vaccine is currently administered or allowed, such as children, or because they have not yet had the opportunity or chose not to be vaccinated. Therefore, possession of a vaccination certificate, or the possession of a vaccination certificate indicating a COVID-19 vaccine, should not be a pre-condition for the exercising of the right to free movement or for*

*the use of cross-border passenger transport services such as airlines, trains, coaches or ferries or any other means of transport. In addition, this Regulation cannot be interpreted as establishing a right or obligation to be vaccinated.”*

Pursuant to paragraphs 31 and 32 of the resolution in Case No. PL. ÚS 10/2021, the legislation under review allows for immediate, albeit limited, free cross-border movement of persons who are not fully vaccinated, without their subsequent isolation and quarantine. This option is conditional only upon vaccination with the first dose of the vaccine. This is controversial from the point of view of the protection of life and health, since an unvaccinated person is subject to isolation or quarantine restrictions, with a questionable purpose. The aforementioned circumstance significantly questions the protection of life and health as the real purpose of the contested legislation, at least concerning the disputed provision of Section 1 (4) (d), as it subjects unvaccinated persons to a restriction which is not strictly necessary for the achievement of a legitimate aim. Indeed, it was not possible to approach such provision in isolation without causing problems with interpretation in relation to the legislation as a whole.

The Decree in question thus considered as fully vaccinated any person who had received at least the first dose of a vaccine, notwithstanding the scientific knowledge

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<sup>124</sup> The Centre addressed the interpretation of the protected ground of “other status” in the context of discrimination against unvaccinated persons, for example in an expert opinion available in Slovak language at <https://www.snslp.sk/wp-content/uploads/OS-Diskriminacia-nezaockovanych-spotrebitelov-cestovnou-kancelariou.pdf>

known at the time that the effect of vaccines only starts after a certain period of time after the vaccine has been administered.<sup>125</sup> In that case, a person who has just been vaccinated is in the same position as a person who has not been vaccinated at all. Decree No. 226/2021 GJ did not respect the above-stated and favoured “newly” vaccinated persons over unvaccinated persons without any rational reason. An unvaccinated person entering the territory of the Slovak Republic had to start compulsory quarantine, and only after a certain period of time could undergo an RT-PCR test. The person thus had to undergo compulsory quarantine even in case of a negative test result when the person crossed the border. Conversely, a vaccinated person could enter the territory of the Slovak Republic without needing to undergo quarantine, regardless of the period of time that had elapsed since their vaccination. The Centre is of the opinion that such measure by the Public Health Authority could not

ensure effective protection of the public health of the population of the Slovak Republic.

For the above-stated reasons, the Constitutional Court suspended the entire contested legislation and, at the same time, in order to avoid a legal vacuum in the pandemic legislation, restored the validity and effectiveness of the previous legislation, i.e. of Decree No. 218/2021 GJ<sup>126</sup> which introduced travel measures based on a so-called “traffic light” scheme in which individual countries are divided into three groups (green, red and black). In accordance with the Decree, a person is not considered fully vaccinated until a certain period of time has elapsed since the administration of the COVID-19 vaccine. According to the “traffic light” scheme, the equivalent of vaccination for “free” entry in the territory of the Slovak Republic is also a negative result of the RT-PCR test or AG test, under the conditions regulated by the Decree.

<sup>125</sup> More details may be found in Slovak language at: <https://www.slovenskoproticovidu.sk/sk/vsetko-o-ockovani/bezpecnost-a-ucinost/4-je-dostupna-vakcina-proti-covid-19-ucinna>

<sup>126</sup> Decree of the Public Health Authority of the Slovak Republic No. 218/2021 GJ, available in Slovak language at [https://www.uvzsr.sk/docs/info/ut/vyhlasaka\\_218.pdf](https://www.uvzsr.sk/docs/info/ut/vyhlasaka_218.pdf)

## 2.8 Conclusion

The Centre evaluated the restrictions on the freedom of religious expression of worshippers in Slovakia which were imposed during the period under review by the state authorities on the basis of the restrictions adopted to prevent the spread of COVID-19. The Centre has carried out a proportionality test on the basis of which it cannot unequivocally conclude whether the interference with the freedom of religious expression within the meaning of Article 24 (2) of the Constitution was constitutionally compliant in the period under review. The Centre points out in particular the assessment of the necessity of interference in the scope in question with the freedom of religious expression within the meaning of Article 24 (2) of the Constitution. In relation to the necessity of restricting the freedom of religious expression within the meaning of Article 24 (2) of the Constitution by the restrictions adopted under the Resolution of the Government of the Slovak Republic No. 808 and the Decree 77 of the Public Health Authority, it can be stated that Slovakia had the strictest restrictions in relation to the freedom of religious expression in comparison with other European countries in the period under review.

On the basis of the measures in force in the above-mentioned European countries at the time, the Centre concludes that, during the period under review, there were less stringent means of restricting the freedom of religious expression within the meaning of Article 24 (2) of the Constitution so that the purpose of the restriction could still be fulfilled. Slovakia could draw some inspiration from the above-mentioned European countries, where

the situation was similar to Slovakia. The Centre also notes that the exemptions from the prohibition of holding mass events of a religious nature were defined in the Decrees from the period under review in general terms, which made them applicable to mass religious acts of all registered religious communities and churches in Slovakia.

The Centre further pointed out a possible interference with the right to peaceful assembly. In the Centre's legal opinion, the threat to the life and health of persons causally linked to the emergence of the COVID-19 pandemic constitutes a significant objective to justify an interference with fundamental rights and freedoms, but its importance is limited by the rational connection between the interference and the objective. At the same time, it should be stressed that this connection is dynamic and was changing throughout the state of emergency. The Centre stresses that, from the point of view of necessity, the ban on peaceful assembly is questionable, as its necessity did not always correspond to the then-current epidemiological situation in 2021. It is also questionable whether in a time of minimal increase in the number of infected persons the prohibition of the right to peaceful assembly was necessary to achieve the objective of protecting human life and health in a causal connection with the emergence of the COVID-19 pandemic. According to the Centre's legal opinion, from the point of view of proportionality in the restriction of fundamental rights and freedoms, a review of such intervention by the Constitutional Court would be ideal.

With regard to the above argumentation of the Constitutional Court, the Centre states that the Constitutional Court did not annul the contested Decree of the Public Health Authority of the Slovak Republic No. 226/2021 GJ, but only suspended its effectiveness. The Constitutional Court will decide on its compliance with the Constitution. The above-mentioned reasons for the suspension of the contested legislation do not materially limit a

comprehensive examination of the merits of the proposal. However, it is clear from the decision on the preliminary discussion itself what criteria the Public Health Authority must take into account in its further standard-setting activities in order to ensure that its decrees do not interfere in an unlawful manner with the fundamental rights and freedoms of the addressees of such standards.



## Recommendations

### **The Centre recommends that:**

- 1** When approving resolutions restricting the freedom of residence and movement by lockdowns, the Government of the Slovak Republic place greater emphasis on assessing the necessity of restrictions interfering with the freedom of religious expression within the meaning of Article 24 (2) of the Constitution of the Slovak Republic.
- 2** When adopting decrees ordering measures restricting mass events when there is a threat to public health, the Public Authority of the Slovak Republic place greater emphasis on consideration of the existence and appropriateness of establishing less stringent means of restricting religious freedom of expression so that the purpose of the restriction can still be met.
- 3** The National Council of the Slovak Republic strengthen the competences of the public defender of rights during a state of emergency so that he/she can provide effective assistance in the protection of fundamental rights and freedoms.



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### 3. Women's reproductive rights

In 2021, the Centre noted a restriction of access to abortion for a selected group of women by the effect of an amendment to the Decree on the Abortion Act, as well as an attempt to indirectly amend the Abortion Act and related provisions of the Health Care Act through a proposal by a group of members of the NR SR for the issuance of an Act on assistance to pregnant women.

In the context of women's reproductive rights<sup>127</sup> renewed attempts to change the legislation regulating the access to abortion, the content of which was actually a restriction of access to abortion compared to the current situation, resonated in the Slovak Republic in 2021. The legal framework regulating access to abortion consists of Act No. 576/2004 Coll. on Health care, services related to the provision of health care, and on amendments and supplements to certain Acts, as amended (hereinafter referred to as the "Health Care Act"), Act No. 73/1986 Coll. on the Induced termination of pregnancy, as amended (hereinafter referred to as the "Abortion Act"), and Decree No. 74/1986 Coll. implementing the Act of the National Council of the Slovak Republic No. 73/1986 Coll. on the Induced termination of pregnancy, as amended (hereinafter referred to as the "Abortion Decree").

The failure to gain sufficient support for previous proposals in the NR SR<sup>128</sup> points to a lack of social consensus on the need to change the legislation in question. The fact that tightening the legislation gov-

erning access to abortion is not in the interest of the general public was confirmed by an AKO representative survey held in October 2021 in relation to the repeated proposal to amend the Abortion Act.<sup>129</sup> According to the survey results, only 7.9% of respondents agree with the tightening of the current legislation. According to 32.1% of respondents, there is no need to change the current legislation, and as many as 30.5% of respondents think that the abortion policy should be further relaxed. The remaining male and female respondents (29.6%) were either unable to assess the topic (17.3% of respondents) or did not know the current wording of the law (12.3% of respondents).

In 2021, the Centre noted a restriction of access to abortion for a selected group of women by the effect of an amendment to the Decree on the Abortion Act, as well as an attempt to indirectly amend the Abortion Act and related provisions of the Health Care Act through a proposal by a group of members of the NR SR for the issuance of an Act on assistance to pregnant women (hereafter referred to as the "Preg-

<sup>127</sup> The term "women's reproductive rights" is used in this chapter in the context of the right to health which includes the right to sexual and reproductive health. The right to sexual and reproductive health includes also access to safe forms of abortion. See e.g.: UN Committee on Economic, Social and Cultural Rights: General Comment No. 14 (2000), paragraphs 8 and 14. Available at <https://bit.ly/3On4b5u>

<sup>128</sup> See the vote on the proposal of the members of NR SR to issue an Act amending Act No. 576/2004 Coll. on Health care, services related to the provision of health care, and on amendments and supplements to certain Acts (print 154), of 20 October 2020, available at <https://www.nrsr.sk/web/Default.aspx?sid=schodze/hlasovanie/hlasklub&ID=44539>

<sup>129</sup> Agentúra AKO, s.r.o.: *Women's rights - Results of a representative opinion poll among the population of the Slovak Republic*, October 2021, available at [https://ako.sk/wp-content/uploads/2021/11/AKO\\_SAS\\_REPORT\\_-\\_PRAVA-ZENY\\_NA\\_WEB\\_2021.pdf](https://ako.sk/wp-content/uploads/2021/11/AKO_SAS_REPORT_-_PRAVA-ZENY_NA_WEB_2021.pdf)

nant Women Assistance Bill").<sup>130</sup> In the context of women's and girls' access to abortion in Slovakia, the report of the Centre also focuses on assessing the availability of safe forms of abortion.

In the renewed legislative effort to change the regulation of abortion in 2021, the situation from previous years was repeated when the bill on assistance to pregnant women was not prepared through a participatory process involving professional bodies, including experts in gynaecology and obstetrics, experts in gender equality and women's reproductive rights, and

human rights institutions and organisations. The Centre considers the circumvention of the participatory process to be a limitation of the democratic space for civil society, especially in the case of laws and policies that have an impact on human rights and equal treatment, as well as in cases of a lack of social consensus on the regulation of a specific issue. Therefore, in this chapter the Centre also maps the functioning of democratic spaces for women activists, journalists and civil society organisations focused on the access to safe forms of abortion and gender equality.

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<sup>130</sup> Proposal by a group of members of the National Council of the Slovak Republic for the issuance of an Act on assistance to pregnant women (Parliamentary Print No. 665), available in Slovak language at <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=8363>

## 3.1 Pregnant Women Assistance Bill

The bill on assistance to pregnant women included amendments to twelve acts, mainly in the areas of health and social support. In terms of women's reproductive rights, the most significant proposed changes were related to the amendment of the Health Care Act, the Abortion Act and Act No. 147/2001 Coll. on Advertising, and on amendments and supplements to certain Acts (hereinafter referred to as the "Advertising Act"). The Pregnant Women Assistance Bill put forward a series of measures with the stated purpose of assisting pregnant women, but several of them imposed restrictions on women's and girls' access to safe and legal abortion in violation of international human rights obligations.

One of the most serious limitations was the proposed amendment to the provision of Section 6b (3) of the Health Care Act governing the time limit for the performance of abortion from the moment of provision of informed consent by the woman concerned. Under the current version of such provision, abortion can be performed no earlier than 48 hours after sending a report on the provision of information that is

mandatorily provided to the woman as a part of the prior informed consent instruction. The Pregnant Women Assistance Bill extended such period to 96 hours. During the second reading of the Pregnant Women Assistance Bill, one of its submitters tabled an amendment to reduce the proposed time limit to 72 hours.<sup>131</sup> The 48-hour waiting period currently in place<sup>132</sup> for the performance of abortion is, however, contrary to the international human rights obligations of the Slovak Republic and the standards of the World Health Organization (hereinafter referred to as "WHO") in relation to safe abortion. According to WHO, mandatory waiting periods delay women's access to legal abortion services and may result in delays in the provision of health care, jeopardizing women's access to safe and legal abortion, while calling into question a woman's ability to make informed decisions. WHO recommends that states remove unjustified waiting periods for abortion from their legislation and policies.<sup>133</sup> The abolition of the mandatory waiting period for abortion was also recommended to the Slovak Republic during the 3rd cycle of the Universal Periodic

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<sup>131</sup> The amendment was not approved. See: The amendment proposed by MP Anna Záborská to the proposal by a group of members of the National Council of the Slovak Republic for the issuance of an Act on assistance to pregnant women (Parliamentary Print No. 665), available in Slovak language at <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=502419>

<sup>132</sup> Introduced by Act No. 345/2009 Coll. amending Act No. 576/2004 Coll. on Health care, services related to the provision of health care, and on amendments and supplements to certain Acts, as amended, available in Slovak language at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2009/345/20090901.html>

<sup>133</sup> WHO: *Safe abortion: technical and policy guidance for health systems*, 2021, pp. 96-97, available at <https://bit.ly/3zKnY1e>

Review of the UN Human Rights Council.<sup>134</sup> Mandatory waiting periods also increase the overall cost of health care for women, as they require women to travel at least twice to the relevant health facility, which has a particularly negative impact on women who come from socially disadvantaged backgrounds, rural areas or regions with low access to health care provided in relation to abortion. In this context, the Council of Europe Commissioner for Human Rights (hereafter referred to as the “Council of Europe Commissioner”) recommends that states ensure the accessibility and availability of legal health care services provided in relation to abortion, including the establishment of efficient processes and procedures to enable women to pursue the existing legal claims related to abortion.<sup>135</sup> Extension of such waiting period for the performance of abortion is also contrary to the recommendations of the UN Committee on the Elimination of Discrimination against Women which recommended in 2015 that Slovakia remove medically unjustified waiting periods for abortion from the Health Care Act.<sup>136</sup> Concerns about the proposal to extend the waiting period for abortion have also been

expressed by the Council of Europe Commissioner.<sup>137</sup> At the same time, the Pregnant Women Assistance Bill did not contain a mechanism to ensure that the attending physician or medical practitioner sends the report immediately, based on which the relevant time limit starts. The attending physician or medical practitioner could then arbitrarily delay the procedure. The Ministry of Health has issued three standard therapeutic and diagnostic procedures for the field of “gynaecology and obstetrics” but the provision of health care related to abortion is not contained in them. It can be concluded that doctors, physicians and other health professionals do not have a set legal deadline within which they are obliged to send a report, nor a standardized procedure for maintaining the highest standard of health care provision in the Slovak Republic.

Other reservations regarding the proposed changes to the regulation of abortion related to measures that made it more difficult for women to access information related to abortion. Such a measure was a prohibition of advertising the need for or availability of abortion and of services or goods provided or

<sup>134</sup> Recommendations addressed to the Slovak Republic during the third round of the Universal Periodic Review of the UN Human Rights Council, Recommendations UPR.145 and UPR.146 (both partially accepted), available in Slovak language at <https://www.snsip.sk/wp-content/uploads/Odporucania-SR-z-3-cyklu-UPH.pdf>

<sup>135</sup> Council of Europe Commissioner for Human Rights: Issue paper on women’s sexual and reproductive health and rights in Europe, 2017, p.11, available at <https://rm.coe.int/women-s-sexual-and-reproductive-health-and-rights-in-europe-issue-pape/168076dead>

<sup>136</sup> UN Committee on the Elimination of Discrimination against Women: *Concluding observations on the combined fifth and sixth periodic reports of Slovakia*, 25 November 2015, paras 30 (c) and 31 (c), available at <https://bit.ly/3QulwLG>

<sup>137</sup> Council of Europe Commissioner for Human Rights: *Letter to the Slovak National Council by Dunja Mijatovic*, available at <https://rm.coe.int/letter-to-the-slovak-national-council-by-dunja-mijatovic-council-of-eu/1680a43530>

offered for the purpose of performing an abortion in the form of a new provision in the Advertising Act. A ban on advertising in relation to abortion would prevent health professionals from publicly providing information on safe forms of abortion and the availability of abortion services, which are nevertheless essential to ensure women's access to abortion and the full enjoyment of their right to sexual and reproductive health.<sup>138</sup> Deteriorating women's access to complete, truthful, objective and scientifically based information on abortion would be contrary to Slovakia's obligations enshrined in the Convention on the Elimination of All Forms of Discrimination against Women, as well as the recommendations of the UN Committee on the Elimination of Discrimination against Women.<sup>139</sup> In accordance with the Convention, every woman has the right to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights. The proposed definition of the advertising ban is vague and open to interpretation, i.e. it does not provide sufficient legal protection for healthcare providers.<sup>140</sup> The ban may also apply to the publication of information about abortion on the website of a gynaecology

and obstetrics clinic, or the publication of information about psychological counselling for women considering abortion. However, the current legal regulation of advertising can be considered sufficient, as it clearly prohibits the inclusion of anything that degrades human dignity, incites unlawful conduct or endangers the physical health or mental health of the population of the Slovak Republic.

Finally, the extent of the information provided to a woman as part of the instruction before the informed consent to undergo an abortion, as regulated by the proposed amendment to the provisions of Section 6b of the Health Care Act, does not sufficiently ensure the impartiality, medical accuracy and accessibility for vulnerable groups of women. The scope of the information that a doctor or medical practitioner is obliged to give to a woman who has met the conditions for the provision of health care related to the performance of abortion omits information that is mandatorily disclosed by the Ministry of Health. As recommended by the UN Committee on the Elimination of Discrimination against Women, Slovakia should prohibit the exposure of women to biased and medically incorrect information about the risks of abortion that could affect their

<sup>138</sup> Ibid.

<sup>139</sup> Convention on the Elimination of All Forms of Discrimination against Women, Article 16 (e), available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>. UN Committee on the Elimination of Discrimination against Women: *Concluding observations on the combined fifth and sixth periodic reports of Slovakia*, 25 November 2015, paras 31 and 42, available at <https://bit.ly/3QuIwLG>

<sup>140</sup> Open letter from 170 health professionals on the Pregnant Women Assistance Bill, available in Slovak language at <https://api.mojapeticia.sk/media/campaign/attachment/dad06c5e-547e-4639-a5f7-c33937921707.pdf>

access to sexual and reproductive health services.<sup>141</sup> It is essential that women who decide to undergo abortion have access to medically accurate and unbiased information, and therefore primarily information that has been collected, reviewed and published by the Ministry of Health on its website for such purpose.

The proposed scope of information provided to women prior to the informed consent to abortion

lacks information on modern forms of protection against unintended pregnancy. The bill on assistance to pregnant women lacks measures that would comprehensively address the prevention of unwanted pregnancies, in the form of age-appropriate, standardised and scientifically based sex education in schools or by making modern forms of contraception available to all women (e.g. fully covered by the public health insurance system).

### 3.1.1 Assessment of possible discriminatory aspects of the proposed supplement to childbirth allowance

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The Pregnant Women Assistance Bill Act was also supposed to amend Act No. 383/2013 Coll. on Childbirth allowance and allowance for multiple children born at the same time, and on amendments and supplements to certain Acts (hereinafter referred to as the “Childbirth Allowance Act”), which was supposed to be supplemented by Sections 4a and 4b. The proposed amendment was intended to create support measures for a woman considering applying for abortion. The adjustment was intended to give the woman a real opportunity to decide, after considering all available information and options, how to direct her life responsibly. The provisions of the Sections 4a and 4b of the Childbirth Allowance Act were intended to grant a supplement to the childbirth allowance to eligi-

ble persons for the birth of a child with a disability. The amount of the supplement should have been EUR 3,170.<sup>14</sup>

In this context the Centre considered the question whether the added provisions would cause unlawful differential treatment of eligible persons to whom a child without a disability is born. The principle of equality is defined in the Constitution in Article 12 (1) and the normative prohibition of discrimination is enshrined in Article 12 (2). The provision of Article 12 (2) of the Constitution is of a general character, and thus does not have the character of a fundamental human right and freedom. Its use may be invoked only in connection with the protection of fundamental human rights and freedoms as

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<sup>141</sup> UN Committee on the Elimination of Discrimination against Women: *Concluding observations on the combined fifth and sixth periodic reports of Slovakia*, 25 November 2015, para 31, available at <https://bit.ly/3QulwLG>



defined in the Constitution.<sup>142</sup> The provision of Article 41 (5) of the Constitution contains a definition of the positive obligation of the state in relation to the parents of children, according to which parents who take care of children have the right to assistance from the state. In the legal case under consideration, it can be stated that the prohibition of discrimination also applies to the right of parents who are caring for children to assistance from the state within the meaning of Article 41 (5) of the Constitution.

In relation to the above-stated, it is necessary to assess the provisions in question by applying the discrimination test.<sup>143</sup> The first step for the Centre to be able to consider a discriminatory nature of any legislation is to identify a comparable situation (comparator). *“Given that these are often more subjective considerations, neither the Constitutional Court nor the European courts (ECHR, Court of Justice) have developed more general criteria that they could apply in abstracto to this important issue.”*<sup>144</sup> The contested legislation differentiates between persons who give birth to a healthy child and persons who give birth to a child with a dis-

ability. One group of persons would only be entitled to the childbirth allowance, while the other group of persons would also be entitled to the supplement to the childbirth allowance. The situation of persons who have a child with a disability and those who have a healthy child is not identical. However, the identity of the situation under consideration is not required to satisfy the comparator.<sup>145</sup>

The stated aim of the contested legislation was to increase the costs associated with the birth of a child with a disability.<sup>146</sup> However, the explanatory memorandum to the Pregnant Women Assistance Bill does not indicate what increased expenses are incurred by eligible persons when a child with a disability is born compared to eligible persons who have a healthy child. Any eligible person within the meaning of Section 2 (1) of the Childbirth Allowance Act has a constitutional right to assistance from the state when caring for his or her children. An eligible person who gives birth to a healthy child will not receive a supplement to the allowance, even though both groups of persons incur costs when their child is born. It should be noted that in the exer-

142 DRGONEC, J.: *Constitution of the Slovak Republic. Theory and practice. 2nd revised and supplemented edition*. Bratislava: C. H. Beck, 2019, p. 384.

143 See p. 26 for more details on each step of the discrimination test.

144 OROSZ, SVÁK: *Constitution of the Slovak Republic Commentary*, Volume I, Bratislava, Wolters Kluwer, 2021, p. 125.

145 *“In other words, the requirement to show an analogous position does not require that the groups being compared be identical. The applicant must show that, because of the specific nature of his/her complaint, he/she was in a relevantly similar situation to others who were treated differently.”* Fábíán v. Hungary (78117/13), 2017, § 113, available at <https://bit.ly/3QtoVKD>. See also Clift v. the United Kingdom (7205/07), 2010, para. 66, available at <https://bit.ly/3xyHuEO>.

146 Explanatory memorandum to the Pregnant Women Assistance Bill, special section on clause 12, available in Slovak language at <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=499445>

cising of the fundamental right to assistance by the state to parents caring for children, the group of persons concerned may be treated differently from eligible persons to whom a child with a disability is born, since only such eligible persons will receive assistance from the state in the form of a supplement to the childbirth allowance.

As regards the assessment of whether the difference in treatment has caused harm to the person concerned, it should be stressed that when a child is born the eligible persons are in a comparable situation in relation to the expenses associated with the newborn child. The proposed provisions which were intended to supplement the Act are therefore detrimental to the persons concerned, as they are not entitled to the supplement to the allowance, despite being in a comparable situation in relation to the expenses incurred.

A demonstrative list of prohibited grounds of discrimination is contained in Article 12 (2) of the Constitution and Article 14 of the Convention. The prohibited ground giving rise to inequality is linked to the different status of the groups being compared. The groups compared are distinguished by whether the eligible person has a healthy child or a child with a disability. Only an eligible person who gives birth to a child with a disability is entitled to the supplement to the allowance

or benefit. Such criterion does not constitute a prohibited ground of discrimination explicitly stated in the Constitution or in the Convention. However, the list of discriminatory grounds is illustrative and not exhaustive, and can be extended to include grounds of “other status”. According to the decision-making practice of the Constitutional Court, *“the reasons do not necessarily have to be reasons consisting of the characteristics related to personality and other immutable features of a person (as it might seem when looking at the wording of Article 12 (2) of the Constitution).”*<sup>147</sup> *The protection afforded by this provision*<sup>148</sup> *is not limited to differential treatment based on characteristics that are personal in the sense of being innate or immutable.”*<sup>149</sup> Differential treatment on the basis of personality or any identifiable characteristics must be assessed on the basis of the particular circumstances of the case, while bearing in mind that the Convention seeks to ensure the enjoyment of the rights it confers on persons in a practical and effective manner, and the nature of their enjoyment should not be understood in a merely theoretical or illusory manner.<sup>150</sup> The reason on the basis of which the eligible persons to whom a healthy child is born have been subjected to less favourable treatment can be subsumed under “other status”.

The next step in the discrimination

<sup>147</sup> Ruling of the Constitutional Court of the Slovak Republic, Case No. PL. ÚS. 1/2012 of 3 July 2013, available in Slovak language at <https://www.ustavnysud.sk/vyhľadavanie-rozhodnuti#!DecisionsSearchResultView>

<sup>148</sup> Article 14 of the Convention.

<sup>149</sup> *Clift v. the United Kingdom* (7205/07), 2010, para. 59, available at <https://bit.ly/3xyHuEO>

<sup>150</sup> *Ibid*, Section 60.

test is to assess whether the exclusion of an individual or a group of persons can be justified, and thus whether there is a justification (public, legitimate interest) or whether it is an appropriate, proportionate interference.<sup>151</sup> The legislator may grant more rights to or impose more obligations on one group of persons than to/on another group of persons only if this is justified in the public interest and if the legislator has not acted with manifest arbitrariness in establishing the rights and obligations. Legislation may therefore provide for a procedure by which a fundamental right is limited, narrowed or modified. However, such action must be justified by a legitimate aim, the achievement of which justifies the interference with a fundamental right. In order to achieve a legitimate aim, the legislator must use legal means which are proportionate to the aim pursued. When assessing legislation, it is therefore not sufficient that a legitimate aim is pursued, but the legislation must also be objectively directed at the realisation of the aim.

The legitimate aim of assisting an eligible person with the increased costs associated with the birth of a child with a disability is pursued under the legislation under consideration by granting a one-off supplement to the childbirth allowance to the eligible person. The explanatory memorandum to the Pregnant Women Assistance Act does not indicate what in-

creased expenses are incurred by eligible persons when a child with a disability is born compared to parents who have a healthy child. After birth every child, regardless of disability, needs to have his or her basic needs met. The basic amount needed for new-born equipment, according to the data found by Tatra banka, is approximately EUR 1,130.<sup>152</sup> Increased expenses in connection with a child with a disability are incurred by the eligible person throughout the entire period of care for the child with a disability. The one-off childbirth allowance is therefore not proportionate to the objective of assisting eligible persons who give birth to a child with a disability.

At the same time, Act No. 447/2008 Coll. on Cash benefits for compensation of severe disability, and on amendments and supplements to certain Acts (hereinafter referred to as the "Disability Compensation Act"), already regulates a system of mechanisms that serve to compensate for severe disability. The Disability Compensation Act defines a set of one-off and recurrent cash allowances that serve to compensate persons with severe disabilities and their family members for the social consequences of severe disabilities. The legislation on the supplement to the childbirth allowance is not intended to help eligible persons with the expenses incurred by the parents of children with disabilities during their lifetime, since the supplement to be granted to the eli-

<sup>151</sup> OROSZ, SVÁK: *Constitution of the Slovak Republic Commentary*, Volume I, Bratislava, Wolters Kluwer, 2021, p. 127.

<sup>152</sup> Tatra banka: *What you are entitled to and what should not be missing in the equipment for a newborn*, available in Slovak language at <https://www.tatrabanka.sk/sk/zivotne-momenty/pridavky-dieta-vybava-novorodenca/>

gible person is a one-off payment to be made immediately after the birth of the child.

The proposed Section 4a (2) of the Childbirth Allowance Act stated that a disability is a disease or condition that will be determined by a generally binding legal regulation issued by the Ministry of Labour, Social Affairs and Family of the Slovak Republic (hereinafter referred to as the “Ministry of Labour”). There is no legal definition of “disability”. However, the UN Convention on the Rights of Persons with Disabilities defines the term “disability” as a result of *“interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”*, and persons with disabilities as those “with long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.<sup>153</sup> According to the Centre, the definition of disability for the purposes of the supplement to the childbirth allowance should meet the standards of the term of disability according to the international human rights obligations of the Slovak Republic.

Identification of a list of diseases that will be considered a health disadvantage would create obstacles for parents who have a child with a disability that the Ministry of Labour does not include in the list of

“diseases” that are considered to be a health disadvantage. The legitimate aim of providing assistance with increased costs to eligible persons in connection with the birth of a child with a disability would thus not be met at all in relation to such parents.

The legislation under consideration may also be considered problematic in relation to the assessment of the existence of a severe disability of a child at birth. The legislation does not take into account the child’s health-related disadvantage which, although already present at birth, may not yet be medically confirmed at the time of the child’s birth. In the light of the foregoing, the contested legislation cannot be regarded as a measure pursuing a legitimate aim, namely the regulation of a state social benefit intended to contribute to the increased costs incurred in connection with the birth of a child with a health-related disadvantage. Only the aim of the provision of the state social benefit itself, by which the state contributes to the increased expenses incurred in connection with the birth of a child with a health disadvantage, can be considered legitimate, but not in relation to a health-related disadvantage which is diagnosable only before or at the birth of the child.

Thus, the proposed wording of the social benefit which is supposed to contribute to the increased expenses arising in connection with the birth of a child with a disability may not correspond to the individual

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<sup>153</sup> UN Convention on the Rights of Persons with Disabilities, Preamble and Article 1 (2), available at <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html>

needs and requirements of parents of children with severe disabilities. While one group of the parents of children with severe disabilities, who meet the requirement of the health-related disadvantage having been diagnosed already at birth, would be entitled to apply for the above-stated social benefit in addition to other types of social support, another group of the parents of children, whose health-related disadvantage may be confirmed with certainty only later, could apply only for other forms of social support.

After applying the discrimination test, the Centre concluded that the proposed provisions of Sections 4a and 4b of the Childbirth Allowance Act may be discriminatory. The objective of assisting an eligible person with the increased expenses associated with the birth of a child

with a disability can undoubtedly be considered legitimate and constitutionally acceptable. However, the means used to achieve the legitimate aim cannot be considered proportionate and necessary. In addition to the legal issues raised by the proposed legislation, the Centre also draws attention to the ethical issues associated with the proposed allowance granted only to women who give birth to a child with a disability, which were raised by the NGO Freedom of Choice as early as in 2020, when the proposed legislation, with some modifications<sup>154</sup>, was part of a parliamentary bill to help pregnant women.<sup>155</sup> The Centre stresses that in its further introduction of measures to assist pregnant women, the legislator should respect the principle of equal treatment and provide assistance to all eligible persons.

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<sup>154</sup> The parliamentary proposal from 2020 defined the supplement to the childbirth allowance only for women who give birth to a child with a severe disability, a severe genetic impairment or an impairment that renders the child incapable of living independently after birth.

<sup>155</sup> *"The proposed legislation raises serious ethical questions, particularly whether the increased benefit is intended to encourage women to carry a fetus with serious damage, or how the psychological and social support available to women, children and families in this situation is provided."* Freedom of Choice: Analysis of 4 parliamentary proposals submitted in connection with the efforts to restrict women's access to abortion for the session of the National Council of the Slovak Republic to be held in July 2020, available in Slovak language at [http://moznostvolby.sk/wp-content/uploads/2020/07/analiza\\_-4-zakony\\_interrupcie\\_-1.pdf](http://moznostvolby.sk/wp-content/uploads/2020/07/analiza_-4-zakony_interrupcie_-1.pdf)

## 3.2 Access to safe forms of abortion in Slovakia

In 2021, the *status quo* was maintained in most aspects of the access to safe and legal forms of abortion, contrary to national and international recommendations that the Slovak Republic takes effective measures to ensure women's access to abortion. However, the *status quo* was maintained only because the Pregnant Women Assis-

tance Bill was not approved by NR SR. In contrast, the change to the Abortion Decree restricted access to abortion for women aged 40+. Access to abortion would be simplified by extending the forms of its performance to include a medical form which has not yet been enacted in the Slovak Republic.

### 3.2.1 Charging for abortion for women aged 40+

On 4 February 2021, the Ministry of Health adopted Decree No. 63/2021, amending Decree of the Ministry of Health of the Slovak Socialist Republic No. 74/1986 Coll. implementing Act of the Slovak National Council No. 73/1986 Coll. on Abortion, as amended (hereinafter referred to as the "Amendment to the Abortion Decree"). The Amendment to the Abortion Decree came into force on 1 March 2021 and ordered deletion of the item "*conception after the age of 40*" from the list of diseases, syndromes and conditions for abortion contained in the Annex to the Abortion Decree.

From 1 March 2021 the age of women over 40 is thus not one of the medical reasons for which abortion is covered by public health insurance. The explanatory memorandum to the Amendment to the Abortion Decree states that "*the age of 40+ alone does not necessarily constitute a medical indication for termination of pregnancy. The*

*legislation in force at the moment does not fully take into account the current technological possibilities and knowledge, especially in the field of prenatal diagnostics.*" A woman's age alone does not automatically constitute a medical indication for abortion. Despite advances in prenatal diagnostics, doctors still consider a woman's age over 35 to be a risk factor for pregnancy.<sup>156</sup> Pregnancy in women aged 35+ can be accompanied by several complications and the chances of not having a healthy baby are increased.<sup>157</sup> The inclusion of age among the medical reasons for which abortion was covered by public health insurance can therefore be considered justified. In addition to health reasons, women aged 40+ may have various social and economic reasons for abortion.

According to the Ministry of Health, the aim of the Amendment to the Abortion Decree is to reduce the number of abortion procedures in

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156 MELIŠOVÁ K.: *Older women and pregnancy - between reproductive rights and common sense*, available in Slovak language at <https://www.unilabs.sk/clanky-invivo/starsie-zeny-tehotenstvo-medzi-pravom-na-reprodukciju-zdravym-rozumom>

157 Gynicare: *Age is not just a number; don't delay pregnancy until you're 40*, available in Slovak language at <https://gynicare.sk/vek-nie-je-len-cislo-tehotenstvo-neodkladajte-do-40-ky/>

accordance with the Manifesto of the Slovak Government for 2020 - 2024. The Ministry of Health, according to the explanatory memorandum, further emphasises the prevention of unwanted pregnancies. According to the Slovak Government, the Slovak Republic will “work to protect unborn children through the prevention of abortions, in particular by improving the financial situation of single mothers and families, by stopping the promotion of abortions for mothers aged 40+, and by other preventive measures.”<sup>158</sup> However, neither the Ministry of Health nor the Slovak Government state whether charging for abortion for women aged 40+ is an effective tool to prevent women from unwanted pregnancies. The UN Committee on the Elimination of Discrimination against Women has recommended, among other things, that the Slovak Republic ensures universal coverage of the costs associated with legal abortion procedures and modern contraception as part of the prevention of unwanted preg-

nancies.<sup>159</sup> The President of the Slovak Society of Gynaecology and Obstetrics also drew attention to the right of women to free and effective contraception.<sup>160</sup> However, such form of prevention against unwanted pregnancies was not addressed at all by the Ministry of Health when drafting the Decree.

The explanatory memorandum provides no justification as to why charging for abortion for women aged 40+ is an appropriate means of achieving a reduction in the number of abortions. The number of abortions is generally declining even without legislative intervention. According to data from the National Health Information Centre (hereafter referred to as “NCZI”), 6,177 abortions were performed in 2020<sup>161</sup>, representing a significant decrease since 1997, when their number was 20,855.<sup>162</sup> It is also by 976 fewer than in 2019.<sup>163</sup> From 2017, the number of abortion procedures for women aged 40+ ranged between 700 and 800 cases per year<sup>164</sup>, accounting for about

158 Manifesto of the Government of the Slovak Republic for 2020 - 2024, available in Slovak language at <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=494677>

159 UN Committee on the Elimination of Discrimination against Women: *Concluding observations on the combined fifth and sixth periodic reports of Slovakia*, 25 November 2015, available at <https://bit.ly/3QuIwLG>

160 Gynaecologist Martin Redecha: *Slovak doctors are forced to perform abortions in a riskier way*, available in Slovak language at <https://www.webnoviny.sk/vzdravotnictve/gynekolog-martin-redech-slovenski-lekari-su-nuteni-robit-interrupcie-rizikovejsim-sposobom/>

161 NCZI: *Abortions in the Slovak Republic 2020*, available in Slovak language at [https://data.nczisk.sk/statisticke-vystupy/Potratty/Potratty\\_v\\_SR\\_2020.pdf](https://data.nczisk.sk/statisticke-vystupy/Potratty/Potratty_v_SR_2020.pdf)

162 NCZI: *Abortions in the Slovak Republic 2017*, available in Slovak language at [https://data.nczisk.sk/statisticke-vystupy/Potratty/Potratty\\_v\\_SR\\_2017.pdf](https://data.nczisk.sk/statisticke-vystupy/Potratty/Potratty_v_SR_2017.pdf)

163 NCZI: *Abortions in the Slovak Republic 2020*, available in Slovak language at [https://data.nczisk.sk/statisticke-vystupy/Potratty/Potratty\\_v\\_SR\\_2020.pdf](https://data.nczisk.sk/statisticke-vystupy/Potratty/Potratty_v_SR_2020.pdf)

164 For 2017 a total of 856 (11.4% of the total number of abortions), for 2018 a total of 845 (11.4% of the total number of abortions), for 2019 a total of 802 (11.2% of the total number of abortions) and for 2020 a total of 724 (11.7% of the total number of abortions).

11% of their total number.<sup>165</sup> Without a justification from the Ministry of Health and a broader public debate, which did not take place in connection with the adoption of the Decree, it is not possible to assess whether charging for abortions for women aged 40+ is an effective tool for preventing unwanted pregnancies.

As a part of the inter-ministerial commentary procedure (hereinafter referred to as the “IMCP”) on the Amendment to the Abortion Decree, the Centre raised a fundamental objection to the proposal as a whole. It called for maintaining the status quo and considering the preparation of new rules for the reimbursement of abortions from public health insurance for all women. The Centre drew attention to the amount of the fee which in several health facilities may currently exceed the maximum abortion fee set by the legislation. It further stated that the amount of the fee alone may be a barrier to safe access to abortions for many women. The exclusion of age as a medical indication for reimbursement of abortions further hinders women's access to safe abortions. The Centre argued that the proposed legislation would be most restrictive for women from socially excluded backgrounds and marginalised Roma communities and women at risk of poverty or experiencing domestic violence.<sup>166</sup> The Ministry of

Health did not accept the Centre's comment.

The Ministry of Health also justified charging for abortion for women aged 40+ by removing the less favourable treatment of women under the age of 40 who had to pay for abortion. However, the elimination of disparities between different groups of persons cannot be seen as restricting access to a particular right to the group as well in order to effectively make up for the less favourable treatment of a particular group. In contrast, so-called positive measures, which serve to temporarily favour traditionally discriminated categories of people, are used to eliminate *de facto* inequalities. In its ruling File No. PL.US 10/02 of 11 December 2003, the Constitutional Court states that “a legal regulation which favours a certain group of persons cannot, for that reason alone, be described as violating the principle of equality. In the field of economic, social, cultural and minority rights, interventions consisting of a preferential treatment within the limits of reasonableness are not only acceptable but sometimes necessary in order to eliminate natural inequalities between different groups of people.”<sup>167</sup> The argumentation of the Ministry of Health regarding the elimination of less favourable treatment of women under 40 years of age is not supported by the Constitutional Court's decision-making

<sup>165</sup> NCZI: *Publication spreadsheet outputs for 2017, 2018, 2019, 2020*, available in Slovak language at [https://www.nczisk.sk/Statisticke\\_vystupy/Tematicke\\_statisticke\\_vystupy/Gynekologia\\_Porodnictvo\\_Potraty/Potraty/Pages/default.aspx](https://www.nczisk.sk/Statisticke_vystupy/Tematicke_statisticke_vystupy/Gynekologia_Porodnictvo_Potraty/Potraty/Pages/default.aspx)

<sup>166</sup> See the Centre's substantial objection to the Decree for further details. Available in Slovak language at <https://www.slov-lex.sk/legislativne-procesy/SK/LP/2020/342/pripomienky/zobraz>

<sup>167</sup> OROSZ, SVÁK: *Constitution of the Slovak Republic Commentary*, Volume I, Bratislava, Wolters Kluwer, 2021, p. 122.



practice and is not factually correct.

A collective comment against the proposal was raised by NGOs representing women's rights in Slovakia. They pointed out further restrictions on reproductive rights and limiting the access to legal and safe abortion. According to them, some women will not be able to afford abortion because of a lack of funds.<sup>168</sup> The Ministry of Justice of the Slovak Republic also raised a substantial comment on the proposal as a whole, pointing out to the introduction of new barriers to women's access to safe abortion.<sup>169</sup> The Ministry of Health did not accept any of the comments.

As a result of preventing access to abortion through charging for it for a certain group of persons, women's right to private life may be interfered with. As stated by the Constitutional Court, restricting the right to safe access to abortion constitutes an interference with

a woman's right to privacy under Article 16 (1) and Article 19 (2) of the Constitution. *"Any restriction on a woman's decision on whether she intends to tolerate such impediments to her autonomous personal fulfilment, and thus whether she intends to remain in the given state of pregnancy until its natural termination, therefore constitutes an interference with the women's constitutional right to privacy."*<sup>170</sup> The proportionality test is then used to assess whether the interference with a woman's right to privacy would be justified in a particular case.<sup>171</sup>

Under the Convention on the Elimination of All Forms of Discrimination against Women, states are obliged to ensure *"the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."*<sup>172</sup> Charging for abortion for

<sup>168</sup> Collective comment by the NGOs Freedom of Choice and ASPEKT, the civic initiative Uprising Continues, as well as citizens, available in Slovak language at <https://www.slov-lex.sk/legislativne-procesy/SK/LP/2020/342/hromadne-pripomienky/COO-2145-1000-3-3995460>

<sup>169</sup> Substantial comment by the Ministry of Justice of the Slovak Republic, available in Slovak language at <https://www.slov-lex.sk/legislativne-procesy/SK/LP/2020/342/pripomienky/zobraz>

<sup>170</sup> Ruling of the Constitutional Court of the Slovak Republic, Case No. PL ÚS 12/01 of 4 December 2007, available in Slovak language at <https://www.ustavnsud.sk/vyhľadavanie-rozhodnuti#!DecisionsSearchResultView>

<sup>171</sup> Ibid: *"The lawfulness of an interference with the right to privacy is thus a function of its compliance with both the formal and the substantive requirements set out in the Constitution. From a formal point of view, such intervention must be based on a legal authorisation by a competent public authority to carry out the intervention, and the intervention may be carried out only in the manner provided for by law (mutatis mutandis I. ÚS 33/95). An interference with the right to privacy is therefore permissible only if it is in accordance with the law. However, such law must also satisfy a certain material quality - it must pursue one or more of the so-called legitimate aims and, at the same time, it must be necessary in a democratic society in order to protect that aim."*

<sup>172</sup> Article 16 (1) (e) of the Convention on the Elimination of All Forms of Discrimination against Women, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

women aged 40+ restricts the right under Article 16.1 (e) of the Convention on the Elimination of All Forms of Discrimination against Women for those women who reach a specified age and do not have sufficient financial resources for abortion. It

is the particularly vulnerable group of women who cannot afford to pay for abortion (e.g. single mothers, women from socially excluded backgrounds, women in material need) who are most affected by the wording of the Decree.

### 3.2.2 Access to medical abortion

Medical abortion is one form of safe abortion that uses pharmacological preparations to terminate pregnancy (the so-called abortion pill). Such pharmacological preparations contain a combination of mifepristone and misoprostol, or misoprostol alone and, alternatively, a combination of letrozole and misoprostol.<sup>173</sup> WHO identifies medical abortion as key to providing greater access to safe, effective and affordable abortion-related health care. Medical abortion increases the availability of safe abortions and the exercising of the right to sexual and reproductive health. At the same time, it is a more effective method that reduces the rate of female mortality caused by abortions performed by forms that are not considered safe. It is a non-invasive form of abortion that is widely accepted and safe for women.<sup>174</sup> In countries where medical abortion is authorised by national legislation, the medicines containing the

active substances used to perform it are included among the essential medicines listed in the WHO Expert Committee's list of essential medicines.<sup>175</sup> In accordance with international human rights obligations, ensuring the availability of essential medicines included in the list in question is considered an obligation of the state resulting from the right to achievement of the highest attainable standard of physical and mental health under Article 12 of the International Covenant on Economic, Social and Cultural Rights.<sup>176</sup>

The Centre also addressed the issue of access to medical abortion in the 2019 Human Rights Report, pointing out a legislative obstacle consisting of a restriction of the inclusion of relevant medicines in the list of categorised medicines and the list of medicines with an officially determined price, and thus to the impossibility of placing the medicines necessary for medical

173 WHO: *Abortion care guideline*, Geneva, World Health Organisation, 2022, p.62. Available at <https://www.who.int/publications/i/item/9789240039483>

174 Ibid, pp. 62-63.

175 For more details see the 15<sup>th</sup> version of the list from 2007 available at: [https://web.archive.org/web/20081002110638/http://www.who.int/medicines/services/essmedicines\\_def/en/](https://web.archive.org/web/20081002110638/http://www.who.int/medicines/services/essmedicines_def/en/)

176 UN Committee on Economic, Social and Cultural Rights: *General Comment No. 14 (2000)*, paragraph 12 (a). Available at <https://bit.ly/3On4b5u>

abortion on the market in the Slovak Republic.<sup>177</sup> Such obstacle can be removed by amending the legislation in question, together with amendment of the Abortion Act. The Centre has also pointed out that medical abortion eliminates the so-called abortion tourism associated with the performance of medical abortion without medical supervision.<sup>178</sup>

During the debate on the Pregnant Women Assistance Bill, a group of MPs tabled an amendment proposing the introduction of medical abortion in the Abortion Act by inserting a new provision, Section 5a, which would read as follows: *“Abortions shall be carried out in accordance with the latest medical knowledge, either surgically or*

*medically.”* The amendment was not approved, with only 34 of the 136 MPs present voting in favour.<sup>179</sup>

No separate proposal for the introduction of medical abortion was put forward in the Slovak Republic in 2021. Despite WHO standards and recommendations of experts and specialists in the field of gynaecology and obstetrics<sup>180</sup>, as well as organisations and initiatives to protect women's sexual and reproductive rights, Slovakia continues to lack access to one of the safe forms of abortion. The Centre views such situation as a restriction on the right to women's health, which includes reproductive health and access to reproductive health services.<sup>181</sup>

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<sup>177</sup> Slovak National Centre for Human Rights: *Report on the Observance of Human Rights Including the Principle of Equal Treatment in the Slovak Republic in 2019*, p. 176. Available in Slovak language at <https://www.snslp.sk/wp-content/uploads/Sprava-o-LP-za-rok-2019-Pravo-na-zdravie.pdf>

<sup>178</sup> Ibid, p. 176.

<sup>179</sup> Amendment proposed by members of the National Council of the Slovak Republic Jana Bittó Cigániková, Zuzana Šebová, Peter Cmorej, Tomáš Lehotský, Miroslav Žiak and Ján Benčík to the proposal of the group of members of the National Council of the Slovak Republic for the issuance of an act on assistance to pregnant women (print 665), available in Slovak language at <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=502378>. Details of the vote on the proposal are available in Slovak language at <https://www.nrsr.sk/web/Default.aspx?sid=schodze/hlasovanie/hlasklub&ID=46861>

<sup>180</sup> Slovak Society of Gynaecology and Obstetrics: *Statement of the Slovak Society of Gynaecology and Obstetrics on the forthcoming changes to the Abortion Act*, available in Slovak language at <http://sgps.sk/postoje-a-vyjadrenia-sgps/>; International Federation of Abortion and Contraception Professionals: *Letter to Members of the National Council of the Slovak Republic*, available at [https://www.fiapac.org/media/uploads/esc-fiapac\\_letter\\_slovak\\_parliament\\_oct2021.pdf](https://www.fiapac.org/media/uploads/esc-fiapac_letter_slovak_parliament_oct2021.pdf)

<sup>181</sup> UN Committee on Economic, Social and Cultural Rights: *General Comment No. 14 (2000)*, paragraphs 8 and 14. Available at <https://bit.ly/3On4b5u>

### 3.2.3 Comparison of the findings from the research on the “Availability of reproductive health services in Slovakia” conducted by the civic organization Freedom of Choice in 2021 with findings from the Centre’s survey held in 2019

In 2021, the NGO Freedom of Choice conducted research to map the availability of reproductive health services in the Slovak Republic<sup>182</sup>, which aimed to determine the informational, physical, geographic and financial availability of legal and safe abortion at the request of a woman without medical indications as defined in Section 4 of the Abortion Act. The research focused on mapping the availability of abortion services based on information provided on 66 websites of inpatient or day care providers specializing in gynaecology. 41% of the facilities were state or public, the remainder were private health facilities or those whose ownership could not be identified.

In 2019, the Centre conducted a short survey for the 2019 Human Rights Report to identify the barriers that women and girls have to overcome in relation to undergoing abortion in health facilities in the country.<sup>183</sup> As a part of the survey, the Centre approached both public and private facilities that operate wards with beds, specializing in gynaecology and obstetrics. A total of 43 facilities participated in the survey, 28 public and 16 private.

In this section of the Report the Centre focuses on comparing the main findings from the research held in 2021 and the findings from the survey held in 2019 to assess the availability of abortion as one of the reproductive health services for women in the country.

The main findings from the research conducted in 2021 indicate that the availability of information on reproductive health services, and therefore the availability of information on the provision of legal and safe abortion at a woman’s request, is low and there is no full and up-to-date list of facilities that provide legal abortions at a woman’s request. Despite the fact that up to 30% of all 66 examined health facility websites state that they provide abortion, research results confirm the inaccuracy of such information. The information does not specify whether the abortion is at the request of a woman without medical reasons or instead a medically indicated abortion for medical reasons. In some cases, health care providers were found to perform abortions only for medical reasons or the information provided was not up-to-date. Information about the provision of abortion without medical reasons

<sup>182</sup> Freedom of Choice: *Main research findings: Availability of Reproductive Health Services in Slovakia - Report on Health Care Providers*, 2021, available in Slovak language at <http://moznostvolby.sk/wp-content/uploads/2021/09/Hlavn%C3%A9-zistenia-z-v%C3%BDskumu.pdf>

<sup>183</sup> Slovak National Centre for Human Rights, *Report on the Observance of Human Rights Including the Principle of Equal Treatment in the Slovak Republic in 2019*, available in Slovak language at <https://www.snsip.sk/wp-content/uploads/Sprava-o-LP-v-SR-za-rok-2019.pdf>, p. 171.

was explicitly given in only 2 to 3 cases. On the contrary, information on abortion was provided only indirectly through the price list of health services in one third (33%) of the examined facilities. Almost one third of facilities (30%) did not present any information on providing abortions. The last group consisted of 6% of examined facilities that explicitly state that they do not provide abortions.<sup>184</sup> The survey conducted in 2019 did not focus on the availability of information on reproductive health services.

In terms of availability of reproductive health services, the survey conducted in 2019 showed that, of the 43 examined health facilities, only 69.8% provided abortions. The most frequently cited reason for not performing abortions was the exercising of conscientious objection by all health professionals working in the gynaecology and obstetrics department and the exercising of conscientious objection by other doctors and medical practitioners who provide health care related to the performance of abortions in the health facility. Among the reasons often given was also the decision of the management of the health facility or the gynaecology and obstetrics department, but without giving a reason for such decision.<sup>185</sup> The survey conducted in 2019 found

that up to 30% of health facilities providing abortions did not enable all the tests and procedures related to performing the abortion to be taken in one location.<sup>186</sup>

In terms of physical and geographic accessibility, the survey held in 2021 examined 70 facilities. According to the main findings, 43% of them provide abortions at the request of the woman, 34% of them refuse to provide abortions, and in 23% of them the provision of abortions could not be ascertained due to insufficient or inconsistent information. Geographic accessibility is also alarming, according to the research conducted in 2021. In some regions, most of the examined facilities refuse to provide legal abortions and women have to (repeatedly) travel more than 100 km to the nearest facility that provides abortions. For example, as many as 8 out of 11 examined facilities in the Prešov region refuse to provide abortions.<sup>187</sup> One third, i.e. 24 health care facilities, institutionally refuse to provide abortions; in the Prešov region this is up to 8 out of 11 facilities. A total of 27% of the 24 facilities mentioned cited religious or personal beliefs as a reason, 19% cited management/staff decisions, 23% refused to give a reason, 8% refused to provide abortions due to the COVID-19 pandemic, and 23% cited another reason, such as

184 Barbora Holubová (ed.), Adriana Mesochoritsová, Paula Jójárt: *Availability of Reproductive Health Services in Slovakia - Report on Health Care Providers - Final Report*, Freedom of Choice, 2021, available in Slovak language at [http://moznostvolby.sk/wp-content/uploads/2021/09/revAM\\_Dostupnost-sluzieb-reprodukčného-zdravia-na-Slovensku.pdf](http://moznostvolby.sk/wp-content/uploads/2021/09/revAM_Dostupnost-sluzieb-reprodukčného-zdravia-na-Slovensku.pdf), p. 41-43.

185 Slovak National Centre for Human Rights: *Report on the Observance of Human Rights Including the Principle of Equal Treatment in the Slovak Republic in 2019*, available in Slovak language at <https://www.snslp.sk/wp-content/uploads/Sprava-o-LP-v-SR-za-rok-2019.pdf>, p. 172.

186 Ibid, p. 175.

187 Freedom of Choice: *Main research findings: Availability of Reproductive Health Services in Slovakia - Report on Health Care Providers*, 2021, available in Slovak language at <http://moznostvolby.sk/wp-content/uploads/2021/09/Hlavn%C3%A9-zistenia-z-v%C3%BDskumu.pdf>, p. 2.

no longer having a gynaecologist or performing abortions only for health reasons.<sup>188</sup>

The affordability of abortion services is equally problematic. The maximum amount of the fee for the performance of abortion at the request of a woman up to 12 weeks is set by the Ministry of Health's Measure No. 07045/2003 - OAP of 30 December 2003 establishing the scope of price regulation in the health sector (Notice No. 588/2003 Coll.), as amended (hereinafter referred to as the "Ministry of Health's Measure") to EUR 248.95. This is a regulated price for all health care facilities, which, according to the Ministry of Health's Measure, includes all costs related to the performance of health care, costs related to diagnosis, examination, including pre-surgery examination, preparation of the application and the patient's stay in the health care facility. In the survey conducted in 2019, the Centre found that the amount of the fee for abortion at the request of a woman is higher in more than three cases due to various surcharges for pre-surgery examinations (about EUR 20-50), administration of immunoglobulin (about EUR 50) or hospitalization fee (about EUR 60-70). The amount of the abortion fee that patients

have to pay can be as high as EUR 300.<sup>189</sup>

Also, the main findings of the 2021 research show that the maximum fee for abortions is not always adhered to. According to the research, the price for performing an abortion at a woman's request is EUR 264.42 on average. The price for the performance ranges from EUR 175 to EUR 492. However, the main findings show that price lists often lack more detailed information on what is included in the price. There are cases where the amount does not include additional and hidden fees, e.g. for application for self-requested abortion by some gynaecological practices or other fees that may be associated with the abortion itself. For example, the fees may not include the admission and check-up fee (approx. EUR 30) or payment for bed/day stay in the day health care unit without meals in the amount of EUR 20.<sup>190</sup> The research from 2021 states a conservative estimate of the total cost of abortion including additional charges at EUR 414, including the circumstances of the current pandemic situation and the patient's obligation to submit a negative result of a PCR test for COVID-19.<sup>191</sup>

188 Barbora Holubová (ed.), Adriana Mesochoritsová, Paula Jójárt: *Availability of Reproductive Health Services in Slovakia - Report on Health Care Providers - Final Report*, Freedom of Choice 2021, available in Slovak language at [http://moznostvolby.sk/wp-content/uploads/2021/09/revAM\\_Dostupnost-sluzieb-reprodukcneho-zdravia-na-Slovensku.pdf](http://moznostvolby.sk/wp-content/uploads/2021/09/revAM_Dostupnost-sluzieb-reprodukcneho-zdravia-na-Slovensku.pdf), p. 66.

189 Slovak National Centre for Human Rights: *Report on the Observance of Human Rights Including the Principle of Equal Treatment in the Slovak Republic in 2019*, available in Slovak language at <https://www.snsip.sk/wp-content/uploads/Sprava-o-LP-v-SR-za-rok-2019.pdf>, p. 175.

190 Barbora Holubová (ed.), Adriana Mesochoritsová, Paula Jójárt: *Availability of Reproductive Health Services in Slovakia - Report on Health Care Providers - Final Report*, Freedom of Choice 2021, available in Slovak language at [http://moznostvolby.sk/wp-content/uploads/2021/09/revAM\\_Dostupnost-sluzieb-reprodukcneho-zdravia-na-Slovensku.pdf](http://moznostvolby.sk/wp-content/uploads/2021/09/revAM_Dostupnost-sluzieb-reprodukcneho-zdravia-na-Slovensku.pdf), pp. 72 and 74.

191 Ibid, p. 74.

### 3.3 Democratic space for activists, journalists and civil society organisations working on the access to safe forms of abortion and women's reproductive rights

In connection with the submitted Pregnant Women Assistance Bill, in October 2021, the Council of Europe Commissioner once again called on the members of NR SR to refrain from retrogressive proposals and to ensure that the Slovak Republic fulfils its obligations in the field of protection and promotion of women's rights. The Commissioner drew attention to the negative impact of the proposed legislation on women's rights, and expressed concern that repeated legislative attempts to restrict access to abortion were creating an *"increasingly hostile environment for human rights defenders in Slovakia who focus on issues of women's sexual and reproductive rights and gender equality in general."*<sup>192</sup>

For the purposes of this Report, the Centre has decided to find out how selected women journalists and activists<sup>193</sup> working on human rights and gender equality issues, including access to abortion, perceive the democratic space for their work in the context of the repeated legislative attempts to restrict abortion. The starting point for the interviews with the respondents was a theoretical human rights framework of the status and specific challenges of female human rights defenders (including female journalists) who also focus on women's sexual and reproductive rights and health, their specific setting in the Slovak context, and the assertion of the Council of Europe Commissioner that repeated legislative attempts to restrict access to abortion create a hostile environment for them.

<sup>192</sup> Ibid.

<sup>193</sup> The female activists involved are also experts in human rights and women's rights.

The questions looked at seven aspects of the work of the female respondents - negative and positive reactions of the public and authorities, examples of stigmatisation of women's advocates, barriers to funding, administrative barriers, barriers to participation, access to information, impact on their work, and support mechanisms.

Research interviews with six respondents three female journalists and three women's activists add to the theoretical knowledge about the functioning or limitations of the democratic space for human rights defenders. The research interviews were limited to a small sample of respondents and were conducted to elicit personal experiences, evaluations and opinions, and therefore the results may not be representative of the experiences of all activists, journalists and organisations working in the field of human rights and gender equality. The research also addressed the gender perspective, which is an important part of the work of female human rights defenders and female journalists.

The issue of openness and threats to the democratic space for civil society, and specifically for human rights defenders, is also debated at the in-



ternational level, including at the UN<sup>194</sup>, Council of Europe<sup>195</sup> and the Organisation for Security and Cooperation in Europe.<sup>196</sup> The so-called *Marrakesh Declaration*<sup>197</sup> also

states that national human rights institutions have an important role to play in the promotion and protection of the democratic space and also for human rights defenders.<sup>198</sup>

## The indispensable role of female human rights defenders and the specific challenges they may face

The term “human rights defenders” refers to persons who, alone or together with others, promote and protect human rights in a peaceful manner. They focus on individual human rights (e.g. the right to education, the right to housing), the rights of specific groups (e.g. rights of LGBTI persons, rights of migrants) or human rights in a comprehensive manner.<sup>199</sup> Female

human rights defenders are women and girls who are focused on human rights, and also all persons, regardless of gender, who are active in promoting gender equality and women's rights.<sup>200</sup>

They are active and engaged in all countries, and the level of their support and protection constitute indicators of democratic societies

194 UN Declaration on Human Rights Defenders, UN General Assembly Resolution No. 53/144 of 1999, available at [https://www.ohchr.org/Documents/Issues/Defenders/Declaration/Slovak\\_declaration.pdf](https://www.ohchr.org/Documents/Issues/Defenders/Declaration/Slovak_declaration.pdf). See also: *General Assembly Resolution A/RES/68/181 - Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: protecting women human rights defenders*, 2014, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/450/31/PDF/N1345031.pdf?OpenElement> and the Office of the United Nations High Commissioner for Human Rights: *Women Human Rights Defenders, Information Series on Sexual and Reproductive Health and Rights*, 2020, available at [https://www.ohchr.org/documents/issues/women/wrgs/sexualhealth/info\\_whrd\\_web.pdf](https://www.ohchr.org/documents/issues/women/wrgs/sexualhealth/info_whrd_web.pdf)

195 Council of Europe Commissioner for Human Rights: *Women's Rights and Gender Equality in Europe*, available at [https://rm.coe.int/ref/CommDH\(2016\)15](https://rm.coe.int/ref/CommDH(2016)15); Council of Europe Commissioner for Human Rights: *Human Rights of LGBTI People In Europe: Current Threats To Equal Rights, Challenges Faced By Defenders, And The Way Forward*, available at <https://rm.coe.int/human-rights-of-lgbti-people-in-europe-current-threats-to-equal-rights/1680a4be0e>

196 Organisation for Security and Co-Operation in Europe Office for Democratic Institutions and Human Rights: *Guidelines on the Protection of Human Rights Defenders*, 2014, available at <https://www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders>

197 Global Alliance of National Human Rights Institutions (GANHRI): *The Marrakesh Declaration - Expanding the civic space and promoting and protecting human rights defenders, with a specific focus on women: The role of national human rights institutions*, 2011, available at [https://ganhri.org/wp-content/uploads/2019/11/Marrakesh-Declaration\\_ENG\\_-12102018-FINAL.pdf](https://ganhri.org/wp-content/uploads/2019/11/Marrakesh-Declaration_ENG_-12102018-FINAL.pdf)

198 Ibid, paragraph 17.

199 Office of the High Commissioner for Human Rights: *About human rights defenders*, available at <https://www.ohchr.org/en/issues/shrdefenders/pages/defender.aspx>

200 Office of the High Commissioner for Human Rights: *Women human rights defenders*, available at <https://www.ohchr.org/en/issues/women/wrgs/pages/hrdefenders.aspx>



In a political climate where there is a global backlash against human rights issues, human rights defenders are often the first to be attacked.<sup>201</sup> At the same time, according to one respondent, attacks on women's human rights, gender equality or feminist organisations are the first indicator of the failure of democracy.<sup>202</sup>

States have an obligation to protect human rights defenders, to condemn and prevent violations of their rights, to refrain from intimidating and harassing them, while respecting and supporting their activities and creating a safe and supportive environment for their work.<sup>203</sup> A safe and supportive environment for human rights defenders includes the existence of an enabling legal and institutional framework, access to justice, effective and independent national institutions for the protection and promotion of human rights, effective protection and public support policies, special attention to the challenges faced by women defenders - women and and those

focused on women's rights and gender equality, and the existence of a strong, dynamic and diverse community of human rights defenders.<sup>204</sup>

Restricting the democratic space for human rights defenders, including their freedom of expression, association, and right to privacy, through the abuse of civil and criminal proceedings, or through intimidation or harassment, is a problem worldwide.<sup>205</sup>

Female human rights defenders also face gender-specific discrimination and violence from states or private individuals, but also within their own communities and families.<sup>206</sup> They also face other specific barriers that are influenced by who they are (girls, women, LGBTI persons), with which groups they identify or are a part of (e.g. feminist movements) or what rights they advocate (e.g. LGBTI rights).<sup>207</sup> The challenges faced by female human rights defenders are diverse and include stigmatization and negative reactions from the pub-

201 A/HRC/40/60 *Report of the Special Rapporteur on the situation of human rights defenders, Situation of women human rights defenders*, 2019, para. 7, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/004/97/PDF/G1900497.pdf?OpenElement>

202 Research interview, respondent 5.

203 A/HRC/40/60 *Report of the Special Rapporteur on the situation of human rights defenders, Situation of women human rights defenders*, 2019, para. 19, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/004/97/PDF/G1900497.pdf?OpenElement>

204 A/HRC/25/55 *Report of the Special Rapporteur on the situation of human rights defenders*, 2013, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/190/95/PDF/G1319095.pdf?OpenElement>

205 Global Alliance of National Human Rights Institutions (GANHRI): *The Marrakesh Declaration - Expanding the civic space and promoting and protecting human rights defenders, with a specific focus on women: The role of national human rights institutions*, 2011, para. 13, available at [https://ganhri.org/wp-content/uploads/2019/11/Marrakesh-Declaration\\_ENG\\_-12102018-FINAL.pdf](https://ganhri.org/wp-content/uploads/2019/11/Marrakesh-Declaration_ENG_-12102018-FINAL.pdf)

206 Ibid, paragraph 14.

207 Office of the High Commissioner for Human Rights: *Women human rights defenders*, available at <https://www.ohchr.org/en/issues/women/wrgs/pages/hrdefenders.aspx>

lic, politicians, authorities, religious societies and family, anti-gender campaigns, defamation, exclusion, marginalisation, lack of recognition and funding, barriers to access to decision-making, or gender-based violence in the online space.<sup>208</sup>

Human rights defenders work in the context of broader political developments involving populism and expressions of misogyny, sexism and homophobia, reduced funding for the promotion of women's rights<sup>209</sup>, regressive anti-gender movements and narratives, and the existence of anti-gender actors who stand *"in opposition to gender equality, human rights of*

*women and LGBTI persons, or in opposition to sexual and reproductive rights"*.<sup>210</sup> Compared to men, female human rights defenders are perceived often as those who challenge the accepted socio-cultural norms and stereotypes about women's roles in society and are more likely to face prejudice as a result.<sup>211</sup> Human rights defenders, including health professionals who specifically focus on women's sexual and reproductive rights, also face stigmatization and harassment for their work.<sup>212</sup>

One research respondent expressed her work in this context as follows:

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*"(...) in the last few years the political and social situation has been changing globally and therefore also in Slovakia. Gender equality is gradually becoming, or has probably already become, a bogeyman and some kind of a common enemy at the political level and in certain communities. This means that it actually affects the work we do in gender equality and women's human rights, because a lot of time and energy is spent on this kind of defence."*<sup>213</sup>

In their role of gathering information and disseminating it to the public, journalists are not perceived as human rights defenders and it is possible that many of them do not even see themselves as such. In some cases, however, journalists

who cover human rights may be considered human rights defenders. This includes e.g. investigative journalists, as well as bloggers who cover a range of human rights issues, monitor and report on human rights abuses, or promote human

208 Ibid.

209 A/HRC/40/60 Report of the Special Rapporteur on the situation of human rights defenders, *Situation of women human rights defenders*, 2019, paras 24-25, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/004/97/PDF/G1900497.pdf?OpenElement>

210 Maďarová, Z.: *Opposition to the notion of gender*, ASPEKTin - feminist webzine, available in Slovak language at <http://www.aspekt.sk/content/aspektin/opozicia-voci-pojmu-rod>

211 A/HRC/25/55 Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, 2013, para. 99, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/190/95/PDF/G1319095.pdf?OpenElement>

212 Ibid, paragraph 45.

213 Research interview, respondent 4.

rights reforms.<sup>214</sup> In addition to the challenges faced by male and female journalists in general, they may face many of the challenges faced by other human rights defenders, such as intimidation, stigmatization, and censorship, which may deter or stifle their work.<sup>215</sup> At the same time, the online envi-

ronment in which journalists work or receive feedback on their work can in some cases be a highly toxic and misogynistic environment.<sup>216</sup> Several respondents reported that they avoided social networks or limited their viewing of comments on them for this reason.

## Public reactions to respondents' work on repeated legislative proposals restricting the access to safe forms of abortion

All of the women interviewed have been working on human rights issues, including women's rights, for a long time. Women activists, in particular, are able to reflect on the evolution and long-standing repeated attempts to restrict women's sexual and reproductive rights and are active in criticizing and advocating against them. Despite the fact that their job is to report objectively on such proposals, female journalists reported that the public (male and female readers) often did not perceive the differences between the role of a journalist and their person, and often perceived them as "faces" associated with the subject. Negative reactions from the public (as well as from politicians) are often personal, despite the fact that the journalists did not express their personal opinion on their articles.

Public reactions to the respond-

ents' work on women's sexual and reproductive rights and the repeated legislative proposals were perceived as highly polarised - encountering both very negative and very positive reactions. Respondents were very positive about the great support, gratitude and growing expertise and activism of women (and men) on this topic. Negative reactions included unpleasant to hateful responses and attacks, including heated and misogynistic comments and emails received in relation to their work on the topic over the past two years, but with respect to other human rights and gender equality topics. The blurring between work and personal status was mentioned by both activists and journalists, while some of the heated reactions, name-calling and vilification is sent to personal and work accounts and directed against them as persons or women. Several respondents limit their private

214 A/HRC/25/55 *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya*, 2013, para. 47, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/190/95/PDF/G1319095.pdf?OpenElement>.

215 Ibid, paragraph 120.

216 *Recommendation CM/Rec(2016)4[1] of the Committee of Ministers to Member States on the protection of journalism and safety of journalists and other media actors*, 2016, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/004/97/PDF/G1900497.pdf?OpenElement>

accounts, e.g. on social media, as a response and strategy to protect and promote their health. One respondent also expressed the need for creating a better coping mechanism for such situations and a lack of greater support on such topic - she mentioned that when she received multiple hateful reactions,

it was difficult for her and affected her personally. Several respondents identified fatigue, exhaustion and a heavy burden on both mental and work life as a direct consequence of repeated legislative proposals that make access to safe abortion more difficult.

“(...) it's sort of never-ending...frustrating that we still have to do the same thing (...) I can imagine thousands of projects that we should be doing instead of having to defend something that this country agreed to when it was building its constitution (...).”<sup>217</sup>

One respondent also reflected that the constant defence against repeated legislative proposals making it more difficult for women to access safe abortion, which is already limited, also prevents progressive activities and criticism inherent in feminist policies and organizations, rather than maintaining the *status quo*. Another respondent recalled that gender equality, including access to safe abortion, should not be perceived in society as only a “women’s issue” as it relates to universal human rights.

Examples of stigmatization encountered by the respondents included stigmatisation of women who have undergone abortion, as well as of activists and journalists

who cover such issues. Respondents also perceived a gendered aspect of the hateful comments - ridicule, misogynistic comments or devaluation of the work of women and feminists and their expertise. Moderating comments on social media posts on such topic took up a lot of time and energy for the respondents who are also in charge of social media communication, especially during the period before the vote on the legislative proposals. The respondents had to react not only to hate speech with regard to the topic or directed against them or the organisations in which they are active, but also to name-calling against the submitters of the legislative proposals themselves, which they do not tolerate in the debate.

“(...) just as women are actually victimized just for being women, and women who have had abortions are victimized, I think those who address this issue are actually stigmatized as well.”<sup>218</sup>

<sup>217</sup> Research interview, respondent 5.

<sup>218</sup> Research interview, respondent 4.

The respondents have been encountering cases of stigmatization in their work for a long time and reflected that reactions to the topic of access to abortion had always been very strong and polarised, and had always spurred very emotional reactions in both a negative and positive sense. Similar polarised reactions are also encountered by some respondents e.g. in the case of religious or medical topics (including vaccinations).

All respondents also reported a number of positive reactions to their work. It is therefore important to note that supportive responses

are perceived as being highly motivating. Respondents note that in recent years a larger community of supporters (including both male and female politicians and doctors) who are professionally skilled, have a human rights-based background, and are spontaneously active in more cities has emerged. Some respondents even perceived that the number of negative reactions was much smaller than the number of positive reactions, highlighting in particular the strong support and gratitude from the public, MPs, readers or women who had undergone or were planning to undergo abortion:

*“We were extremely pleased that women started writing us stories (...) and that they wrote us messages about how important it was. (...) I felt like for every negative reaction there were, I don't know, five positive ones. That we really felt that those people were supporting us, that they appreciated it, and that they were writing us messages and really showing their support for us as well.”<sup>219</sup>*

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Positive feedback and support from a wide range of the public was perceived by all respondents as an important motivating factor.

Another important supporting and motivating factor is the acquired expertise and personal value beliefs.

## Obstacles in financing and administrative background

The existence of a favourable legal and institutional framework and sufficient financial support for the functioning of NGOs and human rights defenders is a part of a properly functioning democratic space. Female activist respondents (and to a lesser extent female journalists) highlighted the lack of financial and administrative support for

their work. In addition to attacks on gender equality, recent years have also seen an increase in the number of actors fighting against women's reproductive rights and their considerable political, financial and administrative/infrastructural base, also created by their close ties to the church. In contrast, many NGOs, including those promoting

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<sup>219</sup> Research interview, respondent 2.

women's sexual and reproductive rights and access to legal and safe abortions, work with a long-term lack of funding without long-term strategic support from the state to build a strong civil society, and are often tied to short-term and financially limited project grants. In addition, NGOs that have long supported gender equality and women's rights have lost access to subsi-

dy support from the Ministry of Labour since 2021.<sup>220</sup> Female journalist respondents also perceive their salary as being insufficient with regard to the demanding nature of their work.

One respondent expressed the lack of civil society support on the issue of women's sexual and reproductive rights and health as follows:

*"And today, actually, when the same situation repeated as two years ago, when such actors were strengthened even more by the elections, there was no one to save Slovakia, or the discourse - I consider this one of the key mistakes that happened, that we did not invest more in the development of civil society."*<sup>221</sup>

Another respondent recalled that the issue of women's sexual and reproductive rights and health should not be a matter of activism, but should be sufficiently promoted by government institutions that are mandated and obligated to do

so under national and international human rights obligations. According to another respondent, the state should also play a greater role in informing citizens about human rights, where the state is substituted by civil society:

*"...so if we have state institutions that want to prevent undemocratic tendencies in our society, then they should provide infrastructural support to civil society that is dedicated to strengthening democratic principles, including strengthening human rights, the human rights of minorities, social justice, and gender equality. And, in this sense, it is actually necessary (...) that the state administration, public organisations, state administration organisations and public sector organisations support and cooperate and listen to people from civil society. And thereby create conditions, good conditions for them to work."*<sup>222</sup>

220 Act No. 417/2020 Coll. amending Act No. 544/2010 Coll. on Subsidies under the competence of the Ministry of Labour, Social Affairs and Family of the Slovak Republic, as amended, as of 1 January 2021 changed the wording of Section 9a which regulated the provision of subsidies for the promotion of gender equality to organisations with the subject of activity "promotion of gender equality" to the new wording "subsidies for the promotion of equality between women and men and equal opportunities" for organisations with the subject of activity "promotion of equality between women and men and equality of opportunities". Available in Slovak language at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/417/20210101.html>

221 Research interview, respondent 5.

222 Research interview, respondent 4.

## Barriers to participation and access to information

As the legislative proposals making access to safe forms of abortion more difficult were parliamentary bills, there was no discussion on such proposals in the form of IMCP, which limited the participatory process of law-making. Although submitted correctly and in accordance with the Rules of Procedure, such proposals are considered problematic by the respondents, as there is not enough time for the professional public to react to fundamental changes.

Some respondents also highlighted a sort of lack of understanding on the part of the state about the role of the participatory process in

the development of policies and laws that also relate to women's human rights. Activists mentioned that the participatory model for human rights issues is in several cases based on the number of entities involved in the discussion rather than on their expertise in the field of human rights. They also described examples where relevant experts were invited only at an early stage of the process, false information was given in the media by the submitter of the proposals about the unwillingness of experts to be involved in the discussion, or relevant ministries were not consulted in the preparation of legislative proposals and the wording put forward was wrong.

*"It would be great if those politicians really listened to the people who are directly affected. (...) So we would like to be invited to be involved, but somehow the current political situation does not indicate that it could be changed for the better."*<sup>223</sup>

Journalists were generally satisfied with the access to information and the responsiveness of the submitters of legislative proposals themselves or with the information provided by the state administration, and did not experience any major problems in this area. However, they expressed the opinion that many politicians take the work of women and men journalists very personally and do not perceive

their work as being professional and independent.

In 2021, pandemic measures also had an impact on the work of women activists. One respondent recalled that the pandemic did not stop restrictive proposals from being put forward, and the measures in response made it impossible to organise protests against such legislative proposals:

*"... the pandemic was used for that, precisely because protests could not be made, people could not take to the streets and express their discontent, but also because abortion care was not seen as essential and was restricted. The pandemic therefore became a space to restrict further access to abortion, also in terms of that legislative aspect."*<sup>224</sup>

<sup>223</sup> Research interview, respondent 2.

<sup>224</sup> Research interview, respondent 4.

### 3.4 Conclusion

According to the explanatory memorandum to the Pregnant Women Assistance Bill, the purpose of the new legislation was to create support measures for women who are considering applying for abortion. Although the stated purpose can be considered legitimate, the very measures introduced by the Pregnant Women Assistance Bill create barriers to the access to abortion for women choosing to have abortion. As a part of the measures to be introduced, the Pregnant Women Assistance Bill included measures to help with the increased costs of having a child with disability, the purpose of which can undoubtedly be regarded as legitimate, but the means of achieving it are contrary to the constitutional principle of equality. The Act on assistance to pregnant women was not approved in the NR SR, but only one vote decided on its non-approval in the third reading. It is foreseeable that, in the context of the repeated submission of similar proposals in recent years, women in the Slovak Republic will continue to face further attempts to restrict access to safe forms of abortion in the future.

In this context, the Centre considers it necessary to stress that the state should strive to develop comprehensive support measures for women. In relation to the prevention of unwanted pregnancies and with a view to improving the quality of women's health and autonomy, it should focus its actions

on family planning. This is a set of educational, social and medical activities that ensure that individuals and couples have access to safe, effective, affordable and acceptable methods of fertility control of their choice, so that they are free to make choices about the number and spacing of their children. Contraception, and access to it, is one of the most important tools for preventing abortion. However, access to, and information about, a wide range of contraceptive methods and approaches is absent from the Pregnant Women Assistance Bill.

Although the current legal framework regulating abortion is adequate, there are repeated attempts in NR SR to tighten it, contrary to WHO standards, recommendations of national and international actors in the field of human rights, gender equality and experts in the field of gynaecology and obstetrics. The Centre also stresses that, according to the Constitutional Court, *"the current legislation ... guarantees that the will of the woman prevails over the protection of an unborn human life only after mature reflection, relying also on relevant medical information conveyed in an accessible form"*.<sup>225</sup> Attempts to introduce stricter standards making access to abortion more difficult are contrary to the legal principle of non-retrogression which prohibits any measures that narrow the existing health rights, and to the Slovak Republic's international

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<sup>225</sup> Ruling of the Constitutional Court of the Slovak Republic, Case No. PL. ÚS. 12/01-297 of 4 December 2007, available in Slovak language at [https://www.ustavnysud.sk/ussr-intranet-portlet/docDownload/1f828bbd-8f96-46f5-a5b6-5fc2de827eaa/Rozhodnutie%20-%20Rozhodnutie%20PL.%20%C3%9AS%2012\\_01.pdf](https://www.ustavnysud.sk/ussr-intranet-portlet/docDownload/1f828bbd-8f96-46f5-a5b6-5fc2de827eaa/Rozhodnutie%20-%20Rozhodnutie%20PL.%20%C3%9AS%2012_01.pdf)



human rights obligations.<sup>226</sup>

The findings of the survey conducted in 2019 and the research carried out in 2021 show that the availability of reproductive health services and the availability of information about such services is insufficient in the Slovak Republic. Women's access to abortion is hampered by inadequate and inaccurate information regarding the provision of reproductive health services, as well as by the geographic accessibility of reproductive health services, which is most problematic in the Prešov Self-Governing Region. In the context of the affordability of reproductive health services, the non-compliance with the maximum fee for abortion set by the Ministry of Health Measure is problematic. In terms of affordability, the ambiguity of the information provided in the price list and the additional and hidden fees for administrative and medical activities associated with the performance of abortion represent a barrier.

The Centre has repeatedly warned that the state of exercising reproductive and sexual rights in the Slovak Republic is alarming, especially for vulnerable groups. Measures should also aim inter alia at the development of a national sexual and reproductive health programme which would create a precondition for the progressive removal of obstacles to the exercising of sexual and reproductive rights, as well as a solid basis for the development of family planning and reproductive health care in the future.

The accessibility of abortion in the Slovak Republic for women aged 40+ was made more difficult in 2021 by the entry into force of the Amendment to the Abortion Decree. Charging for abortion for women aged 40+ makes access to safe, legal forms of abortion more difficult, especially for vulnerable groups of women aged 40+ who lack the financial means to pay for abortion and related procedures. At the same time, medical abortion which is also recommended by experts in the field of gynaecology and obstetrics and women's sexual and reproductive rights was not made available in the Slovak Republic in 2021.

During the discussion about the Pregnant Women Assistance Bill in NR SR, there were also reactions from male and female MPs that showed signs of misogyny, homophobia and intolerance towards gender equality issues, NGOs and human rights defenders. The Centre warns that insensitive, offensive, harmful and especially hateful narratives can interfere with the rights of others, lead to discriminatory behaviour and, in the most serious cases, to conduct punishable by criminal law. However, according to the Constitutional Court, freedom of expression applies not only to information and ideas that are perceived positively and favourably, but also to those that offend, shock or disturb the state or a part of its population, which is due to the requirements of pluralism, tolerance and openness, without which, however, it is impossible to speak of a demo-

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226 Council of Europe Commissioner for Human Rights: *Issue paper on women's sexual and reproductive health and rights in Europe*, 2017, p.11, available at <https://rm.coe.int/women-s-sexual-and-reproductive-health-and-rights-in-europe-issue-pape/168076dead>

cratic society.<sup>227</sup> The Centre stresses that, while mere statements during a debate may not constitute a violation of the freedom of expression, the constant repetition and escalation of hate speech as a part of political discourse may result in a shrinking democratic space for civil society. The exercising of the freedom of expression may constitute an interference with the rights of others, for example in the case of offensive speech.<sup>228</sup>

The barriers that the research respondents have encountered in relation to their work on women's sexual and reproductive rights and health should not be seen only as individual barriers to work. The existence of a strong and diverse civil society, including a community of human rights defenders, is an indicator of a healthy and strong democratic society. The problems highlighted by the human rights defenders working on women's sexual and reproductive rights and health should be seen as an indicator of the problems of the democratic space in general and should therefore be given due attention.

Although the number of research interviews was limited, it illustrates well the conditions of work for the defenders of women's sexual and reproductive rights and health, including access to legal and safe forms of abortion. Women activist respondents perceived a negative impact of the repeated legislative proposals to restrict women's

access to abortion on their work. Since, by the nature of their work, the women journalist respondents bring diverse objective information and describe human rights issues from multiple angles they did not perceive a direct negative impact of the legislative proposals on their work, but they reflected the polarization in society, which was also reflected in the reactions of readers. All respondents repeatedly highlighted the great and important support and gratitude they receive from the public, as well as from some politicians. They see this as a very positive fact and support not only for their work, but also for women's rights and gender equality in recent years.

Aware of the limitations stemming from the size of the research sample and the consequent possibility of generalization, the Centre notes the limitation of democratic space for female human rights defenders working on women's sexual and reproductive rights, including in the context of the repeated legislative proposals that aim to restrict access to legal and safe abortion. Several aspects of the hostile environment for female human rights defenders were reflected in the research interviews, such as limited and unsystematic funding, lack of participation and the need to defend against negative or even hateful reactions. The continued efforts to change the already limited access to safe forms of abortion make the work of female advocates and civil

227 Ruling of the Constitutional Court of the Slovak Republic Case No. II ÚS 307/2014 of 18 December 2014, available in Slovak language at [https://www.ustavnysud.sk/docDownload/26a323dc-98fd-44df-a872-93b1b7bf684f/%C4%8D%2035%20-%20II.%20%C3%9AS%20307\\_2014.pdf](https://www.ustavnysud.sk/docDownload/26a323dc-98fd-44df-a872-93b1b7bf684f/%C4%8D%2035%20-%20II.%20%C3%9AS%20307_2014.pdf)

228 Rychetský, P.: *Freedom of expression and its protection before the Constitutional Court. In Freedom of expression and its limits: IV. Constitution Days*. Košice: UPJŠ, 2016, pp. 40-49.

society difficult and limit their time and energy which could be used for activities aimed at strengthening women's rights, including sexual and reproductive education.

The Centre recognizes the expertise, professionalism and commitment of the respondents and oth-

er male and female human rights defenders and their indispensable role in the protection of human rights. Supporting and strengthening them in the promotion and protection of human rights is an important role of the state, but also of the private sector, media and other actors.

## Recommendations

### The Centre recommends that:

- 1 Members of the National Council of the Slovak Republic and the Government of the Slovak Republic refrain from introducing legislative measures that narrow the scope of guaranteed rights in the area of health, including women's sexual and reproductive health.
- 2 The National Council of the Slovak Republic and the Government of the Slovak Republic refrain from undue interference with women's right to sexual and reproductive health, including access to safe and legal forms of abortion.
- 3 The National Council of the Slovak Republic and the Government of the Slovak Republic respect the principle of equal treatment when introducing legislative and non-legislative measures to help pregnant women.
- 4 The Ministry of Health of the Slovak Republic initiate a transparent and participatory process to develop a national sexual and reproductive health strategy without undue delay.
- 5 The Ministry of Health of the Slovak Republic maintain and publish a complete and up-to-date list of health facilities that perform abortion at a woman's request.
- 6 The Ministry of Health of the Slovak Republic take effective measures to ensure access to safe abortion and to remove legislative and non-legislative barriers to the access to abortion, including medically unjustified mandatory waiting periods, unavailability of information on reproductive health services, and difficult access to abortion in selected districts and regions of the Slovak Republic.
- 7 Health care facilities performing abortions adjust the amount of the fee for abortion in their price lists so that the fee covers all costs associated with the performance of abortion and does not exceed the amount set by the relevant Ministry of Health's Measure.
- 8 The Ministry of Health of the Slovak Republic prepare a proposal of relevant legislative changes that would allow for the performance of medical abortion, including the inclusion of relevant medicines in the list of categorised medicines and the list of medicines with an officially determined price.

- 9** The Government of the Slovak Republic ensure a safe democratic environment for female human rights defenders, including long-term institutional and financial support for civil society organisations working on human rights and gender equality, built on partnership, independence and expertise.
- 10** Ministries that are responsible for individual grants to civil society refrain from interfering with the availability of financial resources for organisations and activists focused on the access to legal and safe forms of abortion.
- 11** The Government of the Slovak Republic, individual Ministries and the National Council of the Slovak Republic strengthen and promote the active participation of female human rights defenders in the development of laws and policies that affect human rights, including women's rights.
- 12** The Government of the Slovak Republic and central government bodies implement and support awareness-raising activities and education of the general public with the aim of eliminating sexism and misogyny in public space.



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## 4. Promotion and protection of human rights, fundamental freedoms and the principle of equal treatment in legislative processes

The Centre was actively involved in inter-ministerial commentary procedures.

In the introduction to the 2020 Human Rights Report, the Centre addressed a “*legislative call*” to the Slovak legislature. It indirectly accused them of neglecting the legislative process in the context of the protection and promotion of minority rights and explicitly drew attention to the status of foreign-

ers and members of national, ethnic and sexual minorities. The next section of the Report assesses the legislature’s reflection on the call described above through a close monitoring of legislative initiatives and processes that occurred in the past calendar year.

## 4.1 Legislative activities of the Centre

The Centre was actively involved in seven inter-ministerial commentary procedures; in three cases its comments were partially accepted.

In January 2021, it commented on the Ministry of Health’s legislative proposal for establishment of the Slovak Government Council for Mental Health (hereinafter referred to as the “Government Council for Mental Health”).<sup>229</sup> The Ministry of Health did not accept any of the four comments made by the Centre, expressing its interest in membership of the proposed Government Council for Mental Health. It formulated the proposal in the form of a substantive comment and with an emphasis on the content of its statutory mandate. In particular, it emphasised the legal power to represent victims of discrimination, including those suffering from mental disorders or illnesses. The remaining three comments were

connected directly to the first of them, with the Centre proposing formal amendments to the provisions on the status of members of the proposed Government Council for Mental Health.

In February 2021, it commented on the legislative intention to re-codify the legal regulation of companies.<sup>230</sup> It put forward an intention to initiate discussions on the introduction of a general obligation to respect human rights, to monitor the impact of business activities on the situation of human rights and fundamental freedoms, and to prevent and mitigate the negative impact of business activities on human rights. In doing so, it referred to the text of the UN Guiding Principles on Business and Human Rights<sup>231</sup>, OECD Guidelines for Multinational Enterprises<sup>232</sup> and Recommendation CM/Rec(2016)3 of the Committee of Ministers of the

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<sup>229</sup> Proposal for establishment of the Council of the Government of the Slovak Republic for Mental Health, legislative process number: LP/2020/639, available in Slovak language at <https://www.slov-lex.sk/legislativne-procesy/SK/LP/2020/639>

<sup>230</sup> Legislative intent to re-codify companies, legislative process number: LP/2020/627, available in Slovak language at <https://www.slov-lex.sk/legislativne-procesy/SK/LP/2020/627>

<sup>231</sup> Available at [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)

<sup>232</sup> An overview of the guidelines is available at <https://www.oecd.org/corporate/mne/38111343.pdf>

Council of Europe.<sup>233</sup> The Committee recommends that Member States harmonize their national legislation and practice in accordance with the recommendations and guidelines contained in the UN Guiding Principles on Business and Human Rights.

In March 2021, the Centre was involved in the inter-ministerial commentary procedure on the bill to amend Act No. 245/2008 Coll. on Education and Training (School Act), and on amendments and supplements to certain Acts, as amended (hereinafter referred to as the “School Act”).<sup>234</sup> The Ministry of Education, Science, Research and Sport of the Slovak Republic (hereinafter referred to as “the Ministry of Education”) proposed to supplement the principles of education and training by respecting the developing abilities of children with health-related disadvantages and respecting the right of children with health-related disadvantages to preserve their identity. In its second comment, the Centre suggested that pupils who are educated in special primary schools should be given the opportunity to achieve lower secondary education and to be educated in secondary schools through undergoing external pupil testing, in accordance with the proposed wording of Section 155 (9) of the School Act. It stressed the request that as many pupils

with health-related disadvantages as possible should have access to secondary education, the completion of which would significantly increase their chances of entering the labour market. The Ministry of Education accepted the comment. It also reflected positively on the call for introducing effective mechanisms to improve the access to external testing for pupils attending special primary schools. The Ministry of Education took note of the Centre’s reasoned disagreement with the introduction of the new task of external testing of pupils under Section 155 of the School Act.

In September 2021, the Centre commented on the Draft Housing Policy of the Slovak Republic until 2030 (hereinafter referred to as the “Draft Housing Policy”).<sup>235</sup> It suggested that the Draft Housing Policy should reflect all known human rights standards in the protection of the right to housing and comprehensively take into account the prohibition of discrimination.

In November 2021, the Centre submitted comments within the inter-ministerial commentary procedure on the Regular Preliminary Opinion of the Ministry of Labour, Social Affairs and Family of the Slovak Republic on the draft Directive of the European Parliament and of the Council to strengthen the application of the principle of equal

<sup>233</sup> Available at <https://edoc.coe.int/en/fundamental-freedoms/7302-human-rights-and-business-recommendation-cmrec20163-of-the-committee-of-ministers-to-member-states.html>

<sup>234</sup> Act amending Act No. 245/2008 Coll. on Education and Training (School Act), and on amendments and supplements to certain Acts, as amended, and amending certain Acts, legislative process number: LP/2021/105, available in Slovak language at <https://www.slov-lex.sk/legislativne-procesy/-/SK/LP/2021/105>

<sup>235</sup> Draft Housing Policy of the Slovak Republic until 2030, legislative process number: LP/2021/488, available in Slovak language at <https://www.slov-lex.sk/legislativne-procesy/SK/LP/2021/488>



pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms (hereinafter referred to as the “Preliminary Opinion”).<sup>236</sup> It disagreed with certain parts of the opinion. It insisted on the use of the established terminology of “gender”, “gender discrimination” and “gender-neutral”. The terms are not synonymous; the term “gender-neutral” cannot be replaced by “neutral in terms of gender”, as such term is restrictive. Sex is not inextricably linked to gender. Gender is a socially constructed category, emerging in the context of social, cultural and economic structure. It defines the different positions of women and men in social and power relations that are not a result of biological and physiological-anatomical differences. Gender is a set of roles, behaviours and habits typically associated with a particular sex. The concept of sex is the biological characteristics of a person, i.e. whether he or she is anatomically a female or a male, and represents the totality of essential biological features that distinguish men and women. Gender cannot thus be identified with the notion of sex, a social category to which certain ideas of society are attached to what is or is not typical, appropriate or correct for a woman or a man. The second of the comments contained a dissenting opinion on the Slovak Republic’s reservations

to Article 25 of the draft Directive. Bodies ensuring the protection and promotion of the principle of equal treatment of all persons without discrimination on grounds of sex (so-called equal treatment bodies) should also be involved in the implementation of the instruments falling within the scope of the Directive. The European Parliament and the Council require Member States to take measures to ensure close cooperation and coordination between national equality bodies and labour inspectorates. At the same time, the European Union requires Member States to ensure that national equality bodies are adequately resourced to carry out their tasks in the context of compliance with the right to equal pay. The Slovak Republic presented reservations to such wording, which the Centre did not agree with. The requirement to allocate resources for the purpose of implementing the Directive is, in its opinion, sufficiently justified by international standards to ensure the independence and effectiveness of the bodies overseeing the implementation of the principle of equal treatment. The European Commission also recommends that EU Member States provide national equality bodies with sufficient financial resources to carry out their tasks and exercise their powers.<sup>237</sup> The European Commission against Racism and Intolerance recommends

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<sup>236</sup> Preliminary opinion on the draft Directive of the European Parliament and of the Council to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms, legislative process number: LPEU/2021/129 COM(2021), available in Slovak language at <https://www.slov-lex.sk/legislativne-procesy/SK/LPEU/2021/129>

<sup>237</sup> For more details see Chapter II, point 1.2.2. European Commission Recommendations (EU) 2018/951 on standards for equality bodies, available at <https://eur-lex.europa.eu/legal-content/SK/TXT/PDF/?uri=CELEX:32018H0951&from=EN>

that, if the mandate of the equality bodies is extended, its members should provide additional funding to such bodies, in line with the requirements of independence and effectiveness in fulfilling their mandate.<sup>238</sup>

In December 2021, the Centre commented on the Draft Statute of the Government Council of the Slovak Republic for the Recovery and Resilience Plan of the Slovak Republic (hereafter referred to as the “Government Council for the Recovery and Resilience Plan”) and expressed its interest in membership in the Council.<sup>239</sup> It justified its interest in membership *inter alia* by the need to implement an approach based on the protection and promotion of human rights and fundamental freedoms. The Centre stated that in line with the approach the public policies, strategies and plans

should not focus solely on rescuing the economy in order to restore the economic growth after the pandemic, and recovery resources should also be used to address the consequences of violations of human rights, fundamental freedoms or discrimination. The Government Council for the Recovery and Resilience Plan is to be an advisory body on the Recovery Plan strategy and through its opinions it should point out the risks to investments and reforms associated with the Recovery Plan. The Centre expressed its belief that its possible representation on the Government Council for the Recovery and Resilience Plan would contribute to the implementation of the planned reforms in accordance with human rights standards and the normative prohibition of discrimination. However, its fundamental comment was not accepted.

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<sup>238</sup> For more details, see Part VIII, point 28 of ECRI General Policy Recommendation No. 2: Equality bodies to combat racism and intolerance at the national level, available at <https://rm.coe.int/ecri-general-policy-recommendation-no-2-revised-on-equality-bodies-to-/1680a0a5a1>

<sup>239</sup> Draft Statute of the Council of the Government of the Slovak Republic for the Recovery and Resilience Plan of the Slovak Republic, legislative process number: LP/2021/692, available in Slovak language at <https://www.slov-lex.sk/legislativne-procesy/SK/LP/2021/692>

## 4.2 Selection of the proposals of bills

It is clear from the monitoring of the proposals of bills that the protection and promotion of human rights and fundamental freedoms or the principle of equal treatment was once again a marginal agenda of the entities entitled to submit legislative proposals to NR SR. The exception was adoption of so-called anti-pandemic measures which are the subject of the Centre's assessment in other chapters of the Report. Only a small number of bills are worth mentioning. In this chapter the Centre does not assess those<sup>240</sup> the purpose of which may be misinterpretation of human rights and fundamental freedoms, political populism or an apparent attempt by the submitters to appeal to certain groups of the population.

In particular, it welcomes submission of the bill on life partnership, and on amendments and supplements to certain Acts.<sup>241</sup> The proposal is another comprehensive result of the efforts to move towards equal rights for persons belonging to sexual minorities. On the contrary, it negatively evaluates the fact that NR SR decided not to continue further discussion on the bill after the first reading. Already in the first paragraph of its general part the explanatory memorandum to the bill emphasises the need to ensure minimum European standards of human rights protection in

the context of equal rights for sexual minorities. However, the Slovak legislator does not reflect the need to ensure even minimal legal guarantees of equality of persons irrespective of the sex of their life partners. The subject of the proposed legislation was to be the legal regulation of the formation, non-existence, nullity and dissolution of life partnership, rights and obligations of life partners, including the maintenance obligation between them, the exercise of their parental rights and obligations, community of property, adoption, etc. The submitter of the bill prepared a comprehensive supplementation and amendment of the existing legal institutes within the framework of special legal regulations.

The Centre particularly highlights the content of the explanatory memorandum to the bill. The provisions are duly reasoned, the submitter relies on comprehensive research and on the interpretative and adjudicative practice of ECHR. It emphasises the need to uphold minimum international human rights standards which members of NR SR must not arbitrarily ignore. On the contrary, such obligations must be borne in mind, as they are obligations of the Slovak Republic arising from its status as a party to the Convention. In the Centre's view, the submitter correctly refers to ECHR's decisions in the

<sup>240</sup> They include e.g. draft constitutional Acts and bills which are available in Slovak language at <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=491492>; <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=499090>; <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=500242>; <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=500861>; <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=502741>

<sup>241</sup> Bill on life partnership, and on amendments and supplements to certain Acts, available in Slovak language at <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=8371>

cases *Oliari and others v. Italy*<sup>242</sup> and *Fedotova and others v. Russia*.<sup>243</sup> In the first of the decisions, ECHR accuses Italy of violating the right to family life under the Convention by denying same-sex couples access to a legal union. According to the ECHR's interpretation of the judgment in the case *Fedotova and Others v. Russia*, "neither social consensus nor public opinion is decisive for the assessment of minority rights and the obligation of the state to provide legal protection to same-sex couples."<sup>244</sup> The Court called on Russia to legally recognize the unions of same-sex couples, regardless of their legal form.<sup>245</sup>

The Centre considers the bill to amend the Anti-Discrimination Act to be another significant legislative initiative.<sup>246</sup> It highlights the intended purpose of the proposed amendment to the Anti-Discrimination Act, which can reasonably be described as improving the state of implementation of the obligation to comply with the principle of equal treatment in the remuneration of female and male employ-

ees. The proposal was also based on a thorough analysis of the current situation which is characterised by a gender pay gap. The explanatory memorandum contains reference to similar legislations of EU Member States - Belgium, France, Sweden, Austria, Germany, Denmark, Finland and Italy. The author of the bill points out the positive impact of the proposed legislation on the implementation of the principle of equal treatment in the above-mentioned countries.<sup>247</sup>

The bill included introduction of an information obligation for the group of so-called "employers with significant social responsibility" defined by the bill. They were to be those employing at least fifty employees, public authorities, state-owned enterprises, budgetary and contributory organisations and companies with 100% state ownership. The information obligation was to include the publication of data on the remuneration of female and male employees, including the production of so-called comparative reports in annual intervals. The

242 Judgment of ECHR in the legal case of *Oliari and others v. Italy*, complaint numbers: 18766/11 and 36030/11, available at [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-156265%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-156265%22]})

243 Judgment of ECHR in the legal case of *Fedotova and others v. Russia*, complaint numbers: 40792/10, 30538/14 and 43439/14, available at [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-211016%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-211016%22]})

244 From the explanatory memorandum to the bill on life partnership, and on amendments and supplements to certain Acts, available in Slovak language at <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=499472>

245 ECHR ruled in the case on 13 July 2021; authors' note.

246 Bill amending Act No. 365/2004 Coll. on Equal treatment in certain areas and on protection against discrimination, and on amendments and supplements to certain Acts (Anti-Discrimination Act), as amended, available in Slovak language at <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=8369>

247 Explanatory memorandum to the bill amending Act No. 365/2004 Coll. on Equal treatment in certain areas and on protection against discrimination, and on amendments and supplements to certain Acts (Anti-Discrimination Act), as amended, available in Slovak language at <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=499464>

Ministry of Labour was identified by the submitter as the addressee. The Centre not only welcomes the intention to introduce specific mechanisms to eliminate gender discrimination in the workplace, but also points to the justification for introducing financial sanctions based on violations of the law against those who are obliged to implement the principle of equal treatment and respect the prohibition of discrimination.

The Centre's only reservation about the proposed legislation is that it has been omitted from the text of the bill as presented, particularly in relation to the exercising of the mandate of the national equality body. The Centre's competence and expertise would undoubtedly help proper implementation of the proposed mechanisms. Together with the Ministry of Labour, it would e.g. be an appropriate addressee of the so-called comparative reports which it would evaluate in the context of the provision of Article 1 (2) (g) of the Act on the Centre, and thus with carrying out in-

dependent investigations concerning discrimination.

The amendment of the Anti-Discrimination Act is a long-term goal of the Centre, not only in the context of the introduction of more effective mechanisms for eliminating discrimination in the remuneration of employees. In the past it carried out a comprehensive analysis and highlighted a number of shortcomings that still exist today.<sup>248</sup> In 2021, it initiated an inevitable need to amend the Anti-Discrimination Act and the Executive Director presented a proposal to amend the anti-discrimination legislation at the 39<sup>th</sup> session of the Council of the Government of the Slovak Republic for Human Rights, National Minorities and Gender Equality of the Slovak Republic (hereafter referred to as the "Government Council for Human Rights, National Minorities and Gender Equality").<sup>249</sup> The Government Council for Human Rights, National Minorities and Gender Equality approved it, obliging the Centre to prepare a working version of the amendment.<sup>250</sup>

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248 ČUNDERLÍK, L., PAVLÍČKOVÁ, Z., RIŠIANOVÁ, S.: *Loopholes in Anti-Discrimination Act*. Bratislava: Slovak National Centre for Human Rights, 2017, available in Slovak language at [http://www.snslp.sk/wp-content/uploads/Medzery\\_antidiskriminacneho\\_zakona-2017.pdf](http://www.snslp.sk/wp-content/uploads/Medzery_antidiskriminacneho_zakona-2017.pdf)

249 Not only the Anti-Discrimination Act, but also its successor legislation; authors' note.

250 More information is available in Slovak language at <https://www.radavladylp.gov.sk/informaciu-z-39-zasadnutia-rady-vlady-sr-pre-ludske-prava-narodnostne-mensiny-a-rodovu-rovnost/>

## 4.3 Selection of approved bills

The subchapter contains Acts in force, with the exception of those approved by NR SR in connection with the pandemic situation, or Acts that the Centre evaluates in other chapters of the present Report. It has divided the now largely effective legislation into three thematic parts.

The largest group of Acts passed in the context of the protection and promotion of human rights or fundamental freedoms were those whose primary purpose is to implement the right to a favourable environment.<sup>251</sup> This right is positive in its nature. It is the role of the state to take such measures which will contribute to ensuring the protection of the right to a favourable environment for everyone. In its jurisprudence and interpretation, ECHR has derived the right from the right to privacy, i.e. from Article 8 of the Convention.<sup>252</sup>

It namely covers several amendments to Act No. 79/2015 Coll. on Waste, and on amendments and supplements to certain Acts, as amended (hereinafter referred

to as the “Waste Act”). The first of them aimed to introduce a financial mechanism for redistributing revenues from landfill charges to landfills and ponds. The legislator thus pursues the financial support of municipalities that have introduced separate collection of biodegradable kitchen waste from households, assuming in the explanatory memorandum a positive impact on the environment.<sup>253</sup> Adoption of Act No 216/2021 Coll. supplemented the promotion of the collection of the above-mentioned type of waste by introducing a quantity reporting obligation for those collecting it.<sup>254</sup> Another amendment to the Waste Act *inter alia* modified the provisions on liability for illegal dumping of waste.<sup>255</sup> The legislature amended the above-mentioned Act primarily as a result of transposition of Directive 2019/904 of the European Parliament and of the Council of the European Union of 5 June 2019 on the Reduction of the impact of certain plastic products on the environment (hereinafter referred to as the “Directive on the reduction of the impact of plastic products

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251 Article 44 (1) of the Constitution, available in Slovak language at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1992/460/>

252 OROSZ, L., SVÁK, J. et al: *Constitution of the Slovak Republic*. Commentary. Volume I. Bratislava: Wolters Kluwer SR s. r. o., 2021, p. 566.

253 Act No. 67/2021 Coll. amending Act No. 329/2018 Coll. on Waste Deposit Fees, and on amendments and supplements to Act No. 587/2004 Coll. on the Environmental Fund, and on amendments and supplements to certain Acts, as amended, as amended by Act No. 111/2019 Coll. and amending Act No. 587/2004 Coll. on the Environmental Fund, and on amendments and supplements to certain Acts, as amended, available in Slovak language at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2021/67/>

254 Available in Slovak language at [https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2021/216/vyhlasene\\_znenie.html](https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2021/216/vyhlasene_znenie.html)

255 Act No. 372/2021 Coll. amending Act No. 79/2015 Coll. on Waste, and on amendments and supplements to certain Acts, as amended, and amending certain Acts, available in Slovak language at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2021/372/2021101>

on the environment”).<sup>256</sup> The primary objective of the amendment is to reduce the negative impact of single-use plastic products on the environment and to gradually minimise the use of single-use plastic products.<sup>257</sup>

In the context of the implementation of the right to a favourable environment, the Centre particularly appreciates the amendment to Act No. 302/2019 Coll. on Depositing of single-use beverage packaging, and on amendments and supplements to certain Acts, as amended. By adopting this amendment, the legislator also amended the Waste Act. It expressly prohibits the “*marketing and distribution of beverages in deposited single-use containers that are not registered with the administrator.*”<sup>258</sup>

The Centre also expects a positive impact on the state of the environment from the implementation of

the provisions of Act No. 214/2021 Coll. on the Promotion of environmentally friendly road transport vehicles, and on amendments and supplements to certain Acts<sup>259</sup>, and Act No 296/2021 Coll. on the Promotion of renewable energy sources and high-efficiency combined production, and on amendments and supplements to certain Acts, as amended, and amending Act No 220/2004 Coll. on the Protection and use of agricultural land and amending Act No 245/2003 Coll. on Integrated pollution prevention and control.<sup>260</sup>

Within the second thematic group of Acts, the Centre once again criticises the legislator for neglecting to promote and protect the rights of minorities and disadvantaged groups living in the territory of the Slovak Republic. In this context only two bills were approved.<sup>261</sup>

The first of them is Act No. 374/2021

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<sup>256</sup> Available in Slovak language at <https://eur-lex.europa.eu/legal-content/sk/LSU/?uri=CELEX-%3A32019L0904>

<sup>257</sup> Act No. 430/2021 Coll. amending Act No. 79/2015 Coll. on Waste, and on amendments and supplements to certain Acts, as amended, and amending Act No. 302/2019 Coll. on Depositing of single-use beverage packaging, and on amendments and supplements to certain Acts, as amended, available in Slovak language at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2021/430/20211201>

<sup>258</sup> Act No. 518/2021 Coll. amending Act No. 302/2019 Coll. on Depositing of single-use beverage packaging, and on amendments and supplements to certain Acts, as amended, and on amendments and supplements to Act No. 79/2015 Coll. on Waste, and on amendments and supplements to certain Acts, as amended, available in Slovak language at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2021/518/>

<sup>259</sup> Available in Slovak language at [https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2021/214/vyhlasene\\_znenie.html](https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2021/214/vyhlasene_znenie.html)

<sup>260</sup> Available in Slovak language at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2021/296/>

<sup>261</sup> The Centre does not evaluate the adoption of Act No. 297/2021 Coll., amending Act No. 138/2017 Coll. on the Fund for the Support of the Culture of National Minorities, and on amendments and supplements to certain Acts, as amended, which aimed at changing the conditions for organisations of national minorities entitled to nominate a representative to participate in the assembly of the organisations of the respective national minority where members of the individual expert councils are elected. Available in Slovak language at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2021/297/>

Coll. which supplements Act No. 447/2008 Coll. on Monetary contributions for the compensation of severe disability, and on amendments and supplements to certain Acts, as amended. The legislator extended the scope of assets that are not taken into account when assessing the right to financial contribution. The Centre appreciates the pursued aim of the legislator, which is *“to eliminate unfairness in the area of provision of monetary allowances for compensation of severe disability in the case when a natural person with severe disability owns, in addition to property which is not considered property for the purposes of Act No.447/208 Coll. (e.g. the real estate in which he/she lives), other property which he/she cannot dispose of on his/her own. This is for example a situation where a spouse owns immovable property as part of undivided marital property after divorce, but the court has not yet ruled on the petition. In such case the severely disabled person is in a hopeless situation where he/she is not entitled to assistance (cash allowance) from the state, although he/she cannot influence his/her own property situation (e.g. due to disagreement with the joint owner or delays in court proceedings), or if the property is subject to a pledge. In such cases it is appropriate for the state to take this situation into account when providing cash benefits to compensate for severe disabilities.”*<sup>262</sup> The potential for

the correct implementation of the amendment is, according to the Centre, able to increase the level of legal protection of persons with severe disabilities living in the territory of the Slovak Republic.

Progress in the promotion and protection of the rights of national minorities is heralded by approval of Act No. 417/2021 Coll. amending Act No. 184/1999 Coll. on the Use of languages of national minorities, as amended (hereinafter referred to as the “Act on the Use of Languages of National Minorities”).<sup>263</sup> The legislator introduced the possibility for municipalities to mark arrow signposts with the names of the marked targets also in the language of the national minority.

The third group of the approved bills consists of amendments to the conditions of collusive custody, the institute of compensation for non-pecuniary damage to victims of crimes and the conditions for exercising the right to vote.

The reason for the adoption of the amendment to Act No. 301/2005 Coll. the Criminal Procedure Code, as amended, which amended the provisions on collusive custody, was the commitment of the Government of the Slovak Republic to continue to humanize and mitigate the restrictions on persons in custody and persons serving a prison sentence in the context of the recommendations of national and international institutions. With

<sup>262</sup> Explanatory memorandum to the proposal of a group of members of the National Council of the Slovak Republic to issue an Act amending Act No. 447/2008 Coll. on Cash benefits for compensation of severe disability, and on amendments and supplements to certain Acts, available in Slovak language at <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=495970>

<sup>263</sup> Available in Slovak language at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2021/417/>



this amendment NR SR modified not only the conditions for the execution of the above-mentioned type of detention, but also the maximum (though relativized by exceptions) five-month period of its duration.<sup>264</sup> Another novelty is the introduction of a prosecutor's power to propose a change to the grounds for remand in custody in pre-trial proceedings if one of the grounds for remand in custody ceases to exist. *"In the case of collusive custody, the petition for taking the accused into custody and the grounds for the court decision on custody must also include a statement of specific facts that give rise to a well-founded fear that the accused will engage in collusive behaviour or that show that the accused has already done so."*<sup>265</sup>

A new important part of the Code of Criminal Procedure is the priority of replacing custody with a promise, guarantee, supervision or monetary security and reasonable obligations and restrictions. The provisions of Article 71 (1) and (2) of the Code of Criminal Procedure reflects the jurisprudential interpretative findings of the Constitutional Court according to which courts, when deciding on custody, are

obliged to consider the possibilities of replacing custody by less severe means provided for in the Code of Criminal Procedure.<sup>266</sup> At the same time, they are obliged to give reasons for the decision on the forms proposed by the complainant, or to give reasons in the context of those forms of detention replacement which are applicable.

The need for the promotion and proper implementation of basic human rights standards for persons deprived of their liberty was highlighted by the Centre in the context of criticism of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which has not yet been ratified.<sup>267</sup>

By adopting Act No. 217/2021 Coll., amending Act No. 274/2017 Coll. on Victims of Crimes, and on amendments and supplements to certain Acts, as amended by Act No. 231/2019 Coll., and amending the Act of the National Council of the Slovak Republic No. 171/1993 Coll. on the Police force, as amended, the legislator fundamentally changed the *"philosophy of compensation*

<sup>264</sup> Act No. 308/2021 Coll., amending Act No. 301/2005 Coll. Criminal Procedure Code, as amended; available in Slovak language at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2021/308/>

<sup>265</sup> Explanatory memorandum to the government bill amending Act No 301/2005 Coll. Criminal Procedure Code, as amended, available in Slovak language at <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=495932>

<sup>266</sup> See e.g. the Resolution of the Constitutional Court of the Slovak Republic, Case No: III. CC 144/2016, available in Slovak language at [https://www.ustavnysud.sk/docDownload/4e50c446-94f6-4cf2-a503-35c474050ea9/%C4%8D%2044%20-%20III.%20%C3%9AS%20144\\_2016.pdf](https://www.ustavnysud.sk/docDownload/4e50c446-94f6-4cf2-a503-35c474050ea9/%C4%8D%2044%20-%20III.%20%C3%9AS%20144_2016.pdf) or ruling of the Constitutional Court of the Slovak Republic, Case No. II. ÚS 67/2013, available in Slovak language at: [https://www.ustavnysud.sk/ussr-intranet-portlet/docDownload/c7b7c3a8-e283-4229-8677-aeaa8718a7c0/Rozhodnutie%20-%20Rozhodnutie%20II.%20%C3%9AS%2067\\_2013.pdf](https://www.ustavnysud.sk/ussr-intranet-portlet/docDownload/c7b7c3a8-e283-4229-8677-aeaa8718a7c0/Rozhodnutie%20-%20Rozhodnutie%20II.%20%C3%9AS%2067_2013.pdf)

<sup>267</sup> Cf. Report on the Observance of Human Rights Including the Principle of Equal Treatment in the Slovak Republic in 2019, available in Slovak language at <https://www.snslp.sk/wp-content/uploads/Sprava-o-LP-v-SR-za-rok-2019.pdf>

*for victims of violent crimes*”<sup>268</sup> and introduced easier access to legal action for victims of crimes through the establishment of intervention centres with regional competence.<sup>269</sup> The amendment to the Act is inter alia the legislator’s response to the recommendations of the European Commission contained in the Report of the Special Adviser on the Compensation of Victims<sup>270</sup> which is based on a holistic and human-rights-based approach to the victims of crime. In this context the Centre welcomes and appreciates its adoption and calls on the addressees of the legal norms to implement them correctly.

The comprehensive amendment to Act No. 180/2014 Coll. on the Conditions for exercising the right

to vote, and on amendments and supplements to certain Acts, as amended, is also worth mentioning.<sup>271</sup> Here the legislator follows up on the amendment to Act No. 180/2014 Coll. on the Conditions for exercising the right to vote, and on amendments and supplements to certain Acts, as amended, adopted on 21 March 2017, by which NR SR approved the holding of elections for municipal government bodies and elections to bodies of self-government regions on the same day and at the same time. The purpose of the amendment was to create conditions that would minimise the risks of exercising the right to vote following the elections to municipal and regional government bodies on the same day. Such an event will occur for the first time in 2022.

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268 From the explanatory memorandum to the government bill amending Act No. 274/2017 Coll. on Victims of Crimes, and on amendments and supplements to certain Acts, as amended by Act No. 231/2019 Coll., and amending the Act of the National Council of the Slovak Republic No. 171/1993 Coll. on the Police Force, as amended, available in Slovak language at <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=489450>

269 Act No. 217/2021 Coll. amending Act No. 274/2017 Coll. on Victims of Crimes, and on amendments and supplements to certain Acts, as amended by Act No. 231/2019 Coll., and amending the Act of the National Council of the Slovak Republic No. 171/1993 Coll. on the Police Force, as amended, available in Slovak language at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2021/217/>

270 Available in Slovak language at [https://ec.europa.eu/info/files/summary-report-strengthening-victims-rights-compensation-reparation\\_en](https://ec.europa.eu/info/files/summary-report-strengthening-victims-rights-compensation-reparation_en)

271 Act No. 512/2021 Coll. amending Act No. 180/2014 Coll. on the Conditions for exercising the right to vote, and on amendments and supplements to certain Acts, as amended, and amending and supplementing certain Acts, available in Slovak language at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2021/512/>

## 4.4 Conclusion

The Centre was actively involved in inter-ministerial commentary procedures. The comments were partially accepted; consideration of the comments on one of the amendments to the School Act is particularly positive. The Ministry of Education agreed with the requirement to introduce mechanisms that would facilitate access to secondary education for pupils with disabilities. It also agreed with the comment on the need to put in place means to improve access to external testing for pupils attending special primary schools. The Ministry of Transport and Construction of the Slovak Republic partially accepted the Centre's call for the Draft Housing Policy to take into account human rights standards and the prohibition of discrimination. The Ministry of Labour agreed with some of the comments of the Centre on the Preliminary Opinion. It agreed that "gender equality" was an internationally established concept. In the legislative material it also removed those parts that did not reflect the need to provide funding for implementation of the draft Directive of the European Parliament and of the Council to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency.

It is clear from the content of the bills that the issue of the protection and promotion of human rights is a marginal area of attention for those who have the legislative initiative. On the contrary, it is a regular occurrence that bills are introduced which contradict, or even explicitly deny, basic human rights principles or established human rights stand-

ards. The Centre assesses the described phenomenon negatively. It praises the small number of bills whose purpose is to promote and protect human rights and fundamental freedoms, with particular emphasis on those intended to promote minorities. Positive examples are the bill on life partnership, and on amendments and supplements to certain Acts, and the proposed amendment to the Anti-Discrimination Act which was intended to put male and female employees on an equal footing in terms of pay, regardless of their gender.

A significant group of approved bills were those whose purpose is to have a positive impact on the state of the environment or to ensure the right to a favourable environment. Specific means to achieve the above-stated purpose should be, for example, the promotion of separate collection of biodegradable kitchen waste from households, new regulation of liability for illegal waste disposal, transposition of the directive on the reduction of the impact of plastic products on the environment or a ban on the marketing and distribution of such deposited single-use beverage packaging that is not registered with the administrator. On the contrary, the Centre is particularly critical of the fact that the need to promote and protect the rights of minorities is once again absent. Only the extension of the scope of assets which are not taken into account for severely disabled persons when assessing entitlement to the financial contribution for the compensation of severe disabilities is worth mentioning in such context. The Centre views the amendment to the Act on the Use of Languages

of National Minorities in the same way. It will duly evaluate the implementation of the amendments by which the legislator regulated the conditions of collusive custody, the institute of compensation for non-pecuniary damage to victims of crimes and the conditions for exercising the right to vote.

## Recommendations

### **The Centre recommends that:**

- 1** Entities empowered with legislative initiative increase the level of activity in submitting such bills the purpose of which will be the equalisation of minorities living in the territory of the Slovak Republic.
- 2** Entities empowered with legislative initiative do not abuse their position to enforce legislative amendments that are in clear contravention of international human rights obligations by which the Slovak Republic is bound.
- 3** National Council of the Slovak Republic and the Government of the Slovak Republic respect the principle of equal treatment when introducing legislative and non-legislative measures to help pregnant women.



## 118 Conclusion

The present 2021 Human Rights Report provides an objective and up-to-date picture of the status of respect for selected human rights and fundamental freedoms and formulates specific and targeted recommendations to improve the status of protection and promotion of human rights and fundamental freedoms in the territory of the Slovak Republic, including the requirement to respect the principle of equal treatment.

In the first chapter, the Centre assessed compliance with the principle of equal treatment in employment and similar legal relationships and in the provision of goods and services. In the area of employment and similar legal relations, it noted possible violations of the prohibition of discrimination against persons not vaccinated against COVID-19 in the provision of benefits to vaccinated persons and also in relation to the application of this criterion in the recruitment process. The Centre has observed activities of private-law entities that, in support of the vaccination campaign, offered consumers the possibility to obtain a discount on the price of goods or services by proving that they had been vaccinated against COVID-19. The sellers' less favourable treatment of those consumers who were not vaccinated was thus causally related to a prohibited ground of discrimination. At the same time, the Centre assessed the question of whether the adoption of legislation introducing the institute of compulsory vaccination against COVID-19 could be seen as a proportionate restriction of the right of every individual to integrity and privacy in relation to the pursued objective which is

the protection of life and health of the population. Having carried out the proportionality test, it cannot state with certainty whether or not the restriction of the right of every individual to integrity and privacy resulting from the introduction of compulsory vaccination would pass the proportionality test.

In the second chapter, the Centre focused on the question of reasonableness of the restrictions on freedom of religious expression in Slovakia which were imposed by state authorities. It carried out a proportionality test with uncertain conclusions. In relation to the necessity of restrictions on the freedom of religious expression, it notes that Slovakia had the strictest restrictions on the freedom of religious expression in comparison with other European countries in the period under review. According to the Centre, there were less stringent means of restricting the freedom of religious expression so that the purpose of protecting the health and life of individuals could be achieved. It also pointed out possible interference with the right to peaceful assembly. The threat to life and health of persons causally linked to the emergence of the COVID-19 pandemic may constitute a sufficiently important objective to justify an interference with fundamental rights and freedoms, but its importance is limited by the rational connection between the interference and the objective. The essential fact that the

connection is dynamic and was changing throughout the state of emergency cannot be overlooked. From the point of view of necessity, the ban on peaceful assembly was questionable, since the necessity of its adoption did not always correspond to the then-current epidemiological situation. It is also questionable whether, during a period of minimal increase in the number of infected persons, the prohibition of the right to peaceful assembly was necessary to achieve the objective of protecting human life and health in a causal connection with the emergence of the COVID-19 pandemic. According to the Centre's legal opinion, from the point of view of proportionality in the restriction of fundamental rights and freedoms, a prior review of such intervention by the Constitutional Court would be more appropriate. The Centre also pointed out the suspension of the effectiveness of a decree of the Public Health Authority by the Constitutional Court. It stressed that the decision on the preliminary discussion itself already makes it clear what criteria the Public Health Authority must take into account in its future standard-setting activities to ensure that its decrees do not interfere in an unlawful manner with the human rights and fundamental freedoms of the addressees of such standards.

In the third chapter, the Centre discussed the purpose of the Pregnant Women Assistance Bill which was supposed to provide supportive measures to women considering abortion. Although the stated purpose can be considered legitimate, the very measures introduced by the Pregnant Women Assistance

Bill create barriers to access to abortion. The Act on assistance to pregnant women was not approved by NR SR, but it is foreseeable that women in the Slovak Republic will face further attempts to restrict their access to safe forms of abortion in the future. In this context, the Centre considers it necessary to stress that the state should strive to develop comprehensive support measures for women. Although the current legal framework regulating abortion is adequate, there are repeated attempts in NR SR to tighten it, contrary to WHO standards and recommendations of national and international actors in the field of human rights and gender equality, as well as experts in the field of gynaecology and obstetrics. The third chapter also compares the findings of the survey conducted in 2019 and the research carried out in 2021 that shows that the availability of reproductive health services and the availability of information about such services is insufficient. The Centre has repeatedly warned that the state of exercising reproductive and sexual rights in the Slovak Republic, especially by vulnerable groups, is alarming. The accessibility of abortion in the Slovak Republic, especially for women aged 40+, was made more difficult in 2021 by the entry into force of the Amendment to the Abortion Decree. Charging for abortion for such women makes it harder for them to access safe legal forms of abortion. The final part of chapter three is a result of research interviews with women journalists and activists working on human rights and gender equality. Although the number of research interviews was limited, it illustrates the conditions of work for the defenders of



women's sexual and reproductive rights and health, including access to legal and safe forms of abortion. The Centre notes the limitation of democratic space for female human rights defenders working on women's sexual and reproductive rights, including in the context of the repeated legislative proposals that aim to restrict access to legal and safe abortion.

In the fourth chapter it evaluated the bills submitted and the laws passed, from the content of which it is evident that the issue of protection and promotion of human rights is a marginal area of interest for legislators. It is a regular occurrence that bills are introduced which contradict, or even explicitly deny, basic human rights principles or established human rights stand-

ards. The Centre assesses the described phenomenon negatively. On the contrary, it praises the small number of bills whose purpose is to promote and protect human rights and fundamental freedoms, with particular emphasis on those intended to promote minorities.

The Centre also sees the relevance and importance of other themes that have resonated in society in relation to ensuring the protection and promotion of human rights and fundamental freedoms. An example is the restriction of individuals' access to so-called "white medicine" during the pandemic. This is a complex issue which the Centre will assess in the future once relevant qualitative and quantitative data is available.

### Vaccination against COVID-19

- 1 Private-law entities in legal relationships do not use the criterion of vaccination against COVID-19 to impose different rights and obligations on persons in a comparable situation, unless they are entitled or required to do so by a generally binding legal regulation.
- 2 Labour inspectorates focus their inspection activities on compliance with generally binding legislation governing the obligation to observe the principle of equal treatment in employment and similar legal relationships with vaccinated and unvaccinated persons.
- 3 The Slovak Trade Inspection focus its inspection activities on compliance with generally binding legislation governing the obligation to observe the principle of equal treatment of vaccinated and unvaccinated consumers.
- 4 If a general vaccination obligation or an obligation for selected groups of the population is introduced, the National Council of the Slovak Republic, the Government of the Slovak Republic or the Public Health Authority of the Slovak Republic comprehensively assess the reasons for implementation of such institute by conducting a strict proportionality test.

### Impact of the COVID-19 pandemic on selected human rights and fundamental freedoms

- 1 When approving resolutions restricting the freedom of residence and movement by lockdowns, the Government of the Slovak Republic place greater emphasis on assessing the necessity of restrictions interfering with the freedom of religious expression within the meaning of Article 24 (2) of the Constitution of the Slovak Republic.
- 2 When adopting decrees ordering measures restricting mass events when there is a threat to public health, the Public Authority of the Slovak Republic place greater emphasis on consideration of the existence and appropriateness of establishing less stringent means of restricting religious freedom of expression so that the purpose of the restriction can still be met.
- 3 The National Council of the Slovak Republic strengthen the competences of the public defender of rights during a state of emergency so that he/she can provide effective assistance in the protection of fundamental rights and freedoms.

## Women's reproductive rights

- 1** Members of the National Council of the Slovak Republic and the Government of the Slovak Republic refrain from introducing legislative measures that narrow the scope of guaranteed rights in the area of health, including women's sexual and reproductive health.
- 2** The National Council of the Slovak Republic and the Government of the Slovak Republic refrain from undue interference with women's right to sexual and reproductive health, including access to safe and legal forms of abortion.
- 3** The National Council of the Slovak Republic and the Government of the Slovak Republic respect the principle of equal treatment when introducing legislative and non-legislative measures to help pregnant women.
- 4** The Ministry of Health of the Slovak Republic initiate a transparent and participatory process to develop a national sexual and reproductive health strategy without undue delay.
- 5** The Ministry of Health of the Slovak Republic maintain and publish a complete and up-to-date list of health facilities that perform abortion at a woman's request.
- 6** The Ministry of Health of the Slovak Republic take effective measures to ensure access to safe abortion and to remove legislative and non-legislative barriers to access to abortion, including medically unjustified mandatory waiting periods, unavailability of information on reproductive health services, and difficult access to abortion in selected districts and regions of the Slovak Republic.
- 7** Health care facilities performing abortions adjust the amount of the fee for abortion in their price lists so that the fee covers all costs associated with the performance of abortion and does not exceed the amount set by the relevant Ministry of Health's Measure.
- 8** The Ministry of Health of the Slovak Republic prepare a proposal of relevant legislative changes that would allow for the performance of medical abortion, including the inclusion of relevant medicines in the list of categorised medicines and the list of medicines with an officially determined price.

- 9 The Government of the Slovak Republic ensure a safe democratic environment for female human rights defenders, including long-term institutional and financial support for civil society organisations working on human rights and gender equality, built on partnership, independence and expertise.
- 10 Ministries that are responsible for individual grants to civil society refrain from interfering with the availability of financial resources for organisations and activists focused on the access to legal and safe forms of abortion.
- 11 The Government of the Slovak Republic, individual Ministries and the National Council of the Slovak Republic strengthen and promote the active participation of female human rights defenders in the development of laws and policies that affect human rights, including women's rights.
- 12 The Government of the Slovak Republic and central government bodies implement and support awareness-raising activities including education of the general public with the aim of eliminating sexism and misogyny in public space.

### **Promotion and protection of human rights, fundamental freedoms and the principle of equal treatment in legislative processes**

- 1 Entities empowered with legislative initiative increase the level of activity in submitting such bills the purpose of which will be the equalisation of minorities living in the territory of the Slovak Republic.
- 2 Entities empowered with legislative initiative do not abuse their position to enforce legislative amendments that are in clear contravention of international human rights obligations by which the Slovak Republic is bound.
- 3 The National Council of the Slovak Republic do not ignore the international human rights obligations of the Slovak Republic in relation to legally recognised unions of persons regardless of their gender.